UNITED STATES CODE

1970 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 20, 1971

Prepared and published under authority of Title 1, U.S. Code, Section 202 (c)
by the Committee on the Judiciary of the House of Representatives

VOLUME SIX

TITLE 23—HIGHWAYS

TO

TITLE 26—INTERNAL REVENUE CODE

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TITLES OF UNITED STATES CODE

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*This title has been enacted as law.
†This title has been eliminated by the enactment of Title 10.

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PREFACE—1970 EDITION

This eighth edition of the United States Code was prepared and published pursuant to section 202 (c) of Title 1 of the Code. It contains a consolidation and codification of all the general and permanent laws of the United States which are in force on January 20, 1971. By statutory authority this edition may be cited "U.S.C. 1970 ed." Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, and 1964.

Inasmuch as many of the general and permanent laws which are required to be incorporated in this Code are inconsistent, redundant, and obsolete, the Committee on the Judiciary is engaged in a comprehensive project of revising and enacting the Code into law, title by title. In furtherance of this plan bills have been enacted to revise, codify and enact into law Titles 1, 3, 4, 5, 6, 9, 10, 13, 14, 17, 18, 23, 28, 32, 35, 37, 38, 39, and 44. In addition, bills relating to other titles are also being prepared for introduction. When this work is completed all the titles of the Code will be legal evidence of the general and permanent law and recourse to the numerous volumes of the Statutes at Large for this purpose will be unnecessary.

The title and chapter structure of the 1964 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1964.

In this edition numerous notes have been added captioned "Section referred to in other sections". These notes have been inserted following each section that is referred to in the text of another section, indicating the section that contains the internal reference. They should be extremely useful to the Congress, the bench and bar, and the public.

The actual work of preparing and editing the material for this edition was done by the West Publishing Co. of St. Paul, Minnesota, under the supervision of the Committee on the Judiciary of the House of Representatives. West Publishing Co. prepared the original Code which Congress enacted in 1926 and has continuously served the Committee since that time in the preparation of the authorized new editions and Supplements to the Code. Grateful acknowledgment is made to the editorial and manuscript staffs of the publishing company and of Joseph Fischer, Esq., the law revision counsel for the Committee, and his staff for their untiring efforts to make this edition as nearly perfect as possible. Acknowledgment of valuable assistance is made also to various officers of Government departments and agencies and the Government Printing Office for their helpful suggestions and criticisms.

The Committee on the Judiciary invites criticisms or suggestions with the view of improving the Code wherever possible. It is hoped that the program of enacting the entire Code, title by title, to improve its present status as merely prima facie evidence of the law, will meet with early success.

Emanuel Celler

Chairman,
Committee on the Judiciary.

Robert W. Kastenmeier

Chairman, Subcommittee No. 3,
Committee on the Judiciary.

WASHINGTON, D.C., *January 2, 1971.*

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TITLE 23.—HIGHWAYS

This title was enacted by Pub. L. 85-767, § 1, Aug. 27, 1958, 72 Stat. 885.

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AMENDMENTS

1966—Pub. L. 89-564, title I, § 102(b)(3), Sept. 9, 1966, 80 Stat. 735, added item 4.

TABLE

Showing disposition of all sections of former Title 23.

Title 23 former sections:	*Title 23 new sections*
1	Omitted.
2	101.
2a	101 (a).
2b	101 (a).
3—5	Omitted.
6	103 (b), 103 (e), 105 (c), 121 (c).
6-1	103 (c).
6a	103 (d).
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6b, 6c	Omitted.
7	110 (a).
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9a	129 (a).
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10	109 (a).
10a—11	Omitted.
12	105 (a), 106 (a), 106 (c), 121 (d).
12a	121 (c).
12b	Omitted.
13	114 (a).
13-1	112 (b), 112 (c).
13a	Omitted.
13b	103 (d).
14	121 (a), 121 (b), 121 (e).
14a	See § 308 (a).
15, 16	Omitted.
17	316.
18	317 (a), (b), (c).
19	315.
20, 20a	Omitted.
21	104 (a), 104 (b) (1).
21-1	307 (a), 307 (b).
21a	104 (b), 105 (a), 106 (a), 114 (a), 118 (a), 118 (c).
21a-1 to 21b	Omitted.
21c	311.
21d	Omitted.
21e	122.
22	104 (e).
23	101 (a), 202 (b), 204 (a), 204 (b), 204 (c), 205 (a), 205 (b), 205 (c).
23a to 23b-1	Omitted.
23c	205 (c).
24	Omitted.
24a	109 (e).
25, 26	Omitted.
41	101 (a), 105 (e).
41a	101 (a), 103 (b).
41b	101 (a), 103 (b).
42—45	Omitted.
46	See T. 18, § 1020.
47, 48	Omitted.
49	See T. 40, §§ 483, 484.
50	Omitted.
51	See T. 40, §§ 483, 484.
52	See T. 40, §§ 483, 484.
53	See T. 40, §§ 483, 484.
54—54b	Omitted.
55	126.
55b	126 (b).
56	Omitted.
57	See § 314.
58—59a	Omitted.
61	307 (c).
62	318.
63	109 (d).
64	320 (a).
65	320 (b).
66	320 (c).
67	320 (d).
68	320 (e).
69	320 (f).
70	313.
71	303 (a).
72	See § 303 note.
73	303 (a).
101—105	Omitted.
106	210 (a), 210 (b).
107—113	Omitted.
114	210 (e).
115	308 (a).
116	315.
117	312.
151	104 (c), 117 (a), 117 (b), 117 (c), 118 (b).
152	204 (f), 205 (d).
153	206 (a), 207 (a), 208 (a), 208 (b).
154	209 (a).
155	203.
156	101 (b), 103 (f), 104 (b) (1), 116 (d), 119 (a), 119 (b), 120 (h).
157	103 (d).
158	101 (b), 104 (b) (4), 104 (b) (5), 109 (b), 115, 118 (c), 120 (c), 127, 307 note.
159	107 (a), 107 (b), 107 (c), 107 (d).
160	108 (a), 108 (b).
161	124.
162	123 (a), 123 (b), 123 (c).
163	111.
164	129 (b), 129 (c), 129 (d).
165	Omitted.
166	113 (a), 113 (b).
167	101 (b), 128 (a), 128 (b), 304.
168, 169	Omitted.
170	305.
171	306.
172	Omitted.
173	See § 120 note.
174	See § 307 note.
175	Omitted.

[1] Chapter 5 was added by Pub. L. 90-495, § 30, Aug. 23, 1968, 82 Stat. 830, without adding item 5 to the analysis of chapters. Item 5 has been editorially supplied to reflect the addition of chapter 5.

CITATION

Section 1 of Pub. L 85–767, Aug. 27, 1958, 72 Stat. 885, provided in part that this title may be cited as "Title 23, United States Code, § ——".

REPEALS

Section 2 of Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 919, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large covering provisions codified in this title.

CONSTRUCTION

Section 3 of Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 921, provided that:

"(a) If any provision of title 23, as enacted by section 1 of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the title and the application of the provision to other persons or circumstances shall not be affected thereby.

"(b) The provisions of this Act shall be subject to Reorganization Plan Numbered 5 of 1950 (64 Stat. 1263) [set out in the Appendix to Title 5]."

SAVINGS CLAUSE

Section 4 of Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 921, provided that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions under section 2 of this Act."

Chapter 1.—FEDERAL-AID HIGHWAYS

Sec.
101. Definitions and declaration of policy.
102. Authorizations.
103. Federal-aid systems.
104. Apportionment.
105. Programs.
106. Plans, specifications, and estimates.
107. Acquisition of rights-of-way—Interstate System.
108. Advance acquisition of rights-of-way.
109. Standards.
110. Project agreements.
111.[1] Use of and access to rights-of-way—Interstate System.
112. Letting of contracts.
113. Prevailing rate of wage.
114. Construction.
115. Construction by States in advance of apportionment.
116. Maintenance.
117. Secondary road responsibility.
118. Availability of sums apportioned.
119.[2] Administration of Federal-aid for highways in Alaska.
120. Federal share payable.
121. Payment to States for construction.
122. Payment to States for bond retirement.
123. Relocation of utility facilities.
124. Advances to States.
125. Emergency relief.
126. Diversion.
127. Vehicle weight and width limitations—Interstate System.
128. Public hearings.
129. Toll roads, bridges, tunnels, and ferries.
130. Railway-highway crossings.
131. Control of outdoor advertising.
132. Payments on Federal-aid projects undertaken by a Federal agency.
133. Relocation assistance.
134. Transportation planning in certain urban areas.
135. Urban area traffic operations improvement program.
136. Control of junkyards.
137. Fringe and corridor parking facilities.
138. Preservation of parklands.
139. Additions to Interstate System.
140. Equal employment opportunity.
141. Real property acquisition policies.
142. Urban highway public transportation.
143. Economic growth center development highways.
144. Special bridge replacement program.

[1] Analysis does not conform to section catchline.
[2] Section repealed without amending analysis.

AMENDMENTS

1970—Pub. L. 91–605, title I, §§ 111(b), 127(b), 134(b), title II, § 204(b), Dec. 31, 1970, 84 Stat. 1720, 1731, 1734, 1742, added items 142, 143, 144, and substituted "Fringe and corridor parking facilities" for "Limitation on authorization of appropriations for certain purposes" in item 137.

1968—Pub. L. 90–495, §§ 10(b), 12(b), 16(b), 22(b), 25(c), 35(b), Aug. 23, 1968, 82 Stat. 820, 822, 823, 827, 829, 836, added items 135, 139, 140, and 141 and substituted "Prevailing rate of wage" for "Prevailing rate of wage—Interstate System" in item 113 and "Construction by States in advance of apportionment" for "Construction by States in advance of apportionment—Interstate System" in item 115.

1966—Pub. L. 89–574, §§ 8(c)(2), 15(b), Sept. 13, 1966, 80 Stat. 769, 771, added items 137 and 138.

Pub. L. 89–564, title I, § 102(b)(1), Sept. 9, 1966, 80 Stat. 734, deleted item 135 relating to highway safety programs.

1965—Pub. L. 89–285, title I, § 102, title II, § 202, Oct. 22, 1965, 79 Stat. 1030, 1032, substituted "Control of outdoor advertising" for "Areas adjacent to the Interstate System" in item 131, and added item 136.

Pub. L. 89–139, § 4(b), Aug. 28, 1965, 79 Stat. 579, added item 135.

1962—Pub. L. 87–866, §§ 5(b), 9(b), Oct. 23, 1962, 76 Stat. 1147, 1148, added items 133 and 134.

1960—Pub. L. 86–657, §§ 4(b), 5(b), July 14, 1960, 74 Stat. 523, included ferries in item 129 and added item 132.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 105, 131, 136, 215, 319, 402 of this title.

§ 101. Definitions and declaration of policy.

(a) As used in this title, unless the context requires otherwise—

The term "apportionment" in accordance with section 104 of this title includes unexpended apportionments made under prior acts.

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the Coast and Geodetic Survey in the Department of Commerce), acquisition of rights-of-way, relocation assistance, elimination of hazards of railway grade crossings, acquisition of replacement housing sites, and acquisition, and rehabilitation, relocation, and construction of replacement housing.

The term "county" includes corresponding units of government under any other name in States which do not have county organizations, and likewise in those States in which the county government does not have jurisdiction over highways it may be construed to mean any local government unit vested with jurisdiction over local highways.

The term "forest road or trail" means a road or trail wholly or partly within or adjacent to and serving the national forests and other areas administered by the Forest Service.

The term "forest development roads and trails" means those forest roads or trails of primary importance for the protection, administration, and utilization of the national forest and other areas

administered by the Forest Service or, where necessary, for the use and development of the resources upon which communities within or adjacent to the national forest and other areas administered by the Forest Service are dependent.

The term "forest highway" means a forest road which is of primary importance to the States, counties, or communities within, adjoining, or adjacent to the national forests, and which is on the Federal-aid system.

The term "highway" includes roads, streets, and parkways, and also includes rights-of-way, bridges, railroad-highway crossings, tunnels, drainage structures, signs, guardrails, and protective structures, in connection with highways. It further includes that portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State highway department including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

The term "Federal-aid highways" means highways located on one of the Federal-aid systems described in section 103 of this title.

The term "Indian reservation roads and bridges" means roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government on which Indians reside whom the Secretary of the Interior has determined to be eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

The term "park roads and trails" means those roads or trails, including the necessary bridges, located in national parks or monuments, now or hereafter established, or in other areas administered by the National Park Service of the Department of the Interior (excluding parkways authorized by Acts of Congress) and also including approach roads to national parks or monuments authorized by the Act of January 31, 1931 (46 Stat. 1053), as amended.

The term "parkway" as used in chapter 2 of this title, means a parkway authorized by an Act of Congress on lands to which title is vested in the United States.

The term "project" means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed.

The term "project agreement" means the formal instrument to be executed by the State highway department and the Secretary as required by the provisions of subsection (a) of section 110 of this title.

The term "public lands development roads and trails" means those roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under his control.

The term "public lands highways" means those main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, which are on the Federal-aid systems.

The term "rural areas" means all areas of a State not included in urban areas.

The term "Secretary" means Secretary of Commerce.

The term "urbanized area" means an area so designated by the Bureau of the Census.

The term "State" means any one of the fifty States, the District of Columbia, or Puerto Rico.

The term "State funds" includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State highway department.

The term "State highway department" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

The term "Federal-aid system" means any one of the Federal-aid highway systems described in section 103 of this title.

The term "Federal aid primary system" means the Federal-aid highway system described in subsection (b) of section 103 of this title.

The term "Federal-aid secondary system" means the Federal-aid highway system described in subsection (c) of section 103 of this title.

The term "Federal-aid urban system" means the Federal-aid highway system described in subsection (d) of section 103 of this title.

The term "Interstate System" means the National System of Interstate and Defense Highways described in subsection (e) of section 103 of this title.

The term "urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available Federal census, within boundaries to be fixed by a State highway department subject to the approval of the Secretary.

(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including the National System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense.

It is hereby declared that the prompt and early completion of the National System of Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the "Interstate System", is essential to the national interest and is one of the most important objectives of this Act. It is the intent of

Congress that the Interstate System be completed as nearly as practicable over the period of availability of the twenty years' appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending June 30, 1976, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire system in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible. it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.

(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any officer or employee in the executive branch of the Federal Government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

(d) No funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency, or instrumentality other than the Federal Highway Administration unless funds for such expenditure are identified and included as a line item in an appropriation Act and are to meet obligations of the United States heretofore or hereafter incurred under this title attributable to the construction of Federal-aid highways or highway planning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 885; Pub. L. 86–70, § 21(e)(1), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, § 17(a), July 12, 1960, 74 Stat. 415; Pub. L. 87–866, § 6(a), Oct. 23, 1962, 76 Stat. 1147; Pub. L. 88–423, § 3, Aug. 13, 1964, 78 Stat. 397; Pub. L. 89–574, § 4(a), Sept. 13, 1966, 80 Stat. 767; Pub. L. 90–495, §§ 4(a), 8, 15, Aug. 23, 1968, 82 Stat. 816, 819, 822; Pub. L. 91–605, title I, §§ 104(a), 106(a), 107, 117(d), 130, 141, Dec. 31, 1970, 84 Stat. 1714, 1716, 1718, 1724, 1732, 1737.)

REFERENCES IN TEXT

The Act of January 31, 1931 (46 Stat. 1053), as amended, referred to in subsec. (a), is classified to sections 8a, 8b, and 8c of Title 16, Conservation.

This Act, referred to in the text, means Pub. L. 85–767, which revised, codified, and reenacted this title.

Section 108 (b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), referred to in subsec. (b), is set out as a note under section.

The Act of March 4, 1915, as amended (31 U.S.C. 686), referred to in subsec. (d)(1), is classified to section 686 of Title 31, Money and Finance.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605, §§ 106(a), 117(d), 130, 141, inserted definitions of "urbanized area" and "Federal-aid urban system", substituted "subsection (e)" for "subsection (d)" in definition of "Interstate System", included within the costs of construction, under the definition of "construction", relocation assistance, acquisition of replacement housing sites, acquisition, and rehabilitation, relocation, and construction of replacement housing, and substituted "acquisition" for "costs" of rights-of-way, broadened definition of "Indian reservation roads and bridges" to include roads and bridges on State controlled Indian reservations, trust lands, and restricted Indian lands, a well as roads and bridges on such lands under Federal control, and added to the definitions of "forest highway" and "public lands highways" provisions to insure that these highways be on the Federal-aid systems.

Subsec. (b). Pub. L. 91–605, § 104(a), substituted "twenty years" for "eighteen years" and "June 30, 1976" for "June 30, 1974".

Subsec. (c). Pub. L. 91–605, § 107, substituted "any officer or employee in the executive branch of the Federal Government" for "any officer or employee of any department, agency, or instrumentality of the executive branch of the Federal Government" and "Highway Trust Fund" for "highway trust fund".

Subsec. (d). Pub. L. 91–605, § 107, substituted provisions prohibiting expenditure of funds from the Highway Trust Fund by any department other than the Federal Highway Administration unless these funds are identified and included as a line item in an appropriation Act and are to meet obligations incurred under this title attributable to the construction of Federal aid highways or for planning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation for provisions expressing essentially the same prohibitions but permitting expenditures to meet obligations incurred under this title attributable to Federal-aid highways, and contracted for in accordance with the Act of March 4, 1915, as amended [section 686 of Title 31, Money and Finance], relating to work or services not usually performed by the Federal Highway Administration, or relating to the furnishing of materials, supplies or equipment, and expenditures specifically identified in the budget and included in an appropriation Act.

1968—Subsec. (a). Pub. L. 90–495, § 8, added "and other areas administered by the Forest Service" following "national forests" and "national forest" in the definitions of "forest road or trail" and "forest development roads and trails".

Subsec. (b). Pub. L. 90–495, § 4(a), substituted a reference to "eighteen years' appropriation" for reference to "sixteen years' appropriation" and substituted "June 30, 1974" for "June 30, 1972".

Subsecs. (c), (d). Pub. L. 90–495, § 15, added subsecs. (c) and (d).

1966—Subsec. (b). Pub. L. 89–574 substituted a reference to "sixteen years' appropriation" for reference to "fifteen years' appropriation" and substituted "June 30, 1972" for "June 30, 1971".

1964—Subsec. (b). Pub. L. 88–423 substituted "fifteen years" for "thirteen years" and "June 30, 1971" for "June 30, 1969."

1962—Subsec. (a). Pub. L. 87–866 inserted the definition of "public lands development roads and trails."

1960—Subsec. (a). Pub. L. 86–624 substituted "fifty States, the District of Columbia, or Puerto Rico" for "forty-nine States, the District of Columbia, Hawaii, or Puerto Rico" in the definition of "State."

1959—Pub. L. 86–70 substituted in the definition of "State" the words "forty-nine States, the District of Columbia, Hawaii" for "forty-eight States, the District of Columbia, Hawaii, Alaska."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 21(e) of Pub. L. 86–70 provided in part that the amendments of subsec. (a) of this section and sections 104(b), 116(a) and 120(a) of this title shall be effective on July 1, 1959.

SHORT TITLE

Section 101 of Pub. L. 91–605 provided that: "This title [enacting sections 142, 143, 215, 216, 321, and 510 of this title, amending this section and sections 103, 104, 105, 106, 109, 120, 125, 128, 129, 131, 134, 135, 136, 137, 139, 140, 303, 307, 320, 506, 511, 512 of this title and section 517 of Title 33, Navigation and Navigable Waters, and enacting material set out as notes under this section and sections 104, 120, 129, 131, 134, 215, 216, 303, 307, 320, and 510 of this title] may be cited as the 'Federal-Aid Highway Act of 1970'."

Section 1 of Pub. L. 88–423 provided that Pub. L. 88–423, which in part amended this section and sections 104, 205, 209 and 320 of this title, may be cited as the "Federal-Aid Highway Act of 1964."

Section 1 of Pub. L. 87–866 provided that Pub. L. 87–866, which in part enacted sections 133, 134 and 214 of this title, amended this section and sections 103, 104, 203 and 307 of this title and enacted provisions set out as a note under section 307 of this title, may be cited as the "Federal-Aid Highway Act of 1962."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

The Coast and Geodetic Survey was consolidated with the Weather Bureau of the Department of Commerce to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All personnel (including commissioned officers) of the Survey and all property held or used by the Survey were deemed transferred to the Administration, and all functions of the Survey, not previously transferred by 1950 Reorg. Plan No. 5, were transferred to the Secretary of Commerce.

SEPARABILITY OF PROVISIONS

Section 36 of Pub. L. 90–495 provided that: "If any provision of this Act (including the amendments made by this Act) [enacting sections 135, 139, 140, 141, and 501–511 of this title, amending sections 101, 101 note, 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319 and 402 of this title, section 636 of Title 15, Commerce and Trade, and section 1653 of Title 49, Transportation, repealing section 133 of this title, and enacting provisions set out as notes under sections 101, 104, 108, 125, 134, 501, 502, and 510 of this title], or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected thereby."

SECTION 108(b) OF THE FEDERAL-AID HIGHWAY ACT OF 1956

Section 108(b) of act June 29, 1956, ch. 462, title I, 70 Stat. 378, as amended by Pub. L. 85–381, § 7(a), Apr. 16, 1958, 72 Stat. 93; Pub. L. 86–342, title I, § 102, Sept. 21, 1959, 73 Stat. 611; Pub. L. 87–61, title I, § 103, June 29, 1961, 75 Stat. 122; Pub. L. 89–139, § 1, Aug. 28, 1965, 79 Stat. 578; Pub. L. 89–574, § 2, Sept. 13, 1966, 80 Stat. 766; Pub. L. 90–495, § 2, Aug. 23, 1968, 82 Stat. 815; Pub. L. 91–605, title I, §§ 102, 106(b)(1), Dec. 31, 1970, 84 Stat. 1714, 1716, provided that: "For the purpose of expediting the construction, reconstruction, or improvement, inclusive of necessary bridges and tunnels, of the Interstate System, including extensions thereof through urban areas, designated in accordance with the provisions of subsection (e) of section 103 of title 23, United States Code [section 103(e) of this title], there is hereby authorized to be appropriated the additional sum of $1,000,000,000 for the fiscal year ending June 30, 1957, which sum shall be in addition to the authorization heretofore made for that year, the additional sum of $1,700,000,000 for the fiscal year ending June 30, 1958, the additional sum of $2,200,000,000 for the fiscal year ending June 30, 1959, the additional sum of $2,500,000,000 for the fiscal year ending June 30, 1960, the additional sum of $1,800,000,000 for the fiscal year ending June 30, 1961, the additional sum of $2,200,000,000 for the fiscal year ending June 30, 1962, the additional sum of $2,400,000,000 for the fiscal year ending June 30, 1963, the additional sum of $2,600,000,000 for the fiscal year ending June 30, 1964, the additional sum of $2,700,000,000 for the fiscal year ending June 30, 1965, the additional sum of $2,800,000,000 for the fiscal year ending June 30, 1966, the additional sum of $3,000,000,000 for the fiscal year ending June 30, 1967, the additional sum of $3,400,000,000 for the fiscal year ending June 30, 1968, the additional sum of $3,800,000,000 for the fiscal year ending June 30, 1969, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1970, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1971, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1972, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1973, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1974, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1975, and the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1976. Nothing in this subsection shall be construed to authorize the appropriation of any sums to carry out sections 131, 136, or 319(b) of title 23, United States Code, or any provision of law relating to highway safety enacted after May 1, 1966."

AUTHORIZATION OF USE OF COST ESTIMATE FOR APPORTIONMENT OF INTERSTATE FUNDS

Section 103 of Pub. L. 91–605 provided that: "The Secretary of Transportation is authorized to make the apportionment for the fiscal years ending June 30, 1972, and June 30, 1973, of the sums authorized to be appropriated for such years for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5, House Document Numbered 91–317."

APPORTIONMENT OF INTERSTATE FUNDS FOR FISCAL YEARS ENDING JUNE 30, 1968, AND 1969

Pub. L. 89–574, § 3, Sept. 13, 1966, 80 Stat. 766, empowered the Secretary of Commerce to make the apportionment for the fiscal years ending June 30, 1968, and 1969, of the sums authorized to be appropriated for such years for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in table 5 of House Document Numbered 42, Eighty-ninth Congress.

FUTURE HIGHWAY NEEDS: REPORTS TO CONGRESS

Section 121 of Pub. L. 91–605 provided that:

"(a) The Secretary of Transportation shall develop and include in the report of Congress required to be submitted in January 1972, by section 3 of the Act of August 28, 1965 (79 Stat. 578; Public Law 89–139) [set out as a note under this section], specific recommendations for the functional realinement of the Federal-aid systems. These recommendations shall be based on the functional classification

study made in cooperation with the State highway departments and local governments as required by the Federal-Aid Highway Act of 1968 [see section 17 of Pub. L. 90–495, set out as a note under this section] and submitted to the Congress in 1970, and the functional classification study now underway of the Federal-aid systems in 1990.

"(b) As a part of the future highway needs report to be submitted to Congress in January 1972, the Secretary shall also make recommendations to the Congress for a continuing Federal-aid highway program for the period 1976 to 1990. The needs estimates to be used in developing such programs shall be in conformance with the functional classification studies referred to in subsection (a) of this section and the recommendations for the functional realinement required by such subsection.

"(c) The recommendations required by subsections (a) and (b) of this section shall be determined on the basis of studies now being conducted by the Secretary in cooperation with the State highway departments and local governments, and, in urban areas of more than fifty thousand population, utilizing the cooperative continuing comprehensive transportation planning process conducted in accordance with section 134 of title 23, United States Code [section 134 of this title]. The highway needs estimates prepared by the States in connection with this report to Congress shall be submitted to Congress by the Secretary, together with his recommendations.

"(d) As a part of the future highway needs report to be submitted to Congress in January 1972, the Secretary shall report to Congress the Federal-aid urban system as designated, and the cost of its construction."

Pub. L. 90–495, § 17, Aug. 23, 1968, 82 Stat. 823, provided that: "The Secretary of Transportation shall, in the report to Congress required to be submitted by January 1970 by section 3 of the Act of August 28, 1965 (79 Stat. 578; Public Law 89–139) [set out as a note under this section], include the results of a systematic nationwide functional highway classification study to be made in cooperation with the State highway departments and local governments with particular attention to the establishment of highway system categories, rural and urban, according to the functional importance of routes, desirable as one of the bases for realigning Federal highway programs to better meet future needs and priorities."

Pub. L. 89–139, § 3, Aug. 28, 1965, 79 Stat. 578, provided that: "It is the sense of Congress that the Secretary of Commerce [Transportation], acting under authority of existing law and through the Bureau of Public Roads, shall report to Congress in January, 1968, and in January of every second year thereafter, his estimates of the future highway needs of the nation."

STUDIES OF NEED FOR AND SURVEY OF HIGHWAY CONSTRUCTION PROGRAMS FOR GUAM, AMERICAN SAMOA, AND THE VIRGIN ISLANDS

Pub. L. 90–495, § 29, Aug. 23, 1968, 82 Stat. 830, directed the Secretary of Transportation, in cooperation with the government of Guam, the government of American Samoa, and the government of the Virgin Islands, to make studies of the need for, and estimates and planning surveys relative to, highway construction programs for Guam, American Samoa, and the Virgin Islands. The Secretary of Transportation was required to submit a report to the Congress on or before April 1, 1969.

Pub. L. 89–574, § 13, Sept. 13, 1966, 80 Stat. 770, directed the Secretary of Commerce, in cooperation with the government of Guam, the government of American Samoa, and the government of the Virgin Islands to make studies of the need for, and estimates and planning surveys relative to, highway construction programs for Guam, American Samoa, and the Virgin Islands. The Secretary of Commerce was required to submit a report to the Congress on or before July 1, 1967.

REPORT AND RECOMMENDATIONS OF SECRETARY OF COMMERCE

Section 5 of Pub. L. 85–767 directed the Secretary of Commerce to submit to the Congress not later than February 1, 1959, a report on the progress made in attaining the objectives set forth in section 101 of title 23, together with recommendations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 460*l*–5.

§ 102. Authorizations.

The provisions of this title apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations, heretofore made, providing for the expenditure of Federal funds upon the Federal-aid systems. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 887.)

§ 103. Federal-aid systems.

(a) For the purposes of this title, the four Federal-aid systems, the primary system, the urban system, the secondary system, and the Interstate System, are established and continued pursuant to the provisions of this section.

(b) The Federal-aid primary system shall consist of an adequate system of connected main highways, selected or designated by each State through its State highway department, subject to the approval of the Secretary as provided by subsection (f) of this section. This system shall not exceed 7 per centum of the total highway mileage of such State, exclusive of mileage within national forests, Indian, or other Federal reservations and within urban areas, as shown by the records of the State highway department on November 9, 1921. Whenever provision has been made by any State for the completion and maintenance of 90 per centum of its Federal-aid primary system, as originally designated, said State through its State highway department by and with the approval of the Secretary is authorized to increase the mileage of its Federal-aid primary system by additional mileage equal to not more than 1 per centum of the total mileage of said State as shown by the records on November 9, 1921. Thereafter, it may make like 1 per centum increases in the mileage of its Federal-aid primary system whenever provision has been made for the completion and maintenance of 90 per centum of the entire system, including the additional mileage previously authorized. This system may be located both in rural and urban areas. The mileage limitations in this paragraph shall not apply to the District of Columbia, Hawaii, Alaska, or Puerto Rico.

(c) The Federal-aid secondary system shall be selected by the State highway departments and the appropriate local road officials in cooperation with each other, subject to approval by the Secretary as provided in subsection (f) of this section. In making such selections, farm-to-market roads, rural mail routes, public school bus routes, local rural roads, county roads, township roads, and roads of the county road class may be included, so long as they are not on the Federal-aid primary system or the Interstate System. This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area.

(d) The Federal-aid urban system shall be established in each urbanized area. The system shall be so located as to serve the major centers of activity,

and designed taking into consideration the highest traffic volume corridors, and the longest trips within such area and shall be selected so as to best serve the goals and objectives of the community as determined by the responsible local officials of such urbanized area based upon the planning process required pursuant to the provisions of section 134 of this title. No route on the Federal-aid urban system shall also be a route on any other Federal-aid system. Each route of the system shall connect with another route on a Federal-aid system. Routes on the Federal-aid urban system shall be selected by the appropriate local officials and the State highway departments in cooperation with each other subject to the approval of the Secretary as provided in subsection (f) of this section. The provisions of chapters 1, 3, and 5 of this title that are applicable to Federal-aid primary highways shall apply to the Federal-aid urban system except as determined by the Secretary to be inconsistent with this subsection.

(e) (1) The Interstate System shall be designated within the United States, including the District of Columbia, and, except as provided in paragraphs (2) and (3) of this subsection, it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense, and to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of this system, to the greatest extent possible, shall be selected by joint action of the State highway departments of each State and the adjoining States, subject to the approval by the Secretary as provided in subsection (f) of this section. All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section. This system may be located both in rural and urban areas.

(2) In addition to the mileage authorized by the first sentence of paragraph (1) of this subsection, there is hereby authorized additional mileage for the Interstate System of two hundred miles, to be used in making modifications or revisions in the Interstate System as provided in this paragraph. Upon the request of a State highway department the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title prior to the enactment of this paragraph, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System (including urban routes necessary for metropolitan transportation) and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. After the Secretary has withdrawn his approval of any such route or portion thereof the mileage of such route or portion thereof and the additional mileage authorized by the first sentence of this paragraph shall be available for the designation of interstate routes or portions thereof as provided in this subsection. The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph except that the cost to the United States of the aggregate of all mileage designated under the third sentence of this paragraph shall not exceed the cost to the United States of the aggregate of all mileage approval for which is withdrawn under the second sentence of this paragraph, as such cost is included in the 1968 Interstate System cost estimate set forth in House Document Numbered 199, Ninetieth Congress, as revised. In considering routes or portions thereof to be added to the Interstate System under the third sentence of this paragraph, the Secretary shall, in consultation with the States and local governments concerned, give due regard to (A) routes or portions thereof in States in which the Secretary has heretofore or hereafter withdrawn his approval of other routes or portions thereof, and (B) the extension of routes which terminate within municipalities served by a single interstate route, so as to provide traffic service entirely through such municipalities.

(3) In addition to the mileage authorized by paragraphs (1) and (2) of this subsection, there is hereby authorized additional mileage of not to exceed 1,500 miles for the designation of routes in the same manner as set forth in paragraph (1), in order to improve the efficiency and service of the Interstate System to better accomplish the purposes of that System.

(f) The Secretary shall have authority to approve in whole or in part the Federal-aid primary system, the Federal-aid secondary system, the Federal-aid urban system, and the Interstate System, as and when such systems or portions thereof are designated, or to require modifications or revisions thereof. No Federal-aid system or portion thereof shall be eligible for projects in which Federal funds participate until approved by the Secretary.

(g) The Secretary, on July 1, 1973, shall remove from designation as a part of the Interstate System every segment of such System for which a State has not established a schedule for the expenditure of funds for completion of construction of such segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System, and with respect to which the State has not provided the Secretary with assurances satisfactory to him that such schedule will be met. Nothing in the preceding sentence shall be construed to prohibit the substitution prior to July 1, 1973, of alternative segments of the Interstate System which will meet the requirements of this title. Any segment of the Interstate System with respect to which a State has not submitted plans, specifications, and estimates for approval by the Secretary by July 1, 1975, shall be removed from designation as a part of the Interstate System. No segment of the Interstate System removed under authority of the preceding sentence shall thereafter be designated as a part of the Interstate System. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 887; Pub. L. 86–70, § 21(d)(1), June 25, 1959,

73 Stat. 145; Pub. L. 86-624, § 17 (b), (c), July 12, 1960, 74 Stat. 415; Pub. L. 87-866, § 8(a), Oct. 23, 1962, 76 Stat. 1147; Pub. L. 90-238, Jan. 2, 1968, 81 Stat. 772; Pub. L. 90-495, §§ 14, 21, Aug. 23, 1968, 82 Stat. 822, 826; Pub. L. 91-605, title I, §§ 106(b), 124, Dec. 31, 1970, 84 Stat. 1716, 1729.)

REFERENCES IN TEXT

The enactment of this paragraph, referred to in subsec. (e)(2), took place on Jan. 2, 1968.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-605, § 106(b)(3), substituted "four" for "three" and added the urban system to the list of Federal-aid systems.

Subsec. (b). Pub. L. 91-605, § 106(b)(1), substituted "subsection (f)" for "subsection (e)".

Subsec. (c). Pub. L. 91-605, § 106(b)(1), substituted "subsection (f)" for "subsection (e)".

Subsec. (d). Pub. L. 91-605, § 106(b)(1), added subsec. (d). Former subsec. (d) redesignated subsec. (e).

Subsec. (e). Pub. L. 91-605, § 106(b)(1), redesignated former subsec. (d) as subsec. (e) and as so redesignated substituted "subsection (f)" for "subsection (e)". Former subsec. (e) redesignated subsec. (f).

Subsec. (f). Pub. L. 91-605, § 106(b)(1), (2), redesignated former subsec. (e) as subsec. (f) and as so redesignated added reference to Federal-aid urban system.

Subsec. (g). Pub. L. 91-605, § 124, added subsec. (g).

1968—Subsec. (d)(1). Pub. L. 90-495, § 14(a), inserted provision making allowance for an exception in pars. (2) and (3) to the forty-one thousand mile total extent of the Interstate system.

Subsec. (d)(2). Pub. L. 90-495, § 21, substituted "1968 Interstate System cost estimate set forth in House Document Numbered 199, Ninetieth Congress, as revised" for "1965 Interstate System cost estimate set forth in House Document Numbered 42, Eighty-ninth Congress".

Subsec. (d)(3). Pub. L. 90-495, § 14(b), added subsec. (d)(3).

Subsec. (d). Pub. L. 90-238 redesignated existing provision as par. (1) and added par. (2).

1962—Subsec. (c). Pub. L. 87-866 substituted "This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area" for "This system shall be confined to rural areas, except (1) that in any State having a population density of more than two hundred per square mile as shown by the latest available Federal census, the system may include mileage in urban areas as well as rural, and (2) that the system may be extended into urban areas subject to the conditions that any such extension passes through the urban area or connects with another Federal-aid system within the urban area, and that Federal participation in projects on such extensions is limited to urban funds."

1960—Subsec. (d). Pub. L. 86-624, § 17(c), substituted "within the United States, including the District of Columbia, and" for "within the continental United States and", and inserted words "to the greatest extent possible" in two instances.

1959—Subsec. (f). Pub. L. 86-70 repealed subsec. (f) which related to determination of roads in the Territory of Alaska on which Federal-aid funds could be expended.

Subsec. (g). Pub. L. 86-624, § 17(b), repealed subsec. (g), which provided that the systems of highways on which funds apportioned to the Territory of Hawaii under this chapter shall be expended may be determined and agreed upon by the Governor of said Territory and the Secretary.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 8(b) of Pub. L. 87-866 provided that: "The amendment made by subsection (a) of this section [to subsec. (c) of this section] shall apply to apportionments made before as well as after the date of enactment of this Act [Oct. 23, 1962]."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 21(d) of Pub. L. 86-70 provided in part that the repeal of subsec. (f) of this section and sections 116(d), 119 and 120(h) of this title, and sections 321a—321d, and 322—325 of Title 48, Territories and Insular Possessions, shall be effective July 1, 1959.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 129, 139 of this title.

§ 104. Apportionment.

(a) Whenever an apportionment is made of the sums authorized to be appropriated for expenditure upon the Federal-aid systems, the Secretary shall deduct a sum, in such amount not to exceed 3¾ per centum of all sums so authorized, as the Secretary may deem necessary for administering the provisions of law to be financed from appropriations for the Federal-aid systems and for carrying on the research authorized by subsections (a) and (b) of section 307 of this title. In making such determination, the Secretary shall take into account the unexpended balance of any sums deducted for such purposes in prior years. The sum so deducted shall be available for expenditure from the unexpended balance of any appropriation made at any time for expenditure upon the Federal-aid systems, until such sum has been expended.

(b) On or before January 1 next preceding the commencement of each fiscal year, except as provided in paragraphs (4) and (5) of this subsection, the Secretary, after making the deduction authorized by subsection (a) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for that fiscal year, among the several States in the following manner:

(1) For the Federal-aid primary system:

One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery and star routes in all the States at the close of the next preceding calendar year, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary. No State shall receive less than one-half of 1 per centum of each year's apportionment.

(2) For the Federal-aid secondary system:

One-third in the ratio which the area of each State bears to the total area of all the States;

one-third in the ratio which the rural population of each State bears to the total rural population of all the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and star routes, certified as above provided, in each State bears to the total mileage of rural delivery and star routes in all the States. No State shall receive less than one-half of 1 per centum of each year's apportionment.

(3) For extensions of the Federal-aid primary and Federal-aid secondary systems within urban areas:

In the ratio which the population in municipalities and other urban places of five thousand or more in each State bears to the total population in municipalities and other urban places of five thousand or more in all the States as shown by the latest available Federal census.

(4) For the Interstate System, for the fiscal years ending June 30, 1957, June 30, 1958, and June 30, 1959:

One-half in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census, except that no States shall receive less than three-fourths of 1 per centum of the funds so apportioned; and one-half in the manner provided in paragraph (1) of this subsection. The sums authorized by section 108 (b) of the Federal-Aid Highway Act of 1956 for the fiscal years ending June 30, 1958, and June 30, 1959, shall be apportioned on a date not less than six months and not more than twelve months in advance of the beginning of the fiscal year for which authorized.

(5) For the Interstate System for the fiscal years 1960 through 1976:

For the fiscal years 1960 through 1966, in the ratio which the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of completing the Interstate System in all of the States. For the fiscal years 1967 through 1976, in the ratio which the Federal share of the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of the Federal share of completing the Interstate System in all of the States. Each apportionment herein authorized for the fiscal years 1960 through 1976, inclusive, shall be made on a date as far in advance of the beginning of the fiscal year for which authorized as practicable but in no case more than eighteen months prior to the beginning of the fiscal year for which authorized. As soon as the standards provided for in subsection (b) of section 109 of this title have been adopted, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of completing the Interstate System as then designated, after taking into account all previous apportionments made under this section, based upon such standards and in accordance with rules and regulations adopted by him and applied uniformly to all of the States. The Secretary shall transmit such estimates to the Senate and the House of Representatives within ten days subsequent to January 2, 1958. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1961. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1963, June 30, 1964, June 30, 1965, and June 30, 1966. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1965. Upon the approval of such estimate by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1967; June 30, 1968; and June 30, 1969. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1968. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1970, and June 30, 1971. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section in the same manner as stated above, and transmit the same to the Senate and the House of Representatives on April 20, 1970. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1972, and June 30, 1973. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under

this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1972. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1974, and June 30, 1975. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1974. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal year ending June 30, 1976. Whenever the Secretary, pursuant to this subsection, requests and receives estimates of cost from the State highway departments, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives.

(6) For the Federal-aid urban system:

In the ratio which the population in urbanized areas, or parts thereof, in each State bears to the total population in such urbanized areas, or parts thereof, in all the States as shown by the latest available Federal census.

(c) Not more than 20 per centum of the amount apportioned in any fiscal year, commencing with the apportionment of funds authorized to be appropriated under subsection (a) of section 102 of the Federal-Aid Highway Act of 1956 (70 Stat. 374), to each State in accordance with paragraphs (1), (2), or (3) of subsection (b) of this section may be transferred from the apportionment under one paragraph to the apportionment under any other of such paragraphs if such a transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. The total of such transfers shall not increase the original apportionment under any of such paragraphs by more than 20 per centum. Nothing contained in this subsection shall alter or impair the authority contained in subsection (d) of this section.

(d) Any funds which are apportioned under paragraph (2) of subsection (b) of this section for the Federal-aid secondary system to a State in which all public roads and highways are under the control and supervision of the State highway department may, if the State highway department and the Secretary jointly agree that such funds are not needed for the Federal-aid secondary system, be expended for projects on another Federal-aid system.

(e) On or before January 1 preceding the commencement of each fiscal year, the Secretary shall certify to each of the State highway departments the sums which he has apportioned hereunder to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section.

(f) Not to exceed 50 per centum of the amounts apportioned in accordance with paragraph (3) of subsection (b) of this section may be expended for projects on the Federal-aid urban system. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 889; Pub. L. 86–70, § 21(e)(2), June 25, 1959, 73 Stat. 146; Pub. L. 86–657, § 8(g), July 14, 1960, 74 Stat. 525; Pub. L. 87–866, § 10(a), Oct. 23, 1962, 76 Stat. 1148; Pub. L. 88–157, §§ 2, 3, Oct. 24, 1963, 77 Stat. 276; Pub. L. 88–423, § 4(a), Aug. 13, 1964, 78 Stat. 397; Pub. L. 89–574, § 4(b), Sept. 13, 1966, 80 Stat. 767; Pub. L. 90–495, § 4(b), Aug. 23, 1968, 82 Stat. 816; Pub. L. 91–605, title I, §§ 104(b), 106(c), Dec. 31, 1970, 84 Stat. 1714, 1717.)

References in Text

Section 108 (b) of the Federal-Aid Highway Act of 1956, referred to in subsec. (b) (4), is set out as a note under section 101 of this title.

Subsection (a) of section 102 of the Federal-Aid Highway Act of 1956 (70 Stat. 374), referred to in subsec. (c), is set out as a note under this section.

Amendments

1970—Subsec. (b)(5). Pub. L. 91–605, § 104(b), extended from 1974 to 1976 the date for completion of the Interstate System, substituted "on April 20, 1970" for "within ten days subsequent to January 2, 1970" as the date for submission by the Secretary to Congress of a revised completion cost estimate of the Interstate System, struck out reference of finality as applied to this estimate, deleted June 30, 1974 from the enumerated list of fiscal years for which the Secretary shall use the Federal share of the approved 1970 estimate in making apportionments, added provision directing the Secretary to submit to Congress a revised Interstate System completion cost estimate within 10-days from Jan. 2, 1972 with apportionments to be made by the Secretary for use in the fiscal years 1974 and 1975 from the Federal share of the approved estimate, and added provision directing the Secretary to submit to Congress another cost estimate within 10-days from Jan. 2, 1974 to be used for making apportionments for the fiscal year 1976.

Subsec. (b)(6). Pub. L. 91–605, § 106(c)(2), added subsec. (b)(6).

Subsec. (f). Pub. L. 91–605, § 106(c)(1), added subsec. (f).

1968—Subsec. (b)(5). Pub. L. 90–495 extended from 1972 to 1974 the date for completion of the Interstate System, added the fiscal year ending June 30, 1971, to the enumeration of fiscal years for which the Secretary may use the Federal share of approval estimates in making apportionments, substituted January 2, 1970, for January 2, 1969, as the date for commencement of the 10-day period during which the Secretary shall transmit to Congress his final revised estimate of the cost of completing the Interstate system, and added the fiscal years ending June 30, 1973, and June 30, 1974, to the enumerated list of fiscal years for which the Secretary shall use the Federal share of the approved estimate in making apportionments.

1966—Subsec. (b)(5). Pub. L. 89–574 substituted "1972" for "1971" wherever appearing except in the provision requiring the Secretary, with the approval of Congress, to use the Federal share of the approved estimates in making apportionments for the fiscal year ending June 30, 1971, and, in such provision, retained the authority of the Secretary to use the Federal share of the approved estimates in making apportionments for the fiscal year ending June 30, 1971, but extended the authority of the Secretary to use the Federal share of the approved estimates in making apportionments for the fiscal year ending June 30, 1972, as well.

1964—Subsec. (b)(5). Pub. L. 88–423 substituted "January 2, 1961" for "January 2, 1962."

1963—Subsec. (b)(3). Pub. L. 88–157, § 2, eliminated provision which considered Connecticut and Vermont towns as municipalities for the purposes of par. (3) regardless of their incorporated status.

Subsec. (b)(5). Pub. L. 88-157, § 3, substituted "1971" for "1969" in the introductory phrase and the 3d sentence; inserted the phrase "For the fiscal years 1960 through 1966," and substituted "such State" for "each State" in the 1st sentence; inserted the 2d sentence respecting apportionment for fiscal years 1967 through 1971; substituted in the 9th sentence "January 2, 1965" for "January 2, 1966, and annually thereafter through and including January 2, 1968"; substituted in the 10th sentence "Upon the approval of such estimate by the Congress" for "Upon approval of any such estimate by the Congress by concurrent resolution" and "fiscal years ending June 30, 1967; June 30, 1968; and June 30, 1969" for "fiscal year which begins next following the fiscal year in which such report is transmitted to the Senate and the House of Representatives" and inserted "the Federal share of" preceding "such approved estimate"; and inserted the 11th through 14th sentences, respecting revised cost estimate for completion of the Interstate System and its submission to Congress within 10 days after Jan. 2, 1968, apportionment for fiscal year ending June 30, 1970, final revised cost estimate for completion of the Interstate System and its submission to Congress within 10 days after Jan. 2, 1969, and apportionment for fiscal year ending June 30, 1971, respectively.

1962—Subsec. (b)(1). Pub. L. 87-866 substituted "preceding calendar year" for "preceding fiscal year."

1960—Subsec. (b). Pub. L. 86-657 eliminated provisions from par. (5) which required, in making the estimates of cost for completing the Interstate System, exclusion of the cost of completing any mileage designated from the one thousand additional miles authorized by section 108(1) of the Federal-Aid Highway Act of 1956.

1959—Subsec. (b). Pub. L. 86-70 eliminated words ", except that only one-third of the area of Alaska shall be included" following "total area of all States" in pars. (1) and (2).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 10(b) of Pub. L. 87-866 provided that: "The amendment made by subsection (a) of this section [to subsec. (b)(1) of this section] shall be applicable only with respect to apportionments made after the date of enactment of this Act [Oct. 23, 1962]."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (b) of this section by Pub. L. 86-70 effective July 1, 1959, see note set out under section 101 of this title.

SHORT TITLE

Section 1 of Pub. L. 88-157 provided: "That this Act [amending sections 104(b) (3), (5), 106(c), 109(b), 121(d), 131(c) and 307(c)(1) of this title] may be cited as the 'Federal-Aid Highway Amendments Act of 1963'."

Section 1 of Pub. L. 86-657 provided that Pub. L. 86-657, which is classified in part to this section and to sections 114, 120, 129, 132, 203, 205, 210 and 305 of this title, may be cited as the "Federal Highway Act of 1960."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION 102 (a) OF THE FEDERAL-AID HIGHWAY ACT OF 1956

Subsection (a) of section 102 of act June 29, 1956, ch. 462, title I, 70 Stat. 374, provided that: "(a) (1) For the purpose of carrying out the provisions of the Federal-Aid Road Act approved July 11, 1916, and all Acts amendatory thereof and supplementary thereto, there is authorized to be appropriated for the fiscal year ending June 30, 1957, $125,000,000 in addition to any sums heretofore authorized for such fiscal year; the sum of $850,000,000 for the fiscal year ending June 30, 1958; and the sum of $875,000,000 for the fiscal year ending June 30, 1959. The sums herein authorized for each fiscal year shall be available for expenditure as follows:

"(A) 45 per centum for projects on the Federal-Aid primary highway system.

"(B) 30 per centum for projects on the Federal-aid secondary highway system.

"(C) 25 per centum for projects on extensions of these systems within urban areas.

"(2) The sums authorized by this section shall be apportioned among the several States in the manner now provided by law and in accordance with formulas set forth in section 4 of the Federal-Aid Highway Act of 1944, approved December 20, 1944: Provided, That the additional amount herein authorized for the fiscal year ending June 30, 1957, shall be apportioned immediately upon enactment of this Act [June 29, 1956]."

APPROVAL OF ESTIMATE OF COST OF COMPLETING THE INTERSTATE SYSTEM AS BASIS FOR APPORTIONMENT OF FUNDS FOR FISCAL YEARS 1963-1966

Section 102 of Pub. L. 87-61, title I, June 29, 1961, 75 Stat. 122, provided that: "The estimate of cost of completing the Interstate System in each State, transmitted to the Congress on January 11, 1961, by the Secretary of Commerce pursuant to the provisions of section 104(b)(5) of title 23, United States Code, and published as House Document Numbered 49, Eighty-seventh Congress, first session, is hereby approved as the basis for making the apportionment of the funds authorized for the Interstate System for the fiscal years ending June 30, 1963, 1964, 1965, and 1966."

APPROVAL OF ESTIMATE OF COST OF COMPLETING THE INTERSTATE SYSTEM AS BASIS FOR APPORTIONMENT OF FUNDS FOR FISCAL YEARS 1960—1962

Section 8 of Pub. L. 85-381, Apr. 16, 1958, 72 Stat. 94, as amended by Pub. L. 85-899, § 1, Sept. 2, 1958, 72 Stat. 1725; Pub. L. 86-342, title I, § 103, Sept. 21, 1959, 73 Stat. 611, provided that: "The estimate of cost of completing the Interstate System in each State transmitted to the Congress on January 7, 1958, by the Secretary of Commerce pursuant to the provisions of section 108(d) of the Act approved June 29, 1956 (70 Stat. 374), and published as House Document Numbered 300, Eighty-fifth Congress, second session, is hereby approved as the basis for making the apportionment of the funds authorized for the Interstate System for the fiscal years ending June 30, 1960, 1961, and 1962."

PERCENTAGE OF TOTAL APPORTIONMENT TO EACH STATE FOR THE FISCAL YEARS 1972 AND 1973; REPORT TO CONGRESS

Section 105(b) of Pub. L. 91-605 provided that:

"(1) No State shall receive less than one-half of 1 per centum of the total apportionment for each of the fiscal years 1972 and 1973 under paragraph (5) of subsection (b) of section 104 of title 23, United States Code [subsec. (b)(5) of this section]. In addition to all other authorizations for the Interstate System for the two fiscal years ending June 30, 1972, and June 30, 1973, there is authorized to be appropriated out of the Highway Trust Fund not to exceed $55,000,000 for each such fiscal year for such System. Such authorization shall be apportioned to each of the States receiving apportionments under section 103 of this Act [section 103 of Pub. L. 91-605, set out as a note under section 101 of this title] of less than one-half of 1 per centum for each such fiscal year, so as to ensure that each such State will receive for each such fiscal year an amount equal to one-half of 1 per centum of the total apportionment for each such fiscal year under section 103 of this Act [section 103 of Pub. L. 91-605, set out as a note under section 101 of this title], as required by the first sentence of this paragraph.

"(2) By January 1, 1972, the Secretary shall report to Congress on his recommendation for the apportionment of funds and matching requirements for work on Federal-aid highways in States which have completed, or are nearing completion, of construction on Interstate System mileage located in their State, and for all States after completion of the Interstate System."

APPORTIONMENTS FOR SUBSEQUENT YEARS BASED ON REVISED ESTIMATES OF COST

Section 108 (d) of act June 29, 1956, ch. 462, title I, 70 Stat. 378, as amended by Pub. L. 85-899, § 2, Sept. 2, 1958, 72 Stat. 1725, provided that: "All sums authorized by this section to be appropriated for the fiscal years 1960 through 1969, inclusive, shall be apportioned among the several States in the ratio which the estimated cost of completing the Interstate System in each State, as determined and approved in the manner provided in this subsection, bears to the sum of the estimated cost of completing the Interstate System in all of the States. Each apportionment herein authorized for the fiscal years 1960 through 1969, inclusive, shall be made on a date as far in advance of the beginning of the fiscal year for which authorized as practicable but in no case more than eighteen months prior to the beginning of the fiscal year for which authorized. As soon as the standards provided for in subsection (i) have been adopted, the Secretary of Commerce, in cooperation with the State highway departments, shall make a detailed estimate of the cost of completing the Interstate System as then designated, after taking into account all previous apportionments made under this section, based upon such standards and in accordance with rules and regulations adopted by him and applied uniformly to all of the States. The Secretary of Commerce shall transmit such estimate to the Senate and the House of Representatives within ten days subsequent to January 2, 1958. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary of Commerce shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962. The Secretary of Commerce shall make a revised estimate of cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1961. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary of Commerce shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1963, June 30, 1964, June 30, 1965, and June 30, 1966. The Secretary of Commerce shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1966, and annually thereafter through and including January 2, 1968. Upon approval of any such estimate by the Congress by concurrent resolution, the Secretary of Commerce shall use such approved estimate in making apportionments for the fiscal year which begins next following the fiscal year in which such report is transmitted to the Senate and the House of Representatives. Whenever the Secretary of Commerce, pursuant to this subsection, requests and receives estimates of cost from the State highway departments, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives."

APPORTIONMENT FACTORS FOR EXPENDITURES ON NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS FOR FISCAL YEAR 1967

Pub. L. 89-139, § 2, Aug. 28, 1965, 79 Stat. 578, provided that: "The Secretray of Commerce is authorized to make the apportionment for the fiscal year ending June 30, 1967, of the sum authorized to be appropriated for such year for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in table 5 of House Document Numbered 42, Eighty-ninth Congress, but the Congress reserves the right to disapprove the cost estimate for completion of such National System submitted by the Secretary on January 11, 1965, and contained in such document."

APPORTIONMENT FACTORS FOR EXPENDITURES ON NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS FOR FISCAL YEARS ENDING JUNE 30, 1970, AND JUNE 30, 1971

Pub. L. 90-495, § 3, Aug. 23, 1968, 82 Stat. 815, provided that: "The Secretary of Transportation is authorized to make the apportionment for the fiscal years ending June 30, 1970, and 1971, of the sums authorized to be appropriated for such years for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in the revision of table 5 of House Document Numbered 199, Ninetieth Congress, set forth in Senate Report 1340, Ninetieth Congress."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 116, 118, 120, 126, 130, 131, 135, 136, 140, 142, 307, 309, 311, 313, 321, 402 of this title.

§ 105. Programs.

(a) As soon as practicable after the apportionments for the Federal-aid systems have been made for any fiscal year, the State highway department of any State desiring to avail itself of the benefits of this chapter shall submit to the Secretary for his approval a program or programs of proposed projects for the utilization of the funds apportioned. The Secretary shall act upon programs submitted to him as soon as practicable after the same have been submitted. The Secretary may approve a program in whole or in part, but he shall not approve any project in a proposed program which is not located upon an approved Federal-aid system.

(b) In approving programs for projects on the Federal-aid secondary system, the Secretary shall require, except in States where all public roads and highways are under the control and supervision of the State highway department, that such project be selected by the State highway department and the appropriate local officials in cooperation with each other.

(c) In approving programs for projects on the Federal-aid primary system, the Secretary shall give preference to such projects as will expedite the completion of an adequate and connected system of highways interstate in character.

(d) In approving for projects on the Federal-aid urban system, the Secretary shall require that such projects be selected by the appropriate local officials and the State highway department in cooperation with each other.

(e) In approving programs for projects under this chapter, the Secretary may give priority of approval to, and expedite the construction of, projects that are recommended as important to the national defense by the Secretary of Defense, or other official authorized by the President to make such recommendation.

(f) In approving programs for projects on the Federal-aid systems pursuant to chapter 1 of this title, the Secretary shall give priority to those projects which incorporate improved standards and features with safety benefits.

(g) In preparing programs to submit in accordance with subsection (a) of this section, the State highway departments shall give consideration to projects providing direct and convenient public access to public airports and public ports for water transportation, and in approving such programs the Secretary shall give consideration to such projects. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 891; Pub. L. 86-624, § 17(b), July 12, 1960, 74 Stat. 415; Pub. L. 89-564, title II, § 206, Sept. 9, 1966, 80 Stat. 736; Pub. L. 91-605, title I, §§ 106(d), 132, Dec. 31, 1970, 84 Stat. 1717, 1732.)

AMENDMENTS

1970—Subsec. (d). Pub. L. 91–605, § 106(d), added subsec. (d). Former subsec. (d) redesignated subsec. (e).

Subsec. (e). Pub. L. 91–605, § 106(d), redesignated former subsec. (d) as subsec. (e). Former subsec. (e) redesignated subsec. (f).

Subsec. (f). Pub. L. 91–605, § 106(d), redesignated former subsec. (e) as subsec. (f).

Subsec. (g). Pub. L. 91–605, § 132, added subsec. (g).

1966—Subsec. (e). Pub. L. 89–564 added subsec. (e).

1960—Subsec. (e). Pub. L. 86–624 repealed subsec. (e), which required the Secretary, in approving programs in Hawaii, to give preference to such projects as will expedite the completion of highways for the national defense or which will connect seaports with units of the national parks.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 117, 134, 138, 140, 143 of this title.

§ 106. Plans, specifications, and estimates.

(a) Except as provided in section 117 of this title, the State highway department shall submit to the Secretary for his approval, as soon as practicable after program approval, such surveys, plans, specifications, and estimates for each proposed project included in an approved program as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto. In taking such action, the Secretary shall be guided by the provisions of section 109 of this title.

(b) In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on (1) the Federal-aid secondary system, except in States where all public roads and highways are under the control and supervision of the State highway department, and (2) the Federal-aid urban system, shall be determined by the State highway department and the appropriate local road officials in cooperation with each other.

(c) Items included in any such estimate for construction engineering shall not exceed 10 per centum of the total estimated cost of a project financed with Federal-aid primary, secondary, or urban funds, after excluding from such total estimated cost, the estimated costs of rights-of-way, preliminary engineering, and construction engineering: *Provided,* That such limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary. For any project financed with interstate funds, such limitation shall be 10 per centum.

(d) In such cases as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid system shall be accompanied by a value engineering or other cost reduction analysis. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 88–157, § 7(a), Oct. 24, 1963, 77 Stat. 278; Pub. L. 91–605, title I, §§ 106(e), 142, Dec. 31, 1970, 84 Stat. 1717, 1737.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–605, § 106(e), inserted reference to the Federal-aid urban system.

Subsec. (d). Pub. L. 91–605, § 142, added subsec. (d).

1963—Subsec. (c). Pub. L. 88–157 substituted "a project financed with Federal-aid primary, secondary, or urban funds" for "the project" and provided for limitation, on items included in estimates for construction engineering on projects flanced with Federal-aid primary, secondary, or urban funds, of 15 percent of total estimated cost of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Pub. L. 89–574, § 5(b), Sept. 13, 1966, 80 Stat. 767, provided that: "The Secretary of Commerce [Transportation] is authorized to modify project agreements entered into prior to the date of enactment of this Act [Sept. 13, 1966] pursuant to section 106 of title 23 of the United States Code [this section] for the purpose of effectuating the amendment made by this section [amending section 109(b) of this title to add a requirement of four lanes of traffic] with respect to as much of the National System of Interstate and Defense Highways as may be possible."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 117, 143, 502, 505 of this title; title 40 App. section 201.

§ 107. Acquisition of rights-of-way—Interstate System.

(a) In any case in which the Secretary is requested by a State to acquire lands or interests in lands (including within the term "interests in lands", the control of access thereto from adjoining lands) required by such State for right-of-way or other purposes in connection with the prosecution of any project for the construction, reconstruction, or improvement of any section of the Interstate System, the Secretary is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including the Act of February 26, 1931, 46 Stat. 1421), if—

(1) the Secretary has determined either that the State is unable to acquire necessary lands or interests in lands, or is unable to acquire such lands or interests in lands with sufficient promptness; and

(2) the State has agreed with the Secretary to pay, at such time as may be specified by the Secretary an amount equal to 10 per centum of the

costs incurred by the Secretary, in acquiring such lands or interests in lands, or such lesser percentage which represents the State's pro rata share of project costs as determined in accordance with subsection (c) of section 120 of this title.

The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States and owned or held by railroads or other corporations.

(b) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction, reconstruction, or improvement of the Interstate System apportioned to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be deposited in the Treasury to the credit of the appropriation for Federal-aid highways and shall be credited to the amount apportioned to such State as its apportionment of funds for construction, reconstruction, or improvement of the Interstate System, or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 108 (b) of the Federal-Aid Highway Act of 1956.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any such lands or interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of access, to the State highway department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State highway department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary, the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 892.)

REFERENCES IN TEXT

The Act of February 26, 1931, 46 Stat. 1421, referred to in subsec. (a), is classified to sections 258a—258e of Title 40, Public Buildings, Property and Works.

Section 108 (b) of the Federal-Aid Highway Act of 1956, referred to in subsec. (b), is set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 509 of this title.

§ 108. Advance acquisition of rights-of-way.

(a) For the purpose of facilitating the acquisition of rights-of-way on any of the Federal-aid highway systems, including the Interstate System, in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State for expenditure on any of the Federal-aid highway systems, including the Interstate System, for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding seven years following the fiscal year in which such request is made.

(b) Federal participation in the cost of rights-of-way acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

(c) (1) There is hereby established in the Treasury of the United States a revolving fund to be known as the right-of-way revolving fund which shall be administered by the Secretary in carrying out the provisions of this subsection. Sums authorized to be appropriated to the right-of-way revolving fund shall be available for expenditure without regard to the fiscal year for which such sums are authorized.

(2) For the purpose of acquiring rights-of-way for future construction of highways on any Federal-aid system and for making payments for the moving or relocation of persons, businesses, farms, and other existing uses of real property caused by the acquisition of such rights-of-way, in addition to the authority contained in subsection (a) of this section, the Secretary, upon request of a State highway department, is authorized to advance funds, without interest, to the State from amounts available in the right-of-way revolving fund, in accordance with rules and regulations prescribed by the Secretary. Funds so advanced may be used to pay the entire costs of projects for the acquisition of rights-of-way, including the net cost to the State of property management, if any, and related moving and relocation payments made pursuant to section 133 or chapter 5 of this title.

(3) Actual construction of a highway on rights-of-way, with respect to which funds are advanced under this subsection, shall be commenced within a period of not less than two years nor more than seven years following the end of the fiscal year in which the Secretary approves such advance of funds, unless the Secretary, in his discretion, shall provide for an earlier termination date. Immediately upon the termination of the period of time within which actual construction must be commenced, in the case of any project where such construction is not commenced before such termination, or upon approval by the Secretary of the plans, specifications, and estimates for such project for the actual construction of a highway on rights-of-way with respect to which funds are advanced under this subsection, whichever shall occur first, the right-of-way revolving fund shall be credited with an amount equal to the Federal share of the funds advanced, as provided in section 120 of this title, out of any Federal-aid highway funds apportioned to the State in which such project is located and available for obligation for projects on the Federal-aid system of which such project is to be a part, and the State shall reimburse the Secretary in an amount equal to the non-Federal share of the funds advanced for deposit in, and credit to, the right-of-way revolving fund. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 893; Pub. L. 86–35, § 1, May 29, 1959, 73 Stat. 62; Pub. L. 90–495, § 7 (a), (b), Aug. 23, 1968, 82 Stat. 818.)

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–495, § 7(a), substituted "subsection (a) of this section" for "this section".

Subsec. (c). Pub. L. 90–495, § 7(b), added subsec. (c).

1959—Subsec. (a). Pub. L. 86–35 increased from five to seven years the period in which actual construction shall commence on rights-of-way acquired in anticipation of such construction.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

AUTHORIZATION OF APPROPRIATIONS TO RIGHT-OF-WAY REVOLVING FUND; APPORTIONMENT; REVERSION OF AMOUNTS NOT ADVANCED OR OBLIGATED

Section 7(c)—(e) of Pub. L. 90–495 provided that:

"(c) There is authorized to be appropriated, out of the highway trust fund, to the right-of-way revolving fund established by subsection (c) of section 108 of title 23, United States Code [subsec. (c) of this section], $100,000,000 for the fiscal year ending June 30, 1970, $100,000,000 for the fiscal year ending June 30, 1971, and $100,000,000 for the fiscal year ending June 30, 1972.

"(d) On or before January 1 next preceding the commencement of each fiscal year for which funds are authorized to be appropriated to the right-of-way revolving fund by subsection (c) of this section, the Secretary shall apportion the funds so authorized for such fiscal year to the States. Each State shall be apportioned for such fiscal year an amount which bears the same percentage relationship to the total amount being apportioned under this subsection as the total of all apportionments made to such State for such fiscal year under paragraphs (1), (2), (3), and (5), of subsection (b) of section 104 of title 23, United States Code bears to the total of all amounts apportioned under such paragraphs to all States for such fiscal year. Amounts apportioned under this subsection shall not be construed to be authorizations of appropriations for the construction, reconstruction, or improvement of the Interstate System for the purposes of subsection (g) of section 209 of the Highway Revenue Act of 1956 set out as a note under section 120 of this title].

"(e) Funds apportioned to a State under this subsection (d) of this section shall remain available for obligation for advances to such State until October 1 of the fiscal year for which such apportionment is made. All amounts not advanced or obligated for advancement before such date shall revert to the right-of-way revolving fund and together with all other amounts credited and reimbursed to such fund shall be available for advances to the States to carry out subsection (c) of section 108 of title 23, United States Code [subsec. (c) of this section], in an equitable manner, taking into consideration each State's need for, and ability to use, such advances, in accordance with such rules and regulations as the Secretary of Transportation shall establish."

STUDY OF ADVANCE ACQUISITION OF RIGHTS-OF-WAY

Pub. L. 89–574, § 10, Sept. 13, 1966, 80 Stat. 769, directed the Secretary of Commerce to make a full and complete investigation and study of the advance acquisition of rights-of-way for future construction of highways on the Federal-aid highway systems, with particular reference to the provision of adequate time for the removal and disposal of improvements located on rights-of-way and the relocation of affected individuals, businesses, institutions, and organizations, the tax status of such property after acquisition and before its use for highway purposes, and the methods for financing advance right-of-way acquisition by both the State governments and the Federal Government, including the possible creation of resolving funds for such purpose. The Secretary was required to submit a report of the results of such study to Congress not later than July 1, 1967, together with his recommendations.

INCREASED LIMITATION PERIOD APPLICABLE TO CERTAIN CONTRACTS

Section 2 of Pub. L. 86–35 provided that agreements entered into before May 29, 1959 by the Secretary of Commerce and a State highway department under authority of section 110(a) of the Federal-Aid Highway Act of 1956, or section 108(a) of title 23 of the United States Code shall be deemed to provide for actual construction of a road on such rights-of-way within a period of seven years following the fiscal year in which such request was made.

§ 109. Standards.

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State highway departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section

106 of this title, of the plans, specifications, and estimates for actual construction of such project. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. Such standards shall in all cases provide for at least four lanes of traffic. The Secretary shall apply such standards uniformly throughout all the States.

(c) Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to specifications that will provide all-weather service and permit maintenance at a reasonable cost.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State highway department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

(g) The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Rct[1] of 1970 guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission, promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

(1) air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects, and tax and property values losses;

(4) injurious displacement of people, businesses and farms; and

(5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate standards for highway noise levels compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards.

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 894; Pub. L. 88–157, § 4, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89–574, §§ 5 (a), 14 Sept. 13, 1966, 80 Stat. 767, 771; Pub. L. 91–605, title I, § 136(a), (b), Dec. 31, 1970, 84 Stat. 1734.)

References in Text

The day of enactment of the Federal-Aid Highway Act of 1970, referred to in subsec. (g), is Dec. 31, 1970.

The Clean Air Act, as amended, referred to in subsec. (j), is classified to section 1857 et seq. of Title 42, The Public Health and Welfare.

Amendments

1970—Subsec. (g). Pub. L. 91–605, § 136(a), substituted provisions ordering the Secretary to issue within 30 days after Dec. 31, 1970, guidelines, which will apply to all proposed projects approved by the Secretary after their issuance, for minimizing soil erosion from highway construction for provisions authorizing the Secretary to consult with the Secretary of Agriculture respecting guidelines for minmizing soil erosion from highway construction and report such guidelines to Congress not later than July 1, 1967.

Subsecs. (h), (i), (j). Pub. L. 91–605, § 136(b), added subsecs. (h), (i), and (j).

1966—Subsec. (b). Pub. L. 89–574, § 5(a) required that in all cases the standards provide for at least four lanes of traffic.

Subsec. (g). Pub. L. 89–574, § 14, added subsec. (g).

1963—Subsec. (b). Pub. L. 88–157 substituted "Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project" for "Such standards shall be adequate to accommodate the types and volumes of traffic forecast for the year 1975", deleted "up" preceding "to such standards" and inserted "all" in the phrase "throughout all the States."

[1] So in original, probably should read Act.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Authorization to modify projects agreements entered into prior to September 13, 1966, to effectuate the amendment of this section by Pub. L. 89–574 which added the requirement of four-lanes of traffic, see section 5(b) of Pub. L. 89–574, set out as a note under section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 106, 115, 117 of this title.

§ 110. Project agreements.

(a) As soon as practicable after the plans, specifications, and estimates for a specific project have been approved, the Secretary shall enter into a formal project agreement with the State highway department concerning the construction and maintenance of such project. Such project agreement shall make provision for State funds required for the State's pro rata share of the cost of construction of such project and for the maintenance thereof after completion of construction.

(b) The Secretary may rely upon representations made by the State highway department with respect to the arrangements or agreements made by the State highway department and appropriate local officials where a part of the project is to be constructed at the expense of, or in cooperation with, local subdivisions of the State. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 894.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 101 of this title.

§ 111. Agreements relating to use of and access to rights-of-way—Interstate System.

All agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 87–61, title I, § 104(a), June 29, 1961, 75 Stat. 122.)

AMENDMENTS

1961—Pub. L. 87–61 substituted "to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere" for "to use the airspace above and below the established grade line of the highway pavement for the parking of motor vehicles provided such use does not interfere."

SHORT TITLE

Section 101 of Pub. L. 87–61 provided that Pub. L. 87–61, which enacted section 6156 of Title 26, Internal Revenue Code, amended this section and sections 131 and 210 of this title and sections 4041, 4061, 4071, 4081, 4218, 4221, 4226, 4481, 4482, 6412, 6416, 6421 and 6601 of Title 26, enacted provisions set out as notes under this section and section 104 of this title and under section 4041 of Title 26, and amended provisions set out as notes under sections 101 and 120 of this title, may be cited as the "Federal-Aid Highway Act of 1961."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

REVISION OF AGREEMENTS RELATING TO UTILIZATION OF SPACE ON RIGHTS-OF-WAY

Section 104(b) of Pub. L. 87–61 provided that: "Upon application, the Secretary of Commerce [Transportation] is authorized to revise any agreement made prior to the date of enactment of this Act [June 29, 1961] to the extent that such agreement relates to the utilization of space on rights-of-way on the National System of Interstate and Defense Highways to conform to section 111 of title 23 of the United States Code as amended by subsection (a)."

§ 112. Letting of contracts.

(a) In all cases where the construction is to be performed by the State highway department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) Construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. All such findings shall be reported promptly in writing

to the Committees on Public Works of the Senate and the House of Representatives. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State highway department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof.

(e) The provisions of this section shall not be applicable to contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to section 117 of this title. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90–495, § 22(c), Aug. 23, 1968, 82 Stat. 827.)

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–495 required that contracts for the construction of each project be awarded only on the basis of the lowest responsive bid by a bidder meeting established criteria of responsibility and required that, to be imposed as a condition precedent, requirements and obligations have been specifically set forth in the advertised specifications.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 209, 210 of this title.

§ 113. Prevailing rate of wage—Interstate System.

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the initial construction work performed on highway projects on the Federal-aid systems, the primary and secondary, as well as their extensions in urban areas, and the Interstate System, authorized under the highway laws providing for the expenditure of Federal funds upon the Federal-aid systems, shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of August 30, 1935, known as the Davis-Bacon Act (40 U.S.C. 267a).[1]

(b) In carrying out the duties of subsection (a) of this section, the Secretary of Labor shall consult with the highway department of the State in which a project on any of the Federal-aid systems is to be performed. After giving due regard to the information thus obtained, he shall make a predetermination of the minimum wages to be paid laborers and mechanics in accordance with the provisions of subsection (a) of this section which shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project.

(c) The provisions of the section shall not be applicable to employment pursuant to apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90–495, § 12(a), Aug. 23, 1968, 82 Stat. 821.)

REFERENCES IN TEXT

The Act of August 30, 1935, known as the Davis-Bacon Act, referred to in sub sec. (a), is classified to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–495 extended wage rate provisions to the construction of all Federal-aid highway projects by amending provisions limiting them only to the Interstate System.

Subsec. (b). Pub. L. 90–495 substituted "any of the Federal-aid systems" for "the Interstate System".

Subsec. (c). Pub. L. 90–495 added subsec. (c).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 114. Construction.

(a) The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and

[1] So in original. Probably should be 40 U.S.C. 276a.

labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.

(b) Convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86–657, § 8(f), July 14, 1960, 74 Stat. 525.)

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 121 of this title.

§ 115. Construction by States in advance of apportionment.

(a) When a State has obligated all funds for any of the Federal-aid systems, including the Interstate System, apportioned to it under section 104 of this title, and proceeds to construct any project without the aid of Federal funds, including one or more parts of any project, on any of the Federal-aid systems in such State, including the Interstate System, as any of those systems may be designated at that time, in accordance with all procedures and all requirements applicable to projects on any such system, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 104 of this title if—

(1) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects on the Federal-aid system involved, and

(2) the project conforms to the applicable standards adopted under section 109 of this title;

The Secretary may not approve an application under this section unless an authorization is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State and that no application may be approved which will exceed the State's expected apportionment of such authorizations.

(b) In determining the apportionment for any fiscal year under the provisions of section 104 of this title, any such project constructed by a State without the aid of Federal funds shall not be considered completed until an application under the provisions of this section with respect to such project has been approved by the Secretary. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 90–495, § 25(a), (b), Aug. 23, 1968, 82 Stat. 828.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–495, § 25(a), extended advance construction authority to all the Federal-aid highway systems rather than just the Interstate System but provided that anticipation of future apportionments by States should only be permitted for those years for which authorizations have been established by law.

Subsec. (b). Pub. L. 90–495, § 25(b), struck out reference to subsec. (b)(5) of section 104 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 116. Maintenance.

(a) It shall be the duty of the State highway department to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system.

(b) In any State wherein the State highway department is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such highway department shall enter into a formal agreement for its maintenance with the appropriate officials of the county or municipality in which such project is located.

(c) If at any time the Secretary shall find that any project constructed under the provisions of this chapter, or constructed under the provisions of prior Acts, is not being properly maintained, he shall call such fact to the attention of the State highway department. If, within ninety days after receipt of such notice, such project has not been put in proper condition of maintenance, the Secretary shall withhold approval of further projects of all types in the entire State until such project shall have been put in proper condition of maintenance, unless such project is subject to an agreement pursuant to subsection (b) of this section, in which case approval shall be withheld only for secondary

or urban projects in the county or municipality where such project is located.

(d) The Secretary in consultation with the State highway departments and interested and knowledgeable private organizations and individuals shall as soon as possible establish national bridge inspection standards in order to provide for the proper safety inspection of bridges on any of the Federal-aid highway system. Such standards shall specify in detail the method by which inspections shall be conducted by the State highway departments, the maximum time lapse between inspections and the qualifications for those charged with the responsibility for carrying out such inspections. Each State shall be required to maintain written reports to be available to the Secretary pursuant to such inspections together with a notation of the action taken pursuant to the findings of such inspections. Each State shall be required to maintain a current inventory of all bridges on the Federal-aid system.

(e) The Secretary shall establish in cooperation with the State highway departments a program designed to train appropriate employees of the Federal Government and the State governments to carry out bridge inspections. Such a program shall be revised from time to time in light of new or improved techniques. For the purposes of this section the Secretary may use funds made available pursuant to the provisions of section 104(a) and section 307(a) of this title. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86–70, § 21(d)(2), (e)(3), June 25, 1959, 73 Sat. 145, 146; Pub. L. 90–495, § 26, Aug. 23, 1968, 82 Stat. 829.)

AMENDMENTS

1968—Subsecs. (d), (e). Pub. L. 90–495 added subsecs. (d) and (e).

1959—Subsec. (a). Pub. L. 86–70, § 21(e)(3), substituted "It" for "Except as provided in subsection (d) of this section, it".

Subsec. (d). Pub. L. 86–70, § 21(d)(2), repealed subsec. (d), which related to expenditure of funds apportioned to the Territory of Alaska and contributed by the Territory for the maintenance of roads.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 86–70 effective July 1, 1959, see note set out under section 101 of this title.

Repeal of subsec. (d) of this section by Pub. L. 86–70 effective July 1, 1959, see note set out under section 103 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 117. Secondary road responsibility.

(a) The Secretary may, upon the request of any State highway department, discharge his responsibility relative to the plans, specifications, estimates, surveys, contract awards, design, inspection, and construction of all projects on the Federal-aid secondary system by his receiving and approving a certified statement by the State highway department setting forth that the plans, design, and construction for each such project are in accord with those standards and procedures which (1) were adopted by such State highway department, (2) were applicable to projects in this category, and (3) were approved by him.

(b) The Secretary shall not approve such standards and procedures unless they are in accordance with the provisions of subsection (b) of section 105, subsection (b) of section 106, and subsection (c) of section 109, of this title.

(c) Subsections (a) and (b) of this section shall not be construed to relieve the Secretary of his obligation to make a final inspection of each project after construction and to require an adequate showing of the estimated cost of construction and the actual cost of construction. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 897.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 112, 114, 502, 505 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7–135 of the District of Columbia Code.

§ 118. Availability of sums apportioned.

(a) On and after the date that the Secretary has certified to each State highway department the sums apportioned to each Federal-aid system or part thereof pursuant to an authorization under this title, or under prior Acts, such sums shall be available for expenditure under the provisions of this title.

(b) Such sums shall continue available for expenditure in that State for the appropriate Federal-aid system or part thereof for a period of two years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period shall lapse, except that any amount apportioned to the States for the Interstate System under subsection (b) (4) and (5) of section 104 of this title remaining unexpended at the end of the period during which it is available under this section shall lapse and shall immediately be reapportioned among the other States in accordance with the provisions of subsection (b) (5) of section 104 of this title. Such sums for any fiscal year shall be deemed to be expended if a sum equal to the total of the sums apportioned to the State for such fiscal year and previous fiscal years is covered by formal project agreements providing for the expenditure of funds authorized by each Act which contains provisions authorizing the appropriation of funds for

Federal-aid highways. Any Federal-aid highway funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds, primary, secondary, urban, or interstate, previously apportioned to the State and be immediately available for expenditure.

(c) The total payments to any State shall not at any time during a current fiscal year exceed the total of all apportionments to such State in accordance with section 104 of this title for such fiscal year and all preceding fiscal years.

(d) Funds made available to the State of Alaska under this title may be expended for construction of access and development roads on a Federal-aid system that will serve resource development, recreational, residential, commercial, industrial, or other like purposes. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 897; Pub. L. 89–574, § 7(a), Sept. 13, 1966, 80 Stat. 768.)

AMENDMENTS

1966—Subsec. (d). Pub. L. 89–574 added subsec. (d).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 143 of this title; title 40 App. section 201.

§ 119. Repealed. Pub. L. 86–70, § 21(d)(3), June 25, 1959, 73 Stat. 145, eff. July 1, 1959.

Section, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 899, related to the administration of Federal aid for highways in Alaska.

EFFECTIVE DATE OF REPEAL

Repeal of this section by Pub. L. 86–70 effective July 1, 1959, see note set out under section 103 of this title.

§ 120. Federal share payable.

(a) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with primary, secondary, or urban funds, on the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system shall either (A) not exceed 70 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area, or (B) not exceed 70 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area, except that the Federal share payable on any project in a State shall not exceed 95 per centum of the total cost of any such project. In any case where a State elects to have the Federal share provided in clause (B) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than one year, requiring such State to use solely for highway construction purposes (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in clause (B) and what its share would be if it elected to pay the share provided in clause (A) for all projects subject to such agreement.

(b) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with interstate funds on the Interstate System, authorized to be appropriated prior to June 29, 1956, shall not exceed 60 per centum of the cost of construction, except that in the case of any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area. The provisions of subsection (a) of this section shall apply to any project financed with funds authorized by the provisions of section 2 of the Federal-Aid Highway Act of 1952.

(c) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project on the Interstate System provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to 90 per centum of the total cost thereof, plus a percentage of the remaining 10 per centum of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area, except that such Federal share payable on any project in any State shall not exceed 95 per centum of the total cost of such project.

(d) The Federal share payable on account of any project for the elimination of hazards of railway-highway crossings, as more fully described and subject to the conditions and limitations set forth in section 130 of this title, may amount to 100 per centum of the cost of construction of such projects, except that not more than 70 per centum of the right-of-way and property damage costs, paid from public funds, on any such project, may be paid from sums apportioned in accordance with section 104 of this title: *Provided,* That not more than 10 per centum of all the sums apportioned for all the Federal-aid systems for any fiscal year in accordance with section 104 of this title shall be used under this subsection.

(e) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.

(f) The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title shall not exceed 70 per centum of the cost thereof: *Provided,* That, in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area: *Provided further,* That the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 per centum of the cost thereof, whether or not such highways, roads or trails are on any Federal-aid highway systems. The Secretary may increase the Federal share payable on account of any repair or reconstruction under this section up to 100 per centum of the replacement cost of a comparable facility if he determines it is in the public interest. As used in this section with respect to bridges and in section 144 of this title, "a comparable facility" shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life. Any project agreement for which the final voucher has not been approved by the Secretary on or before the date of this Act may be modified to provide for the Federal share authorized herein.

(g) The Secretary is authorized to cooperate with the State highway departments and with the Department of the Interior in the construction of Federal-aid highways within Indian reservations and national parks and monuments under the jurisdiction of the Department of the Interior and to pay the amount assumed therefor from the funds apportioned in accordance with section 104 of this title to the State wherein the reservations and national parks and monuments are located.

(h) At the request of any State, the Secretary may from time to time enter into agreements with such State to reimburse the State for the Federal share of the costs of preliminary and construction engineering at an agreed percentage of actual construction costs for each project, in lieu of the actual engineering costs for such project. The Secretary shall annually review each such agreement to insure that such percentage reasonably represents the engineering costs actually incurred by such State. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 898; Pub. L. 86–70, § 21(d)(4), (e)(4), June 25, 1959, 73 Stat. 145, 146; Pub. L. 86–342, title I, § 107(b), Sept. 21, 1959, 73 Stat. 613; Pub. L. 86–657, § 3, July 14, 1960, 74 Stat. 522; Pub. L. 88–658, Oct. 13, 1964, 78 Stat. 1090; Pub. L. 89–574, § 9(a), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90–495, §§ 27(b), 34 Aug. 23, 1968, 82 Stat. 829, 835; Pub. L. 91–605, title I, §§ 106(f), 108(a), 109(b), 128, Dec. 31, 1970, 84 Stat. 1718, 1719, 1731.)

REFERENCES IN TEXT

Section 2 of the Federal-Aid Highway Act of 1952, referred to in subsec. (b), means section 2 of Act June 25, 1952, ch. 462, 66 Stat. 159, which is not classified to this Code.

Section 108 (b) of the Federal-Aid Highway Act of 1956, referred to in subsec. (c), is set out as a note under section 101 of this title.

On or before the date of this Act, referred to in subsec. (f), probably means on or before the date of Pub. L. 86–342 which was approved on September 21, 1959.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605, §§ 106(f), 108(a), inserted reference to the Federal-aid urban system, and substituted "70 per centum" for "50 per centum" in two places.

Subsec. (d). Pub. L. 91–605, § 108(a), substituted "70 per centum" for "50 per centum".

Subsec. (f). Pub. L. 91–605, §§ 108(a), 109(b), added definition of "a comparable facility" and substituted "70 per centum" for "50 per centum".

Subsec. (h). Pub. L. 91–605, § 128, added subsec. (h).

1968—Subsec. (a). Pub. L. 90–495, § 34, made provision for an election by the States as to the formula it desired to have its Federal share computed under by adding an optional formula permitting an increase in the Federal share by a percentage of the remaining cost equal to the percentage that the area of specified lands is of the State's total, but not so as to increase the share beyond 95 percent of the total cost of the project, with States exercising the option required to enter into an agreement to use the difference solely for highway construction purposes.

Subsec. (f). Pub. L. 90–495, § 27(b), authorized the Secretary to increase the Federal share payable on account of any repair or reconstruction under this section up to 100 per centum of the replacement cost of a comparable facility if he determines that it is in the public interest.

1966—Subsec. (f). Pub. L. 89–574 added parkways, public land highways, public lands development roads, and trails to the list of road projects on the repair or reconstruction of which the Federal share payable may amount to 100 per centum of the cost.

1964—Subsec. (f). Pub. L. 88–658 provided that in case of any State containing nontaxable Indian lands, and public domain lands exclusive of national forests and national parks and monuments exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area.

1960—Subsec. (a). Pub. L. 86–657 substituted "nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments" for "unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal."

1959—Subsec. (a). Pub. L. 86–70, § 21(e)(4), substituted "subsection (d) of this section" for "subsections (d) and (h) of this section."

Subsec. (f). Pub. L. 86–342 provided that the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads may amount to 100 per centum of the cost thereof, whether or not such highways, roads or trails are on any Federal-aid highway system.

Subsec. (h). Pub. L. 86–70 § 21(d)(4) repealed subsec. (h), which related to contributions by the Territory of Alaska and to the expenditure of Federal funds apportioned to the Territory of Alaska and funds contributed by the Territory.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 108(b) of Pub. L. 91–605 provided that: "The amendments made by subsection (a) of this section [amending subsecs. (a), (d), and (f) of this section] shall take effect with respect to authorizations for appropriations for fiscal years beginning after June 30, 1973."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment of subsec. (a) of this section by section 34 of Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

Amendment of subsec. (f) of this section by section 27(b) of Pub. L. 90–495 applicable to repair or construction with respect to which project agreements have been entered into on or before Jan. 1, 1968, see section 27(c) of Pub. L. 90–495, set out as a note under section 125 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 86–70 effective July 1, 1959, see note set out under section 101 of this title.

Repeal of subsec. (h) of this section by Pub. L. 86–70 effective July 1, 1959, see note set out under section 103 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SHORT TITLE

Section 101 of Pub. L. 86–342 provided that Pub. L. 86–342, which amended this section and sections 125, 131 and 320 of this title, and sections 4041, 4081, 4082, 4226, 6412, 6416 and 6421 of Title 26, Internal Revenue Code, enacted notes set out under section 307 of this title and section 4082 of Title 26, and amended notes set out under sections 101, 104 and 120 of this title, may be cited as the "Federal-Aid Highway Act of 1959".

HIGHWAY TRUST FUND

Section 209 of act June 29, 1956, ch. 462, title II, 70 Stat. 397, as amended by Pub. L. 86–342, title II, § 202, Sept. 21, 1959, 73 Stat. 615; Pub. L. 86–346, title I, § 104(5), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86–440, § 1(c), Apr. 22, 1960, 74 Stat. 81; Pub. L. 87–61, title II, § 207, June 29, 1961, 75 Stat. 128; Pub. L. 88–578, title II, § 202, Sept. 3, 1964, 78 Stat. 904; Pub. L. 89–44, title II, § 210, title VIII, § 809(e), June 21, 1965, 79 Stat. 144, 168; Pub. L. 91–258, title II, §§ 207(e), 208(g), May 21, 1970, 84 Stat. 249, 252; Pub. L. 91–605, title III, § 301, Dec. 31, 1970, 84 Stat. 1743, provide that:

"(a) CREATION OF TRUST FUND.—There is hereby established in Treasury of the United States a trust fund to be known as the 'Highway Trust Fund' (hereinafter in this section called the 'Trust Fund'). The Trust Fund shall consist of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

"(b) DECLARATION OF POLICY.—It is hereby declared to be the policy of the Congress that if it hereafter appears—

"(1) that the total receipts of the Trust Fund (exclusive of advances under subsection (d) will be less than the total expenditures from such Fund (exclusive of repayments of such advances); or

"(2) that the distribution of the tax burden among the various classes of persons using the Federal-aid highways, or otherwise deriving benefits from such highways, is not equitable,

the Congress shall enact legislation in order to bring about a balance of total receipts and total expenditures, or such equitable distribution, as the case may be.

"(c) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

"(1) IN GENERAL.—There is hereby appropriated to the Trust Fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the following percentages of the taxes received in the Treasury before October 1, 1977, under the following provisions of the Internal Revenue Code of 1954 (or under the corresponding provisions of prior revenue laws)—

"(A) 100 percent of the taxes received after June 30, 1956, under sections 4041 (taxes on diesel fuel and special motor fuels), 4071(a)(4) (tax on tread rubber), and 4081 (tax on gasoline);

"(B) 20 percent of the tax received after June 30, 1956, and before July 1, 1957, under section 4061(a)(1) (tax on trucks, buses, etc.);

"(C) 50 percent of the tax received after June 30, 1957, and before July 1, 1962, under section 4061(a)(1) (tax on trucks, buses, etc.), and 100 percent of the tax received after June 30, 1962, under section 4061(a)(1);

"(D) 37½ percent of the tax received after June 30, 1956, and before July 1, 1957, under section 4071(a)(1) (tax on tires of the type used on highway vehicles);

"(E) 100 percent of the taxes received after June 30, 1957, under section 4071(a) (1), (2), (3), and (5) (taxes on tires of the type used on highway vehicles, other tires, and inner tubes);

"(F) 100 percent of the tax received under section 4481 (tax on use of certain vehicles);

"(G) 100 percent of the floor stocks taxes imposed by section 4226(a); and

"(H) 100 percent of the taxes received after December 31, 1965, under sections 4061(b) (tax on parts and accessories for trucks, buses, etc.) and 4091 (tax on lubricating oil).

In the case of any tax described in subparagraph (H), amounts received during the calendar year 1966 shall be taken into account only to the extent attributable to liability for tax incurred after December 31, 1965.

"(2) [Repealed. Pub. L. 87–61, title II, § 207(b), June 29, 1961, 75 Stat. 128.]

"(3) LIABILITIES INCURRED BEFORE OCTOBER 1, 1977, FOR NEW OR INCREASED TAXES.—There is hereby appropriated to the Trust Fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the following percentages of the taxes which are received in the Treasury after September 30, 1977, and before July 1, 1978, and which are attributable to liability for tax incurred before October 1, 1977, under the following provisions of the Internal Revenue Code of 1954—

"(A) 100 percent of the taxes under sections 4041 (taxes on diesel fuel and special motor fuels), 4061(b) (tax on parts and accessories for trucks, buses, etc.), 4071(a)(4) (tax on tread rubber), 4081 (tax on gasoline), and 4091 (tax on lubricating oil);

"(B) 20 percent of the tax under section 4061(a)(1) (tax on trucks, buses, etc.);

"(C) 50 percent of the tax under section 4071(a)(1) (tax on tires of the type used on highway vehicles) and 10 percent of the tax under section 4071(a)(3) (tax on inner tubes for tires); and

"(D) 100 percent of the tax under section 4481 (tax on use of certain vehicles).

"(4) METHOD OF TRANSFER.—The amounts appropriated by paragraphs (1), (2), and (3) shall be transferred at least monthly from the general fund of the Treasury to the Trust Fund on the basis of estimates by the Secretary of the Treasury of the amounts, referred to in paragraphs (1), (2), and (3) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(5) ADJUSTMENTS FOR AVIATION USES.—The amounts described in paragraphs (1)(A) and (3)(A) with respect to any period shall (before the application of this subsection) be reduced by appropriate amounts to reflect any amounts transferred to the Airport and Airway Trust Fund under section 208(b) of the Airport and Airway Revenue Act of 1970 [section 1742(b) of Title 42] with respect to such period. The amounts described in paragraphs (1)(E) and (3)(C) with respect to any period shall (before the application of this subsection) be reduced by appropriate amounts to reflect any amounts transferred to the Airport and Airway Trust Fund under section 208(b)(3) of the Airport and Airway Revenue Act of 1970 [section 1742(b)(3) of Title 42] with respect to such period.

"(d) ADDITIONAL APPROPRIATIONS TO TRUST FUND.—There are hereby authorized to be appropriated to the Trust Fund, as repayable advances, such additional sums as may be required to make the expenditures referred to in subsection (f).

"(e) MANAGEMENT OF TRUST FUND.—

"(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Commerce) to report to the Congress not later than the first day of March of each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during each fiscal year thereafter up to and including the fiscal year ending June 30, 1978. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(2) INVESTMENT.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price, or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest. Advances to the Trust Fund pursuant to subsection (d) shall not be invested.

"(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

"(4) INTEREST AND CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(f) EXPENDITURES FROM TRUST FUND.—

"(1) FEDERAL-AID HIGHWAY PROGRAM.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, for making expenditures after June 30, 1956, and before October 1, 1977, to meet those obligations of the United States heretofore or hereafter incurred under the Federal-Aid Road Act approved July 11, 1916, as amended and supplemented, which are attributable to Federal-Aid highways (including those portions of general administrative expenses of the Bureau of Public Roads payable from such appropriations).

"(2) REPAYMENT OF ADVANCES FROM GENERAL FUND.—Advances made pursuant to subsection (d) shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the Trust Fund for such purposes. Such interest shall be at rates computed in the same manner as provided in subsection (e)(2) for special obligations and shall be compounded annually.

"(3) TRANSFERS FROM TRUST FUND FOR GASOLINE AND LUBRICATING OIL USED FOR CERTAIN PURPOSES.—The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid before July 1, 1978, under sections 6420 (relating to amounts paid in respect of gasoline used on farms), 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and 6424 (relating to amounts paid in respect of lubricating oil not used in highway motor vehicles) of the Internal Revenue Code of 1954 on the basis of claims filed for periods beginning after June 30, 1956, and ending before October 1, 1977. This paragraph shall not apply to amounts estimated by the Secretary of the Treasury as paid under section 6421 of such Code with respect to gasoline used after December 31, 1964, in motorboats. This paragraph shall not apply to amounts estimated by the Secretary of the Treasury as paid under sections 6420 and 6421 of such Code with respect to gasoline used after June 30, 1970, in aircraft.

"(4) 1972 FLOOR STOCKS REFUNDS.—The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the following percentages of the floor stocks refunds made before July 1, 1978, under section 6412(a)(2) of the Internal Revenue Code of 1954—

"(A) 40 percent of the refunds in respect of articles subject to the tax imposed by section 4061(a)(1) of such Code (trucks, buses, etc.);

"(B) 100 percent of the refunds in respect of articles subject to tax under section 4071(a) (1), (3), or (4) of such Code (certain tires, tubes, and tread rubber); and

"(C) 80 percent of the refunds in respect of gasoline subject to tax under section 4081 of such Code (other than gasoline to be used in motorboats, as estimated by the Secretary of the Treasury).

"(5) Transfers from the Trust Fund for Special Motor Fuels and Gasoline Used in Motorboats.—The Secretary of the Treasury shall pay from time to time from the trust fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965 [sections 460*l*–4 to 460*l*–10 of Title 16] amounts as determined by him in consultation with the Secretary of Commerce equivalent to the taxes received, on or after January 1, 1965, under section 4041(b) of the Internal Revenue Code of 1954 with respect to special motor fuels used as fuel for the propulsion of motorboats and under section 4081 of such Code with respect to gasoline used as fuel in motorboats."

"(6) TRANSFERS FROM THE TRUST FUND FOR INCOME TAX CREDITS ALLOWED FOR CERTAIN USES OF GASOLINE, SPECIAL FUELS, AND LUBRICATING OIL.—The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 39 of the Internal Revenue Code of 1954 [section 39 of title 26] (relating to credit for certain uses of gasoline, special fuels, and lubricating oil) with respect to gasoline, special fuels, and lubricating oil used before October 1, 1977. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the credits allowed." This paragraph shall not apply to amounts estimated by the Secretary of the Treasury as attributable to the use after June 30, 1970, of gasoline and special fuels in aircrafts.

"(7) TRANSFERS FROM TRUST FUND FOR NONTAXABLE USES OF FUELS.—The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid before July 1, 1978, under section 6427 of the Internal Revenue Code of 1954 (relating to fuels not used for taxable purposes) on the basis of claims filed for fuels used before October 1, 1977. This paragraph shall not apply to amounts estimated by the Secretary of the Treasury as paid under such section 6427 with respect to fuels used in aircraft."

(g) ADJUSTMENTS OF APPORTIONMENTS.—The Secretary of the Treasury shall from time to time, after consultation with the Secretary of Commerce, estimate the amounts which will be available in the Highway Trust Fund (excluding repayable advances) to defray the expenditures which will be required to be made from such fund. In any case in which the Secretary of the Treasury determines that, after all other expenditures required to be made from the Highway Trust Fund have been defrayed, the amounts which will be available in such fund (excluding repayable advances) will be insufficient to defray the expenditures which will be required as a result of the apportionment to the States of the amounts authorized to be appropriated for any fiscal year for the

construction, reconstruction, or improvement of the Interstate System, he shall so advise the Secretary of Commerce and shall further advise the Secretary of Commerce as to the amount which, after all other expenditures required to be made from such fund have been defrayed, will be available in such fund (excluding repayable advances) to defray the expenditures required as a result of apportionment to the States of Federal-aid highway funds for the Interstate System for such fiscal year. The Secretary of Commerce shall determine the percentage which such amount is of the amount authorized to be appropriated for such fiscal year for the construction, reconstruction, or improvement of the Interstate System and, notwithstanding any other provision of law, shall thereafter apportion to the States for such fiscal year for the construction, reconstruction, or improvement of the Interstate System, in lieu of the amount which but for the provisions of this subsection would be so apportioned, the amount obtained by multiplying the amount authorized to be appropriated for such fiscal year by such percentage. Whenever the Secretary of the Treasury determines that there will be available in the Highway Trust Fund (excluding repayable advances) amounts which, after all other expenditures required to be made from such fund have been defrayed, will be available to defray the expenditures required as a result of the apportionment of any Federal-aid highway funds for the Interstate System previously withheld from apportionment for any fiscal year, he shall so advise the Secretary of Commerce and the Secretary of Commerce shall apportion to the States such portion of the funds so withheld from apportionment as the Secretary of the Treasury has advised him may be so apportioned without causing expenditures from the Highway Trust Fund for the Interstate System to exceed amounts available in such fund (excluding repayable advances) to defray such expenditures. Any funds apportioned pursuant to the provisions of the preceding sentence shall remain available for expenditure until the close of the third fiscal year following that in which apportioned."

PERCENTAGE OF FUNDS CONTRIBUTED BY ALASKA

Section 21(d)(4) of Pub. L. 86-70, which repealed subsec. (h) of this section, provided in part that the provisions of subsec. (h) relating to the percentage of funds to be contributed by Alaska shall continue to apply to funds apportioned to Alaska for fiscal year 1960 and prior fiscal years.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 107, 108, 121, 122, 125, 130, 142, 307 of this title; title 42 section 3338.

§ 121. Payment to States for construction.

(a) The Secretary may, in his discretion, from time to time as the work progresses, make payments to a State for costs of construction incurred by it on a project. These payments shall at no time exceed the Federal share of the costs of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

(b) After completion of a project in accordance with the plans and specifications, and approval of the final voucher by the Secretary, a State shall be entitled to payment out of the appropriate sums apportioned to it of the unpaid balance of the Federal share payable on account of such project.

(c) No payment shall be made under this chapter, except for a project located on a Federal-aid system and covered by a project agreement. No final payment shall be made to a State for its costs of construction of a project until the completion of the construction has been approved by the Secretary following inspections pursuant to section 114 (a) of this title.

(d) In making payments pursuant to this section, the Secretary shall be bound by the limitations with respect to the permissible amounts of such payments contained in sections 120 and 130 of this title. Payments for construction engineering on any project financed with Federal-aid primary, secondary, or urban funds shall not exceed 10 per centum of the Federal share of the cost of construction of such project after excluding from the cost of construction the costs of rights-of-way, preliminary engineering, and construction engineering: *Provided,* That such limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary. For any project financed with interstate funds, such limitation shall be 10 per centum.

(e) Such payments shall be made to such official or officials or depository as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 899; Pub. L. 88-157, § 7(b), Oct. 24, 1963, 77 Stat. 278.)

AMENDMENTS

1963—Subsec. (d). Pub. L. 88-157 substituted "any project financed with Federal-aid primary, secondary, or urban funds" for "any one project" and provided for limitation, on payments for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of Federal share of cost of construction of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SUBMISSION OF RECOMMENDATIONS TO CONGRESS FOR REIMBURSEMENT OF STATES FOR CERTAIN HIGHWAYS.

Pub. L. 85-845, Aug. 28, 1958, 78 Stat. 1083 required the Secretary of Commerce, within ten days after the first day of the first session of the Eighty-sixth Congress, to submit to Congress recommendations for legislation for the purpose of assisting Congress to determine whether or not to reimburse each State of any portion of a toll or free highway (1) which was on the National System of Interstate and Defense Highways, (2) which met the standards required by the Federal-Aid Highway Act of 1956 for such National System of Interstate and Defense Highways, and (3) the construction of which had been completed since August 2, 1947, or which had been in actual use or under construction by contract, for completion, awarded not later than June 30, 1957.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 122 of this title.

§ 122. Payment to States for bond retirement.

Any State that shall use the proceeds of bonds issued by the State, county, city, or other political subdivision of the State for the construction of one or more projects on the Federal-aid primary or Interstate System, or extensions of any of the Federal-aid highway systems in urban areas, may claim payment of any portion of the sums apportioned to

it for expenditure on such system to aid in the retirement of the principal of such bonds at their maturities, to the extent that the proceeds of such bonds have been actually expended in the construction of one or more of such projects. Such claim for payment may be made only when all of the provisions of this title have been complied with to the same extent and with the same effect as though payment were to be made to the State under section 121 of this title, instead of this section, and the Federal share payable shall not exceed the pro rata basis of payment authorized in section 120 of this title. This section shall not be construed as a commitment or obligation on the part of the United States to provide funds for the payment of the principal of any such bonds. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 900.)

§ 123. Relocation of utility facilities.

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term "utility", for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term "cost of relocation", for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 900.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 124. Advances to States.

If the Secretary shall determine that it is necessary for the expeditious completion of projects on any of the Federal-aid systems, including the Interstate System, he may advance to any State out of any existing appropriations the Federal share of the cost of construction thereof to enable the State highway department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special revolving trust fund, by the State official authorized under the laws of the State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State highway department for rights-of-way which have been or are being acquired, and for construction which has been actually performed and approved by the Secretary pursuant to this chapter. Upon determination by the Secretary that any part of the funds advanced to any State under the provisions of this section are no longer required, the amount of the advance, which is determined to be in excess of current requirements of the State, shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced. Any sum advanced and not repaid on demand shall be deducted from sums due the State for the Federal pro rata share of the cost of construction of Federal-aid projects. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 901.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 125. Emergency relief.

(a) An emergency fund is authorized for expenditure by the Secretary, subject to the provisions of this section and section 120 of this title, for (1) the repair or reconstruction of highways, roads, and trails which he shall find have suffered serious damage as the result of (A) natural disaster over a wide area such as by floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, or (B) catastrophic failures from any cause, in any part of the United States, and (2) the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiences or physical deterioration. Subject to the following limitations, there is hereby authorized to be appropriated such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis: (1) not more than $50,000,000 is authorized to be expended in any one fiscal year to carry out this section except that if in any fiscal year the total of all expenditures under this section is less than $50,000,000, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amounts otherwise available to carry out this section in such years, and (2) 60 per centum of the expenditures under this section for any fiscal year are authorized to be appropriated from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any moneys in the Treasury not otherwise appropriated.

(b) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on the Federal-aid highway systems, including the Interstate System, in accordance with the provisions of this chapter. Except as to highways, roads, and trails mentioned in subsection (c) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State highway department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary.

(c) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highway systems. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 86–342, title I, § 107(a), Sept. 21, 1959, 73 Stat. 612; Pub. L. 89–574, § 9(b), (c), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90–495, § 27(a), Aug. 23, 1968, 82 Stat. 829; Pub. L. 91–605, title I, § 109(a), Dec. 31, 1970, 84 Stat. 1718.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605 provided emergency relief for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiencies or physical deterioration.

1968—Subsec. (a). Pub. L. 90–495 permitted the use of the emergency fund for repair or construction caused by other than natural catastrophes.

1966—Subsec. (a). Pub. L. 89–574, § 9(c), raised from $30,000,000 to $50,000,000 the upper limit on allowable annual appropriations to establish and replenish the fund, provided that, if, in any fiscal year the total of all expenditures under this section is less than $50,000,000, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amount otherwise available, and provided that 60 per centum of the expenditures under this section are authorized to be appropriated from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any monies in the Treasury not otherwise appropriated.

Subsec. (c). Pub. L. 89–574, § 9(b), added parkways, public lands highways, public lands development roads, and trails to the list of types of roads the repair or reconstruction of which may be paid for out of the emergency fund.

1959—Pub. L. 86–342, among other changes, made expenditures from the emergency fund subject to the provisions of section 120 of this title, and permitted the Secretary to expend funds from the emergency fund, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highway systems.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 27(c) of Pub. L. 90–495 provided that: "The amendments made by this section [amending this section and section 120 of this title] shall be applicable to repair or reconstruction with respect to which project agreements have been entered into on or after January 1, 1968."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 9(d) of Pub. L. 89–574 provided that: "The amendments made by this section [amending subsecs. (a) and (c) of this section] shall take effect July 1, 1966."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 120 of this title.

§ 126. Diversion.

(a) Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts provided by law on June 18, 1934, for such purposes in each State from State motor vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes, under such regulations as the Secretary of Commerce shall promulgate from time to time.

(b) In no case shall the provisions of this section operate to deprive any State of more than one-third of the entire apportionment authorized under this chapter to which that State would be entitled in any fiscal year. The amount of any reduction in a State's apportionment shall be reapportioned in the same manner as any other unexpended balance at the end of the period during which it otherwise would be available in accordance with section 104 (b) of this title. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 901.)

§ 127. Vehicle weight and width limitations—Interstate System.

No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This

section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956. With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. (Pub L. 85–767, Aug 27, 1958, 72 Stat. 902; Pub. L. 86–624, § 17(e), July 12, 1960, 74 Stat. 416.)

REFERENCES IN TEXT

Section 108 (b) of the Federal-Aid Highway Act of 1956, referred to in the text, is set out as a note under section 101 of this title.

AMENDMENTS

1960—Pub. L. 86–624 made the laws or regulations in effect on Feb. 1, 1960, applicable, with respect to the State of Hawaii, for the purposes of this section in lieu of those in effect on July 1, 1956.

§ 128. Public hearings.

(a) Any State highway department which submits plans for a Federal-aid highway project involving the by passing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed locations of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental, and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

(b) When hearings have been held under subsection (a), the State highway department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 90–495, § 24, Aug. 23, 1968, 82 Stat. 828; Pub. L. 91–605, title I, § 135, Dec. 31, 1970, 84 Stat. 1734.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605, § 135(a), provided for submission of a report by the State highway department involved indicating consideration given to economic, social, environmental, and other effects of the plan or highway location or design plus the various alternatives which were considered.

Subsec. (b). Pub. L. 91–605, § 135(b), made reference to report to be submitted by the State highway department together with the certification of public hearings.

1968—Subsec. (a). Pub. L. 90–495 added the social effect of projects, the impact on environment, and their consistency with the goals and objectives of such urban planning as has been promulgated by the community to the list of factors to be considered by State highway departments in looking over projects involving the bypassing or passing through of municipalities.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 129. Toll roads, bridges, tunnels, and ferries.

(a) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Federal participation, on the same basis and in the same manner as in the construction of free highways under this chapter, in the construction of any toll bridge, toll tunnel, or approach thereto, upon compliance with the conditions contained in this section. Such bridge, tunnel, or approach thereto, must be publicly owned and operated. Federal funds may participate in the approaches to a toll bridge or toll tunnel whether such bridge or tunnel is to be or has been constructed, or acquired, by the State or other public authority. The State highway department or departments must be a party or parties to an agreement with the Secretary whereby it or they undertake performance of the following obligations:

(1) all tolls received from the operation of the bridge or tunnel, less the actual cost of such operation and maintenance, shall be applied to the repayment to the State or other public authority of all of the costs of construction or acquisition of such bridge or tunnel, except that part which was contributed by the United States;

(2) no tolls shall be charged for the use of such bridge or tunnel after the State or other public authority shall have been so repaid; and

(3) after the date of final repayment, the bridge or tunnel shall be maintained and operated as a free bridge or free tunnel.

(b) Upon a finding by the Secretary that such action will promote the development of an integrated Interstate System, the Secretary is authorized to approve as part of the Interstate System any toll road, bridge or tunnel, now or hereafter constructed which meets the standards adopted for the improvement of projects located on the Interstate System, when such toll road, bridge or tunnel is located on a route heretofore or hereafter designated as a part of the Interstate System. No Federal-aid highway funds shall be expended for the construction, reconstruction or improvement of any such toll road, except to the extent permitted by law after June 29, 1956. No Federal-aid highway funds shall be expended for the construction, reconstruction or improvement of any such toll bridge or tunnel, except to the extent permitted by law on or after June 29, 1956. After June 30, 1968, all agreements between the Secretary and a State highway department for the construction of projects on the Interstate System shall contain a clause providing that no toll road will be constructed after June 30, 1968, on the interstate highway route

involved without the official concurrence of the Secretary. The Secretary shall not concur in any such construction unless he makes an affirmative finding that, under the particular circumstances existing, the construction of such road as a toll facility rather than a toll-free facility is in the public interest. The preceding two sentences shall not apply to any toll bridge or toll tunnel.

(c) Funds authorized for expenditure on any of the Federal-aid highway systems, including the Interstate System, shall be available for expenditure on projects approaching any toll road, bridge or tunnel to a point where such project will have some use irrespective of its use for such toll road, bridge or tunnel.

(d) Funds authorized for the Interstate System shall be available for expenditure on Interstate System projects approaching any toll road on the Interstate System, although the project has no use other than an approach to such toll road, if an agreement satisfactory to the Secretary has been reached with the State prior to the approval of such project—

(1) that the section of toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against such section of toll road covered in the agreement and their maintenance and operation and debt service during the period of toll collections, and

(2) that there is one or more reasonably satisfactory alternate free routes available to traffic by which the toll section of the system may be bypassed.

(e) Notwithstanding the provisions of subsection (b) of this section, the Secretary may permit Federal participation in the reconstruction and improvement of any toll road providing for only two lanes of traffic, which is designated part of the Interstate System on the date of enactment of this subsection as he may find necessary to bring such two lane toll road to the geometric and construction standards for the Interstate System in order to provide for the safe use of such highway as part of the Interstate System and to facilitate the removal of tolls therefrom. Federal participation in such reconstruction and improvement shall be on the same basis and in the same manner as in the construction of free Interstate System highways under this chapter. No Federal participation shal be permitted pursuant to this subsection except on two lane toll roads which were designated as a part of the Interstate System on or before June 30, 1968. Before Federal participation under this subsection, the State highway department and the toll road authority involved shall enter into an agreement with the Secretary which shall provide that—

(1) no indebtedness which is to be liquidated by the collection of tolls (in addition to indebtedness in existence on date of enactment in this subsection) shall be incurred after the date of enactment of this subsection;

(2) all tolls received from the operation of the toll road, less the actual cost of such operation and maintenance, shall be applied to the repayment of only those bonds outstanding on the date of enactment of this subsection constituting a valid lien against such toll road and its maintenance and operation and debt service during the period of toll collection;

(3) the toll road shall become free to the public upon collection of tolls sufficient to liquidate all such bonds.

(f) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, the route of which has been approved under section 103 (b) or (c) of this title as a part of one of the Federal-aid systems and has not been designated as a route on the Interstate System. Such ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition thereof, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

(f) Notwithstanding section 301 of this title, the Secretary may permit Federal participation under this title in the construction of ferry boats, whether toll or free, subject to the following conditions:

(1) It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.

(2) The operation of the ferry shall be on a route which has been approved under section 103 (b) or (c) of this title as a part of one of the Federal-aid systems within the State and has not been designated as a route on the Interstate System.

(3) Such ferry shall be publicly owned and operated.

(4) The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, mainitenance, and repair.

(5) Such ferry shall be operated only within the State or between adjoining States, and no part of its operation shall be in any foreign or international waters.

(6) No such ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from such a disposition shall be credited to the unprogramed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 86–657, §§ 5, 8(a), July 14, 1960, 74 Stat. 523, 524, Pub. L. 90–495, § 28, Aug. 23, 1968, 82 Stat. 829; Pub.

L. 91-605, title I, §§ 133, 139, Dec. 31, 1970, 84 Stat. 1732, 1736.)

AMENDMENTS

1970—Subsec. (e). Pub. L. 91-605, § 133, added subsec. (e). Former subsec. (e), pertaining to ferry approaches, was redesignated subsec. (f).

Subsec. (f). Pub. L. 91-605, §§ 133, 139, redesignated subsec. (e), pertaining to ferry approaches, as subsec. (f) and added a new subsec. (f) dealing with ferry boats.

1968—Subsec. (b). Pub. L. 90-495 required that, after June 30, 1968, as a condition for the addition of toll highway facilities on the Interstate system, the approval of the Secretary is required, with an affirmative finding that the construction of the road as a toll facility rather than a toll-free facility is in the public interest, but with such limitation on the construction of toll facilities not to extend to toll bridges and tunnels.

1960—Pub. L. 86-657, § 5(b), included ferries in the catchline.

Subsec. (c). Pub. L. 86-657, § 8(a), eliminated words "under prior Acts" which followed "Funds authorized."

Subsec. (e). Pub. L. 86-657, § 5(a), added subsec. (e).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

RICHMOND-PETERSBURG TURNPIKE

Section 131 of Pub. L. 91-605 provided that: "The Secretary of Transportation is authorized to amend any agreement heretofore entered into under the provisions of section 129(d) of title 23, United States Code [subsec. (d) of this section], in order to permit the continuation of tolls on the existing Richmond-Petersburg Turnpike to finance the construction within the existing termini of such turnpike of two lanes thereon in addition to the lanes in existence on the date of enactment of this section [Dec. 31, 1970] necessary to meet traffic and highway safety requirements. Any amended agreement entered into for such purposes shall provide assurances that the existing turnpike (including the additional lanes) shall become free to the public upon the collection of tolls sufficient to liquidate all construction costs, and the costs of maintenance, operation, and debt service during the period of toll collections to liquidate such construction costs, but in no event shall tolls be collected after date of maturity of those bonds outstanding on the date of enactment of this section [Dec. 31, 1970] issued for construction of such turnpike having the latest maturity date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 301 of this title.

§ 130. Railway-highway crossings.

(a) Except as provided in subsection (d) of section 120 of this title and subsection (b) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with section 104 of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, except as provided in subsection (d) of section 120 of this title and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State highway department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 903.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 120, 121 of this title.

§ 131. Control of outdoor advertising.

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the

Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall

be entitled to such payments unless the State maintains the control required under such agreement. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(*l*) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $20,000,000 for the fiscal year ending June 30, 1970, not to exceed $27,000,000 for the fiscal year ending June 30, 1971, not to exceed $20,500,000 for the fiscal year ending June 30, 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 904; Pub. L. 86–342, title I, § 106, Sept. 21, 1959, 73 Stat. 612; Pub. L. 87–61, title I, § 106, June 29, 1961, 75 Stat. 123; Pub. L. 88–157, § 5, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89–285, title I, § 101, Oct. 22, 1965, 79 Stat. 1028; Pub. L. 89–574, § 8(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90–495, § 6(a)—(d), Aug. 23, 1968, 82 Stat. 817; Pub. L. 91–605, title I, § 122(a), Dec. 31, 1970, 84 Stat. 1726.)

REFERENCES IN TEXT

"This Act", referred to in subsec. (d), probably has reference to the "Highway Beautification Act of 1965", Pub. L. 89–285, which is classified to this section and sections 136 and 319 and 135 note of this title.

The "date of enactment of this subsection", referred to in subsec. (g), is the date of enactment of Pub. L. 89–285, which was approved on October 22, 1965.

AMENDMENTS

1970—Subsec. (m). Pub. L. 91–605 authorized to be appropriated not to exceed $27,000,000, $20,500,000 and $50,000,000, for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (d). Pub. L. 90–495, § 6(a), provided that whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority.

Subsec. (j). Pub. L. 90–495, § 6(b), struck out provision for the imposition of controls on outdoor advertising by the Federal government that are stricter than those imposed by the State highway department.

Subsec. (m). Pub. L. 90–495, § 6(c), added provision authorizing an appropriation of not to exceed $2,000,000 for the fiscal year ending June 30, 1970.

Subsec. (n). Pub. L. 90–495, § 6(d), added subsec. (n).

1966—Subsec. (m). Pub. L. 89–574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this section after June 30, 1967 the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this section.

1965—Subsec. (a). Pub. L. 89–285 deleted specific reference to the area which lies within six-hundred and sixty feet of the edge of the right-of-way and which is visible from the right-of-way and instead made only general reference to the areas adjacent to the Interstate System and deleted reference to types of permissible signs.

Subsec. (b). Pub. L. 89–285 substituted provisions reducing by 10 per centum the apportioned share, on or after January 1, 1968, of any state not making provision for effective control of erection and maintenance of outdoor advertising signs, displays and devices within six-hundred and sixty feet of the nearest edge of the right of way and visible from the traveled portion, reapportioning withheld funds to other states, and allowing for suspension of such provisions in the discretion of the Secretary, for provisions which authorized the Secretary to enter into agreements with the states to carry out national policy on control of areas adjacent to the Interstate System.

Subsec. (c). Pub. L. 89–285 substituted provisions setting out permissible types of signs as directional and

other official signs and notices, signs advertising sale or lease of property on which the sign is located, and signs, displays, and devices advertising activities conducted on the property on which the sign is located, for provisions allowing for an increase in the federal share payable under the Federal-Aid Highway Act of 1956, as amended, in the case of states entering into an agreement with the Secretary prior to July 1, 1965.

Subsec. (d). Pub. L. 89-285 substituted provisions allowing for agreements between the Secretary and the several states covering commercial or industrial property, for provisions covering control of the adjacent area when the Interstate System is located on or near public lands or reservations of the United States.

Subsec. (e). Pub. L. 89-285 substituted provisions setting out the timetable for removal of signs, displays, and devices lawfully along Interstate System or Federal-aid primary system highways, for provisions allowing the inclusion of the cost of purchase or condemnation of the right to advertise or control advertising in the area adjacent to Interstate System right-of-way as part of the cost of construction.

Subsecs. (f)—(m). Pub. L. 89-285 added subsecs. (f)—(m).

1963—Subsec. (c). Pub. L. 88-157 substituted "July 1, 1965" for "July 1, 1963."

1961—Subsec. (c). Pub. L. 87-61 substituted "July 1, 1963" for "July 1, 1961."

1959—Subsec. (b). Pub. L. 86-342 substituted "Agreements entered into between the Secretary of Commerce and State highway departments under this section shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the presently existing boundaries of incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of the date of approval of this Act, is clearly established by State law as industrial or commercial" for "Upon application of the State, any such agreement may, within the discretion of the Secretary of Commerce consistent with the national policy, provide for excluding from application of the national standards segments of the Interstate System which traverse incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use is clearly established by State law as industrial or commercial."

Effective Date of 1968 Amendment

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 502 of this title.

Transfer of Functions

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Acquisition of Dwellings

Section 305 of Pub. L. 89-285 provided that: "Nothing in this Act or the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under this section and sections 135 and 136 of this title] shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings)."

Authorization of Additional Appropriations for Administrative Expenses

Section 402 of Pub. L. 89-285 provided that: "In addition to any other amounts authorized by this Act and the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under this section and sections 135 and 136 of this title], there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Commerce not to exceed $5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act)."

Highway Beautification Commission

Section 123 of Pub. L. 91-605 provided that:

"(a) There is hereby established a commission to be known as the Commission on Highway Beautification, hereinafter referred to as the 'Commission'.

"(b) The Commission shall be comprised of eleven members as follows:

"(1) two majority and two minority members of the Senate Committee on Public Works to be appointed by the President of the Senate;

"(2) two majority and two minority members of the House Committee on Public Works to be appointed by the Speaker of the House of Representatives;

"(3) three persons to be appointed by the President of the United States from among persons who are not officers or employees of the United States.

"(c) The Chairman shall be elected from among the members of the Commission by a majority vote of such members. Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

"(d) The organization meeting of the Commission shall be held at such time and place as may be specified in a call issued jointly by the senior member appointed by the President of the Senate and the senior member appointed by the Speaker of the House of Representatives.

"(e) Six members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

"(f) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

"(g) Members of the Commission who are not Members of Congress or officers or employees in the executive branch shall each receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

"(h) The Commission shall (1) study existing statutes and regulations governing the control of outdoor advertising and junkyards in areas adjacent to the Federal-aid highway system; (2) review the policies and practices of the Federal and State agencies charged with administrative jurisdiction over such highways insofar as such policies and practices relate to governing the control of outdoor advertising and junkyards; (3) compile data necessary to understand and determine the requirements for such control which may now exist or are likely to exist within the foreseeable future; (4) study problems relating to the control of on-premise outdoor advertising signs, promotional signs, directional signs, and signs providing information that is essential to the motoring public; (5) study methods of financing and possible sources of Federal funds, including use of the Highway Trust Fund, to carry out a highway beautification program; and (6) recommend such modifications or additions to existing laws, regulations, policies, practices, and demonstration programs as will, in the judgment of the Commission, achieve a workable and effective highway beautification program and best serve the public interest.

"(i) The Commission shall, not later than one year after the funding of this section submit to the President and the Congress its final report. It shall cease to exist six months after submission of said report. All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the Archives of the United States.

"(j) The Chairman of the Commission shall request the head of each Federal department or independent agency which has an interest in or responsibility with respect to the control of outdoor advertising and of junkyards to

appoint, and the head of such department or agency shall appoint, a liaison officer who shall work closely with the Commission and its staff in matters pertaining to this section.

"(k) In carrying out its duties the Commission shall seek the advice of various groups interested in the problems relating to the control of outdoor advertising and junkyards including, but not limited to, State and local governments, public and private organizations working in the fields of environmental protection and conservation, communications media, commercial advertising interests, industry, education, and labor.

"(*l*) The Commission or, on authorization of the Commission, any committee of two or more members may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued only on the authority of the Commission and shall be served by anyone designated by the Chairman of the Commission.

"(m) The Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this section and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission upon request made by the Chairman.

"(n) There are hereby authorized to be appropriated such sums, but not more than $200,000, as may be necessary to carry out the provisions of this section and such moneys as may be appropriated shall be available to the Commission until expended.

"(*o*) The Commission is authorized to appoint and fix the compensation of a staff director, and such additional personnel as may be necessary to enable it to carry out its functions. The Director and personnel may be appointed without regard to provisions of title 5, United States Code, covering appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Any Federal employees subject to the civil service laws and regulations who may be employed by the Commission shall retain civil service status without interruption or loss of status or privilege. In no event shall the staff director or any other employee receive as compensation an amount in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. In addition, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed $100 per diem for individuals.

"(p) The Commission is authorized to enter into contracts or agreements for studies and surveys with public and private organizations and, if necessary, to transfer funds to Federal agencies from sums appropriated pursuant to this section to carry out such of its duties as the Commission determines can best be carried out in that manner."

COMPREHENSIVE STUDY ON HIGHWAY BEAUTIFICATION PROGRAMS

Section 302 of Pub. L. 89–285 provided that in order to provide the basis for eavluating the continuing programs authorized by Pub. L. 89–285, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of Pub. L. 89–885, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of Pub. L. 89–285. The Secretary was required to submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

STANDARDS, CRITERIA, RULES AND REGULATIONS; REPORT TO CONGRESS

Section 303 of Pub. L. 89–285 provided that:

"(a) Before the promulgation of standards, criteria, and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

"(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code."

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

Section 401 of Pub. L. 89–285 provided that: "Nothing in this Act or the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under this section and sections 135 and 136 of this title] shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 137 of this title.

§ 132. Payments on Federal-aid projects undertaken by a Federal agency.

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made. (Added Pub. L. 86–657, § 4(a), July 14, 1960, 74 Stat. 522.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 133. Repealed. Pub. L. 90–495, § 37, Aug. 23, 1968, 82 Stat. 836.

Section, Pub. L. 87–866, § 5(a), Oct. 23, 1962, 76 Stat. 1146, provided for relocation assistance for persons displaced by Federal-aid highway construction. See section 501 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1970, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

§ 134. Transportation planning in certain urban areas.

(a) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States, as authorized in this title, in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section. No highway project may be constructed in any urban area of fifty thousand population or more unless the responsible public officials of such urban area in which the project is located have been consulted and their views considered with respect to the corridor, the location and design of the project.

(b) The Secretary may define those contiguous interstate areas of the Nation in which the movement of persons and goods between principal metropolitan areas, cities, and industrial centers has reached, or is expected to reach, a critical volume in relation to the capacity of existing and planned transportation systems to efficiently accommodate present transportation demands and future growth. After consultation with the Governors and responsible local officials of affected States, the Secretary may by regulation designate, for administrative and planning purposes, as a critical transportation region or a critical transportation corridor each of those areas which he determines most urgently require the accelerated development of transportation systems embracing various modes of transport, in accordance with purposes of this section. The Secretary shall immediately notify such Governors and local officials of such designation. The Secretary may, after consultation with the Governors and responsible local officials of the affected States, provide by regulation for the establishment of planning bodies to assist in the development of coordinated transportation planning, including highway planning, to meet the needs of such regions or corridors, composed of representatives of the affected States and metropolitan areas, and may provide assistance including financial assistance to such bodies. There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed $500,000 to carry out this subsection. (Added Pub. L. 87–866, § 9 (a), Oct. 23, 1962, 76 Stat. 1148, and amended Pub. L. 91–605, title I, § 143, Dec. 31, 1970, 84 Stat. 1737.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605, § 143(a), designated existing provisions as subsec. (a) and as so designated added provision prohibiting a highway construction project in any urban area of 50,000 or more population unless responsible public officials of such area have been consulted and their views considered with respect to the corridor, the location, and the design of the project.

Subsec. (b). Pub. L. 91–605, § 143(b), added subsec. (b).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

FRINGE PARKING DEMONSTRATION PROJECTS

Pub. L. 90–495, § 11, Aug. 23, 1968, 82 Stat. 820, which permitted the Secretary to approve construction of publicly owned parking facilities under this title until June 30, 1971 as a demonstration project, authorized the Federal share of any project under this section to be 50%, prevented approval of projects by the Secretary unless the State or political subdivision thereof where the project is located can construct, maintain, and operate the facility, unless the Secretary has entered into an agreement with the State or political subdivision governing the financing, maintenance, and operation of the facility, and unless the Secretary has approved design standards for construction of the facility, defined "parking facilities", permitted a State or political subdivision to contract for the operation of such facility, prohibited approval of the project by the Secretary unless it is carried on in accordance with section 134 of this title (this section), and required annual reports to Congress on the demonstration projects approved under this section, was repealed by Pub. L. 91–605, title I, § 134(c), Dec. 31, 1970, 84 Stat. 1734. See section 137 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 135, 142 of this title.

§ 135. Urban area traffic operations improvement programs.

(a) The Congress hereby finds and declares it to be in the national interest that each State should have a continuing program within the designated boundaries of urban areas of the State designed to reduce traffic congestion and to facilitate the flow of traffic in the urban areas.

(b) The Secretary may approve under this section any project on an extension of the Federal-aid primary or secondary system in urban areas and on the Federal-aid urban system for improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and loading and unloading ramps. If such project is located in an urban area of more than fifty thousand population, such project shall be based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

(c) The sums authorized to carry out this section shall be apportioned in accordance with section 104(b)(3) of this title.

(d) The Secretary shall report annually on projects approved under this section with any recommendations he may have for further improvement of traffic operations in accordance with this section.

(Added Pub. L. 90-495, § 10(a), Aug. 23, 1968, 82 Stat. 820, and amended Pub. L. 91-605, title I, §§ 106 (g), 125, Dec. 31, 1970, 84 Stat. 1718, 1729.)

PRIOR PROVISIONS

A prior section 135, Pub. L. 89-139, § 4(a), Aug. 28, 1965, 79 Stat. 578, calling for a highway safety program in each state approved by the Secretary, was repealed by Pub. L. 89-564, title I, § 102(a), Sept. 9, 1966, 80 Stat. 734.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-605 inserted reference to the Federal-aid urban system and required that projects under this section be based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title only in urban areas of more than fifty thousand population.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 502 of this title.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 89-285, title III, § 304, Oct. 22, 1965, 79 Stat. 1033, provided that: "There is authorized to be appropriated the sum of $500,000 to enable the Secretary of Commerce to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs."

§ 136. Control of junkyards.

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

(1) those lawfully in existence on the date of enactment of this subsection.

(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before January 1, 1968, and

(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

(*l*) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $3,000,000 for the fiscal year ending June 30, 1970, not to exceed $3,000,000 for the fiscal year ending June 30, 1971, not to exceed $3,000,000 for the fiscal year ending June 30, 1972, and not to exceed $5,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

(Added Pub. L. 89-285, title II, § 201, Oct. 22, 1965, 79 Stat. 1030, and amended Pub. L. 89-574, § 8(a),

Sept. 13, 1966, 80 Stat. 768; Pub. L. 90–495, § 6(c), Aug. 23, 1968, 82 Stat. 818; Pub. L. 91–605, title I, § 122(b), Dec. 31, 1970, 84 Stat. 1726.)

AMENDMENTS

1970—Subsec. (m). Pub. L. 91–605 authorized to be appropriated not to exceed $3,000,000, $3,000,000, and $5,000,000, for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (m). Pub. L. 90–495 added provision authorizing an appropriation of not to exceed $3,000,000 for the fiscal year ending June 30, 1970.

1966—Subsec. (m). Pub. L. 89–574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this section after June 30, 1967, the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this section.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective August 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

SHORT TITLE

Section 403 of Pub. L. 89–285 provided that: "This Act [enacting this section and provisions set out as notes under sections 131 and 135 of this title and amending sections 131 and 319 of this title] may be cited as the 'Highway Beautification Act of 1965'."

ACQUISITION OF DWELLINGS

Prohibition against the use of eminent domain to acquire any dwelling (including related buildings) under the terms of Pub. L. 89–285, see section 305 of Pub. L. 89–285, set out as a note under section 131 of this title.

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

Prohibition against the taking of private property or the restriction of reasonable and existing use by such taking without just compensation under the terms of Pub. L. 89–285, see section 401 of Pub. L. 89–285, set out as a note under section 131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 131, 137 of this title.

§ 137. Fringe and corridor parking facilities.

(a) The Secretary may approve as a project on the Federal-aid urban system the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Secretary shall not approve any project under this section until—

(1) he has determined that the State, or the political subdivision thereof, where such project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility;

(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency, or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facility; and

(3) he has approved design standards for constructing such facility developed in cooperation with the State highway department.

(c) The term "parking facilities" for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

(d) Nothing in this section, or in any rule or regulation issued under this section, or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title. (Added Pub. L. 89–574, § 8(c)(1), Sept. 13, 1966, 80 Stat. 768, and amended Pub. L. 91–605, title I, § 134(a), Dec. 31, 1970, 84 Stat. 1733.)

AMENDMENTS

1970—Pub. L. 91–605 substituted "Fringe and corridor parking facilities" for "Limitation on authorization of appropriations for certain purposes" in the section catchline.

Subsec. (a). Pub. L. 91–605 substituted provisions premitting the Secretary to approve construction of publicly owned parking facilities under the Federal-aid urban system for provisions limiting authorization of appropriations under section 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing these sections and provisions from being construed as authority for any appropriations not specifically authorized in these sections and provisions.

Subsec. (b). Pub. L. 91–605 substituted provisions preventing project approval by the Secretary unless the State or political subdivision thereof where the project is located can construct, maintain, and operate the facility, unless the Secretary has entered into an agreement with the State or political subdivision governing the financing, maintenance, and operation of the facility, and unless the Secretary has approved design standards for construction of the facility for provisions limiting authorization of appropriations under sections 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing appropriations to carry out these sections and provisions unless they are specific as to the amount authorized and as to the fiscal year.

Subsec. (c). Pub. L. 91–605 substituted provisions defining the term "parking facilities" for provisions limiting authorization of appropriations under sections 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing the highway trust fund from being a source of appropriation for these sections and provisions in an amount exceeding the tax imposed by section 4061(a)(2) of Title 26, if such tax was imposed at a rate of 1% plus additional amounts appropriated from the general fund to the highway trust fund for such purposes except that the total of all appropriations made from such fund to carry out these sections and provisions shall never exceed the total of all appropriations made to such fund based on the imposition of such tax plus additional amounts appropriated from the general fund to the highway trust fund for such purposes.

Subsecs. (d), (e). Pub. L. 91–605 added subsecs. (d), (e).

SHORT TITLE

Section 1 of Pub. L. 89–574 provided that: "This Act [adding this section and section 138 of this title, amending sections 101, 104, 109, 118, 120, 125, 131, 136, 302, and 319 of this title, and enacting provisions set out as notes under sections 101, 106, 108, 125, 133, and 137 of this title] may be cited as the Federal-Aid Highway Act of 1966'."

§ 138. Preservation of parklands.

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. (Added Pub. L. 89–574, § 15(a), Sept. 13, 1966, 80 Stat. 771, and amended Pub. L. 90–495, § 18(a), Aug. 23, 1968, 82 Stat. 823.)

REFERENCES IN TEXT

The effective date of the Federal-Aid Highway Act of 1968, referred to in text, is the effective date of Pub. L. 90–495, which took effect on Aug. 23, 1968.

AMENDMENTS

1968—Pub. L. 90–495 amended section generally so as to make it clear that the section does not constitute a mandatory prohibition against the use of enumerated lands but rather is a discretionary authority.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

§ 139. Additions to Interstate System.

(a) Whenever the Secretary determines that a highway on the Federal-aid primary system meets all of the standards of a highway on the Interstate System and that such highway is a logical addition or connection to the Interstate System, he may, upon the affirmative recommendation of the State or States involved, designate such highway as a part of the Interstate System. The mileage of any highway designated as part of the Interstate System under this section shall not be charged against the limitation established by the first sentence of section 103 (e) of this title. The designation of a highway as part of the Interstate System under this section shall create no Federal financial responsibility with respect to such highway.

(b) Whenever the Secretary determines that a highway on the Federal-aid primary system would be a logical addition or connection to the Interstate System and would qualify for designation as a route on that system in the same manner as set forth in paragraph 1 of subsection (d) [1] of section 103 of this title, he may upon the affirmative recommendation of the State or States involved designate such highway as a future port of the Interstate System. Such designation shall be made only upon the written agreement of the State or States involved that such highway will be constructed to meet all the standards of a highway on the Interstate System within twelve years of the date of the agreement between the Secretary and the State or States involved. The mileage of any highway designated as a future part of the Interstate System under this subsection shall not be charged against the limitations established by the first sentence of section 103(d) [2] of this title. The designation of a highway as a future part of the Interstate System under this subsection shall create no Federal financial responsibility with respect to such highway except that Federal-aid highway funds otherwise available to the State or States involved for the construction of Federal-aid primary system highways may be used for the reconstruction of a highway designated as a route on the Interstate System under this subsection. In the event that the State or States involved have not substantially completed the construction of any highway designated under this subsection within the time provided for in the agreement between the Secretary and State or States involved, the Secretary shall remove the designation of such highway as a future part of the Interstate System. Removal of such designation as result of failure to comply with the agreement provided for in this subsection shall in no way prohibit the Secretary from designating such route as part of the Interstate System pursuant to subsection (a) of this section or under any other provision of law providing for addition to the Interstate System. No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision thereof, shall refer to any highway under this section, nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as such highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a part of the Interstate System. (Added Pub. L. 90–495, § 16 (a), Aug. 23, 1968, 82 Stat. 823, and amended Pub. L. 91–605, title I, §§ 106(b)(1), 140, Dec. 31, 1970, 84 Stat. 1716, 1736.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605, §§ 106(b)(1), 140, designated existing provisions as subsec. (a) and as so designated substituted "section 103(e)" for "section 103(d)".

Subsec. (b). Pub. L. 91–605, § 140, added subsec. (b).

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

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[1] So in original, probably should read subsection (e).

[2] So in original, probably should read section 103(e).

§ 140. Equal employment opportunity.

(a) Prior to approving any programs for projects as provided for in subsection (a) of section 105 of this title, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed or national origin. He shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, where he considers it necessary to assure equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed or national origin. The Secretary shall periodically obtain from the Secretary of Labor and the respective State highway departments information which will enable him to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as he shall deem necessary to carry out the equal employment opportunity program required hereunder.

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer highway construction training, including skill improvement programs. Whenever an apportionment is made under subsections 104 (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) of this title of the sums authorized to be appropriated for expenditure upon the Federal-aid primary and secondary systems, and their extensions within the urban areas, the Interstate System, and the Federal-aid urban system for the fiscal years 1972 and 1973, the Secretary shall deduct such sums as he may deem necessary not to exceed $5,000,000 per fiscal year, for administering the provisions of this subsection to be financed from the appropriation for the Federal-aid systems. Such sums so deducted shall remain available until expended. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary. (Added Pub. L. 90–495, § 22(a), Aug. 23, 1968, 82 Stat. 826, and amended Pub. L. 91–605, title I, § 110, Dec. 31, 1970, 84 Stat. 1719.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605 designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 91–605 added subsec. (b).

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

§ 141. Real property acquisition policies.

Before approving projects under this chapter, the Secretary shall obtain from the State highway department the following assurances:

(1) that every reasonable effort shall be made to acquire the real property by negotiation;

(2) that the construction of projects shall be so scheduled that to the greatest extent practicable no person lawfully occupying the real property shall be required to move from his home, farm, or business location without at least 90 days, written notice from the State or political subdivision having responsibility for such acquisition; and

(3) that it will be the policy of the State, before initiating negotiations for real property, to establish an amount which is believed to be just compensation, under the law of the State, and to make a prompt offer to acquire the property for the full amount so established.

(Added Pub. L. 90–495, § 35(a), Aug. 23, 1968, 82 Stat. 836.)

Repeal

Provisions of section repealed by Pub. L. 91–646, title III, § 306, Jan. 2, 1971, 84 Stat. 1907, the repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State; but such sections completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with such sections, see section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

§ 142. Urban highway public transportation.

(a) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles on highways, other than on rails, for the transportation of passengers (hereinafter in this section referred to as 'buses') within urbanized areas so as to increase the traffic capacity of the Federal-aid systems, sums apportioned in accordance with paragraphs (3), (5), and (6) of subsection (b) of section 104 of this title shall be available to finance the Federal share of the costs of projects for the construction of exclusive or preferential bus lanes, highway traffic control devices, bus passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers.

(b) The establishment of routes and schedules of such public mass transportation systems shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of title 23, United States Code.

(c) For all purposes of this title, a project authorized by subsection (a) of this section shall be deemed to be a highway project, and, except as provided in subsection (d) of this section, the Federal share payable on account of such project shall be that provided in section 120 of this title.

(d) No project authorized by this section, other than a project for fringe or transportation corridor parking facilities, shall be approved unless—

(1) such project (A) will avoid the construction of a highway project under this title which increases automobile traffic capacity, (B) will provide a capacity for the movement of persons at least equal to that which would be provided by the avoided highway project, and (C) will not exceed in the amount of the Federal share, the Federal share of the cost of the avoided highway project; or

(2) no other feasible or prudent highway project can provide the additional capacity for the movement of persons by motor vehicles on highways (other than on rails) provided by this project.

(e) No project authorized by this section shall be approved unless the Secretary of Transportation has received assurances satisfactory to him from the State that public mass transportation systems will have adequate capability to fully utilize the proposed project. (Added Pub. L. 91-605, title I, § 111 (a), Dec. 31, 1970, 84 Stat. 1719.)

§ 143. Economic growth center development highways.

(a) In order to demonstrate the role that highways can play to promote the desirable development of the Nation's natural resources, to revitalize and diversify the economy of rural areas and smaller communities, to enhance and disperse industrial growth, to encourage more balanced population patterns, to check, and, where possible, to reverse current migratory trends from rural areas and smaller communities, and to improve living conditions and the quality of the environment, the Secretary is authorized to make grants to States for demonstration projects for the construction, reconstruction, and improvement of development highways on the Federal-aid primary system to serve and promote the development of economic growth centers and surrounding areas, encourage the location of business and industry in rural areas, facilitate the mobility of labor in sparsely populated areas, and provide rural citizens with improved highways to such public and private services as health care, recreation, employment, education, and cultural activities, or otherwise encourage the social and economic development of rural communities, and for planning, surveys, and investigations in connection therewith.

(b) Each Governor may transmit to the Secretary his recommendations for (1) the selection of economic growth centers within the State, (2) priorities for the construction of development highways on the Federal-aid primary system to serve such centers, and (3) such other information as may be required by the Secretary, for his consideration in approving the selection of economic growth centers for demonstration projects.

(c) Upon the application of the State highway department of any State in which an economic growth center approved by the Secretary as eligible for a demonstration project is located, the Secretary is authorized to pay up to 100 per centum of the cost of engineering and economic surveys or other investigations necessary for the planning and design of development highways on the Federal-aid primary system needed to provide appropriate access to such growth center, including publicly owned airport facilities and public ports for water transportation which may be established to serve it, in order to carry out the purposes of this section.

(d) Except as otherwise provided in this section, all of the provisions of this title applicable to Federal-aid primary highways except those which the Secretary determines are inconsistent with this section shall apply to development highways and to funds authorized to carry out this section. For the purposes of sections 105, 106, and 118 of this title, funds authorized to carry out this section shall be deemed to be apportioned on January 1 next preceding the commencement of the fiscal year for which authorized. No State shall receive in any fiscal year more than 15 per centum of the funds authorized to carry out this section for such fiscal year.

(e) The Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project.

(f) (1) Except in the case of a project subject to paragraph (2) of this subsection, no project shall be approved by the Secretary under this section until he has determined that such project will promote the aims and purposes set forth in subsection (a) of this section and that the economic growth center to be benefited will meet such criteria as he, after consultation with the Secretary of Commerce, deems necessary, including, but not limited to, the following: (1) growth centers shall be geographically and economically capable of contributing significantly to the development of the area, and (2) growth centers shall have a population not in excess of one hundred thousand according to the latest available Federal census. In approving projects the Secretary shall give preference to those areas offering the most potential for future economic growth.

(2) In the case of a project proposed to be conducted within the Appalachian region as defined in section 403 of the Appalachian Regional Development Act of 1965, no project shall be approved by the Secretary under this section until he shall have consulted with the Federal Cochairman of the Appalachian Regional Commission. In the case of a project proposed to be conducted within an economic development region as defined in title V of the Public Works and Economic Development Act of 1965, no project shall be approved by the Secretary under this section until he shall have consulted with the Federal Cochairman for such region and the Secretary of Commerce. In consultation with the appropriate official, the Secretary shall establish criteria for the selection of growth centers eligible for assistance under this section such that the aims and purposes set forth in subsection (a) of this section will be promoted. Such criteria shall include, but not be limited to, the following: (1) growth centers shall

be geographically and economically capable of contributing significantly to the development of the area, (2) growth centers shall have a population not in excess of one hundred thousand persons according to the latest available Federal census, and (3) the selection of such growth centers within the Appalachian region and the economic development regions shall take into account the purposes of the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965. In approving projects the Secretary shall give preference to those areas offering the most potential for future economic growth and he shall make arrangements for close coordination throughout the development and implementation of the project with the Federal Cochairman of the Appalachian Regional Commission, or with the appropriate Federal Cochairman of an economic development region, and the Secretary of Commerce, as the case may be.

(g) There is authorized to be appropriated out of the Highway Trust Fund not to exceed $50,000,000 for the fiscal year ending June 30, 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973. (Added Pub. L. 91-605, title I, § 127(a), Dec. 31, 1970, 84 Stat. 1729.)

§ 144. Special bridge replacement program.

(a) Congress hereby finds and declares it to be in the vital interest of the Nation that a special bridge replacement program be established to enable the several States to replace bridges over waterways or other topographical barriers when the States and the Secretary finds that the bridge is significantly important and is unsafe because of structural deficiences, physical deterioration, or functional obsolescence.

(b) The Secretary in consultation with the States shall (1) inventory all bridges located on any of the Federal-aid systems over waterways and other topographical barriers of the United States; (2) classify them according to their serviceability, safety, and essentiality for public use; and (3) based on that classification, assign each a priority for replacement.

(c) Whenever any State or States make application to the Secretary for assistance in replacing a bridge which the priority system, established under subsection (b) of this section, shows to be eligible, the Secretary may approve Federal participation in the reconstruction of a comparable facility. In approving projects under this section, the Secretary shall give consideration to those projects which will remove from service bridges which are most in danger of failure and give consideration to the economy of the area involved. Approval of projects and allocation of funds under this section shall be without regard to allocation or apportionment formulas otherwise established under this title.

(d) The Federal share payable on account of any bridge replacement under this section shall not exceed 75 per centum of the cost thereof.

(e) For the purpose of carrying out the provisions of this section, there are hereby authorized to be appropriated out of the Highway Trust Fund, $100,000,000 for the fiscal year ending June 30, 1972; and $150,000,000 for the fiscal year ending June 30, 1973, to be available until expended. Such funds shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such funds were apportioned under this chapter.

(f) Notwithstanding any other provisions of law the General Bridge Act of 1946 (33 U.S.C. 525-533) shall apply to bridges authorized to be reconstructed and bridges constructed to replace unsafe bridges under this section.

(g) The Secretary shall report annually on projects approved under this section with any recommendations he may have for further improvement in the special bridge replacement program authorized in accordance with this section. (Added Pub. L. 91-605, title II, § 204(a), Dec. 31, 1970, 84 Stat. 1741.)

Chapter 2.—OTHER HIGHWAYS

Sec.
201. Authorizations.
202. Apportionment or allocation.
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204. Forest highways.
205. Forest development roads and trails.
206. Park roads and trails.
207. Parkways.
208. Indian reservation roads.
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212. Inter-American Highway.
213. Rama Road.
214. Public lands development roads and trails.
215. Territories highway development program.
216. Darien Gap Highway.

AMENDMENTS

1970—Pub. L. 91-605, title I, §§ 112(b), 113(b), Dec. 31, 1970, 84 Stat. 1721, 1722, added items 215 and 216.

1962—Pub. L. 87-866, § 6(c), Oct. 23, 1962, 76 Stat. 1147, added item 214.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 110, 317, 509 of this title.

§ 201. Authorizations.

The provision of this title shall apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds on the following classes of highways: Forest highways, forest development roads and trails, park roads and trails, parkways, Indian reservation roads, public lands highways, and defense access roads. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 906.)

§ 202. Apportionment or allocation.

(a) On or before January 1 next preceding the commencement of each fiscal year, the Secretary shall apportion the sums authorized to be appropriated for such fiscal year for forest highways in the several States, according to the area and value of the land owned by the United States within the national forests therein, which the Secretary of Agriculture is directed to determine and certify to the Secretary from such information, sources,

and departments as the Secretary of Agriculture may deem most accurate.

(b) Sums authorized to be appropriated for forest development roads and trails shall be allocated by the Secretary of Agriculture according to the relative needs of the various national forests, taking into consideration the existing transportation facilities, value of timber or other resources served, relative fire danger, and comparative difficulties of road and trail construction.

(c) Sums authorized to be appropriated for public lands highways shall be allocated by the Secretary among those States having unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, on the basis of need in such States, respectively, as determined by the Secretary upon application of the State highway departments of the respective States. Preference shall be given to those projects which are located on a Federal-aid system. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 906.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 203. Availability of funds.

Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads and trails, parkways, Indian reservation roads, and public lands highways shall be available for contract upon apportionment, or a date not earlier than one year preceding the beginning of the fiscal year for which authorized if no apportionment is required. Any amount remaining unexpended for a period of two years after the close of the fiscal year for which authorized shall lapse. The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated. Any funds heretofore or hereafter authorized for any fiscal year for forest highways, forest development roads and trails, public lands development roads and trails, park roads and trails, parkways, Indian roads and public lands highways shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years since and including the fiscal year ending June 30, 1955, shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 86–657, § 8 (b), July 14, 1960, 74 Stat. 524; Pub. L. 87–866, § 7, Oct. 23, 1962, 76 Stat. 1147.)

AMENDMENTS

1962—Pub. L. 87–866 inserted "public lands development roads and trails," proceding "park roads and trails", in two instances.

1960—Pub. L. 86–657 substituted "Funds authorized" for "Funds now authorized" in the first sentence.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highway and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 204. Forest highways.

(a) Funds available for forest highways shall be used by the Secretary to pay for the cost of construction and maintenance thereof. In connection therewith, the Secretary may enter into construction contracts and such other contracts with a State, or civil subdivision thereof as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions, may be accepted but shall not be required by the Secretary.

(c) Construction estimated to cost $5,000 or more per mile, exclusive of bridges, shall be advertised and let to contract. If such estimated cost is less than $5,000 per mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary on his own account. For such purpose, the Secretary may purchase, lease, hire, rent, or otherwise obtain all necessary supplies, materials, tools, equipment, and facilities required to perform the work, and may pay wages, salaries, and other expenses for help employed in connection with such work.

(d) All appropriations for forest highways shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of Agriculture.

(e) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with the forest-highway program.

(f) Funds available for forest highways shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 907.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 211, 315 of this title.

§ 205. Forest development roads and trails.

(a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost $15,000 or more per mile or $15,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than $15,000 per mile or $15,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 907; Pub. L. 86–657, § 8(c), July 14, 1960, 74 Stat. 524; Pub. L. 88–423, § 4(d), Aug. 13, 1964, 78 Stat. 398; Pub. L. 90–495, § 9, Aug. 23, 1968, 82 Stat. 820.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–495 increased from $10,000 to $15,000 the cost limitation on construction per mile, or per project for projects of less than a mile, which the Forest Service may construct on its own account and struck out provisions spelling out the functions which the Secretary of Agriculture is authorized to perform in carrying out such construction.

1964—Subsec. (a). Pub. L. 88–423 inserted "and other" following "experimental."

1960—Subsec. (a). Pub. L. 86–657 substituted "may enter into contracts" for "may enter into construction contracts."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 211, 315 of this title.

§ 206. Park roads and trails.

(a) Funds available for park roads and trails shall be used to pay for the cost of construction and improvement thereof.

(b) Appropriations for the construction and improvement of park roads shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of Interior. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 315 of this title.

§ 207. Parkways.

(a) Funds available for parkways shall be used to pay for the cost of construction and improvement thereof.

(b) Appropriations for the construction of parkways shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of the Interior.

(c) The location of parkways upon public lands, national forests, or other Federal reservations, shall be determined by agreement between the department having jurisdiction over such lands and the Secretary of the Interior. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 315 of this title.

§ 208. Indian reservation roads.

(a) Funds available for Indian reservation roads and bridges shall be used to pay for the cost of construction and improvement thereof.

(b) The Secretary shall approve the location, type, and design of all projects for Indian reservation roads and bridges before any expenditures are made thereon and all construction thereof shall be under the general supervision of the Secretary.

(c) Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior.

(d) Cooperation of States, counties, or other local subdivisions may be accepted in such construction and improvement, and any funds, received from a State, county, or local subdivision shall be credited to appropriations available for Indian reservation roads and bridges. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 87–282, Sept. 22, 1961, 75 Stat. 584.)

AMENDMENTS

1961—Subsec. (d). Pub. L. 87–282 added subsec. (d).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 315 of this title.

§ 209. Public lands highways.

(a) Funds available for public lands highways shall be used by the Secretary to pay for the cost of construction and maintenance thereof.

(b) The Secretary is authorized to cooperate with the State highway departments and with the Secretary of the Department having jurisdiction over the particular lands, in the survey, construction, and maintenance of public lands highways.

(c) The provisions of section 112 of this title are applicable to public lands highways.

(d) Funds available for public lands highways shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 88–423, § 4(b), Aug. 13, 1964, 78 Stat. 397.)

AMENDMENTS

1964—Subsec. (d). Pub. L. 88–423 added subsec. (d).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 210. Defense access roads.

(a) The Secretary is authorized, out of the funds appropriated for defense access roads, to provide for the construction and maintenance of defense access roads (including bridges, tubes, and tunnels thereon) to military reservations, to defense industries and defense industry sites, and to the sources of raw material when such roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, and for replacing existing highways and highway connections that are shut off from the general public use by necessary closures or restrictions at military reservations and defense industry sites.

(b) Funds appropriated for the purposes of this section shall be available, without regard to apportionment among the several States, for paying all or any part of the cost of the construction and maintenance of defense access roads.

(c) Not exceeding $5,000,000 of any funds appropriated under the Act approved October 16, 1951 (65 Stat. 422), may be used by the Secretary in areas certified to him by the Secretary of Defense as maneuver areas for such construction, maintenance, and repair work as may be necessary to keep the highways therein, which have been or may be used for training of the Armed Forces, in suitable condition for such training purposes and for repairing the damage caused to such highways by the operations of men and equipment in such training.

(d) Whenever any project for the construction of a circumferential highway around a city or of a radial intracity route thereto submitted by any State is certified by the Secretary of Defense, or such other official as the President may designate, as being important for civilian or military defense, such project may be constructed out of the funds heretofore or hereafter authorized to be appropriated for defense access roads.

(e) If the Secretary shall determine that the State highway department of any State is unable to obtain possession and the right to enter upon and use the required rights-of-way, lands, or interest in lands, improved or unimproved, required for any project authorized by this section with sufficient promptness, the Secretary is authorized to acquire, enter upon, take possession thereof, and expend funds for projects thereon, prior to approval of title by the Attorney General, in the name of the United States, such rights-of-way, lands, or interest in lands as may be required in such State for such projects by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including the Act of February 26, 1931; 46 Stat. 1421). The cost incurred by the Secretary in acquiring any such rights-of-way, lands, or interest in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition; and shall be payable out of the funds available for paying the cost or the Federal share of the cost of the project for which such rights-of-way, lands, or interests in lands are acquired. The Secretary is further authorized and directed by proper deed executed in the name of the United States to convey any lands or interests in lands acquired in any State under the provisions of prior Acts or of this section to the State highway department of such State or to such political subdivision thereof as its laws may provide, upon such terms and conditions as may be agreed upon by the Secretary and the State highway department, or political subdivisions to which the conveyance is to be made.

(f) The provisions of section 112 of this title are applicable to defense access roads.

(g) If the Secretary shall determine that it is necessary for the expeditious completion of any defense access road project he may advance to any State out of funds appropriated for defense access roads transferred and available to the Department of Commerce the Federal share of the cost of construction thereof to enable the State highway department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special fund by the State official authorized by State law to receive such funds, to be disbursed solely upon vouchers approved by the State highway department for rights-of-way which have been or are being acquired and for construction which has been actually performed under this section. Upon determination by the Secretary that funds advanced to any State under the provisions of this subsection are no longer required, the amount of the advance which is determined to be in excess of requirements for the project shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced.

(h) Funds appropriated for the purposes of this section shall be available to pay the cost of repairing damage caused to highways by the operation of vehicles and equipment in the construction of classified military installations and facilities for ballistic

missiles if the Secretary shall determine that the State highway department of any State is, or has been, unable to prevent such damage by restrictions upon the use of such highways without interference with, or delay in, the completion of a contract for the construction of such military reservations or installations. This subsection shall apply notwithstanding any provision of contract holding a party thereto responsible for such damage, if the Secretary of Defense or his designee shall determine, in fact, that construction estimates and the bid of such party did not include allowance for repairing such damage. This subsection shall apply to damage caused by construction work commenced prior to June 1, 1961, and still in progress on that date and construction work which is commenced or for which a contract is awarded on or after June 1, 1961. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 86–657, § 8(d), July 14, 1960, 74 Stat. 524; Pub. L. 87–61, title I, § 105, June 29, 1961, 75 Stat. 123.)

REFERENCES IN TEXT

The Act approved October 16, 1951, referred to in subsec. (c), means act Oct. 16, 1951, ch. 507, 65 Stat. 422, which was repealed by Pub. L. 85–767, § 2 [35].

The Act of Feb. 26, 1931, referred to in subsec. (e), is classified to sections 258a—258e of Title 40, Public Buildings, Property and Works.

AMENDMENTS

1961—Subsec. (h). Pub. L. 87–61 added subsec. (h).
1960—Subsec. (g). Pub. L. 86–657 added subsec. (g).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

CROSS REFERENCES

Availability of appropriations to military departments for advances for construction, maintenance and improvement of access roads, see section 700b of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 210 of this title; title 31 section 700b.

§ 211. Timber access road hearings.

With respect to any proposed construction of a timber access road from funds authorized for carrying out the provisions of sections 204, 205, and 210 of this title, advisory public hearings may be held at a place of [1] convenient or adjacent to the area of construction with notice and reasonable opportunity for interested persons to present their views as to the practicability and feasibility of such construction. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 909.)

§ 212. Inter-American Highway.

(a) Funds appropriated for the Inter-American Highway shall be used to enable the United States to cooperate with the Governments of the American Republics situated in Central America—that is, with the Governments of the Republic of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama—in the survey and construction of the Inter-American Highway within the borders of the aforesaid Republics, respectively. Not to exceed one-third of the appropriation authorized for each fiscal year may be expended without requiring the country or countries in which such funds may be expended to match any part thereof, if the Secretary of State shall find that the cost of constructing said highway in such country or countries will be beyond their reasonable capacity to bear. The remainder of such authorized appropriations shall be available for expenditure only when matched to the extent required by this section by the country in which such expenditure may be made. Expenditures from the funds available on a matching basis shall not be made for the survey and construction of any portion of said highway within the borders of any country named herein unless such country shall provide and make available for expenditure in conjunction therewith a sum equal to at least one-third of the expenditures that may be incurred by that Government and the United States on such portion of the highway. All expenditures by the United States under the provisions of this section for material, equipment, and supplies shall, whenever practicable, be made for products of the United States or of the country in which such survey or construction work is being carried on. Construction work to be performed under contract shall be advertised for a reasonable period by the Minister of Public Works, or other similar official, of the government concerned in each of the participating countries and contracts shall be awarded pursuant to such advertisements with the approval of the Secretary. No part of the appropriations authorized shall be available for obligation or expenditure for work on said highway in any cooperating country unless the government of said country shall have assented to the provisions of this section; shall have furnished satisfactory assurances that it has an organization adequately qualified to administer the functions required of such country under the provisions hereof; and then only as such country may submit requests, from time to time, for the construction of any portion of the highway to standards adequate to meet present and future traffic needs. No part of said appropriations shall be available for obligation or expenditure in any such country until the government of that country shall have entered into an agreement with the United States which shall provide, in part, that said country—

(1) will provide, without participation of funds authorized, all necessary rights-of-way for the construction of said highway, which rights-of-way shall be of a minimum width where practicable of one hundred meters in rural areas and fifty meters in municipalities and shall forever be held inviolate as a part of the highway for public use;

(2) will not impose any highway toll, or permit any such toll to be charged, for use by vehicles or persons of any portion of said highway constructed under the provisions of this section;

(3) will not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of said highway by vehicles or persons from the United

[1] So in original.

States that does not apply equally to vehicles or persons of such country;

(4) will continue to grant reciprocal recognition of vehicle registration and drivers' licenses in accordance with the provisions of the Convention for the Regulation of Inter-American Automotive Traffic, which was opened for signature at the Pan American Union in Washington on December 15, 1943, and to which such country and the United States are parties, or of any other treaty or international convention establishing similar reciprocal recognition; and

(5) will provide for the maintenance of said highway after its completion in condition adequately to serve the needs of present and future traffic.

(b) The survey and construction work authorized by this section shall be under the administration of the Secretary, who shall consult with the appropriate officials of the Department of State with respect to matters involving the foreign relations of this Government, and such negotiations with the Governments of the American Republics named in subsection (a) of this section as may be required to carry out the purposes of this section shall be conducted through, or as authorized by, the Department of State.

(c) The provisions of this section shall not create nor authorize the creation of any obligations on the part of the Government of the United States with respect to any expenditures for highway construction or survey heretofore or hereafter undertaken in any of the countries enumerated in subsection (a) of this section, other than the expenditures authorized by the provisions of this section.

(d) Appropriations made pursuant to any authorizations heretofore, or hereafter enacted for the Inter-American Highway shall be considered available for expenditure by the Secretary for necessary administrative and engineering expenses in connection with the Inter-American Highway program. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 909.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 216 of this title.

§ 213. Rama Road.

(a) Recognizing the mutual benefits that will accrue to the Republic of Nicaragua and to the United States from the completion of the road from San Benito to Rama in said Republic of Nicaragua, the construction of which road was begun and partially completed pursuant to an agreement between said Republic and the United States, the Secretary is authorized out of the funds appropriated for such purposes to provide for the construction of such road. Appropriations made for such purposes shall remain available until expended. No expenditure shall be made hereunder for the construction of said road until a request therefor shall have been received by the Secretary of State from the Government of the Republic of Nicaragua nor until an agreement shall have been entered into by said Republic with the Secretary of State which shall provide, in part, that said Republic—

(1) will provide, without participation of funds authorized under this title, or under prior Acts, all necessary right-of-way for the construction of said highway, which right-of-way shall be of a minimum width, where practicable, of one hundred meters in rural areas and fifty meters in municipalities and shall forever be held inviolate as a part of the highway for public use;

(2) will not impose any highway toll, or permit any such toll to be charged for the use of said highway by vehicles or persons;

(3) will not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of said road by vehicles or persons from the United States that does not apply equally to vehicles or persons of such Republic;

(4) will continue to grant reciprocal recognition of vehicle registration and drivers' licenses in accordance with the provisions of the Convention for the Regulation of Inter-American Automotive Traffic, which was opened for signature at the Pan American Union in Washington on December 15, 1943, and to which such Republic and the United States are parties; or any other treaty or international convention establishing similar reciprocal recognition; and

(5) will maintain said road after its completion in proper condition adequately to serve the needs of present and future traffic.

(b) The funds appropriated for such purposes shall be available for expenditure in accordance with the terms of this section for the survey and construction of said road from San Benito to Rama in the Republic of Nicaragua without being matched by said Republic, and all expenditures made under the provisions of this section for materials, equipment, and supplies, shall, whenever practicable, be made for products of the United States or of the Republic of Nicaragua.

(c) The survey and construction work undertaken pursuant to this section shall be under the general supervision of the Secretary. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 911.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 214. Public lands development roads and trails.

(a) Funds available for public lands development roads and trails shall be used to pay the cost of construction and improvement of such roads and trails.

(b) Funds available for public lands development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

(c) The Secretary shall approve the location, type, and design of all projects for public lands development roads and trails before any expenditures are made thereon and all construction thereof shall be under the general supervision of the Secretary. (Added Pub. L. 87–866, § 6(b), Oct. 23, 1962, 76 Stat. 1147.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 215. Territorial highway program.

(a) Recognizing the mutual benefits that will accrue to the Virgin Islands, Guam, and American Samoa, and to the United States from the improvement of highways in such territories of the United States, the Secretary is authorized to assist each such territorial government in a program for the construction and improvemeent of a system of arterial highways, and necessary interisland connectors designated by the Governor of such territory and approved by the Secretary. Federal financial assistance shall be granted under this subsection to such territories upon the basis of a Federal contribution of 70 per centum of the cost of any project.

(b) In order to establish a long-range highway development program, the Secretary is authorized to provide technical assistance for the establishment of an appropriate agency to administer on a continuing basis highway planning, design, construction and maintenance operations, the development of a system of arterial and collector highways, including necessary interisland connectors, and the establishment of advance acquisition of right-of-way and relocation assistance programs.

(c) No part of the appropriations authorized under this section shall be available for obligation or expenditure with respect to any territory until the Governor enters into an agreement with the Secretary providing that the government of such territory (1) will design and construct a system of arterial and collector highways, including necessary interisland connectors, built in accordance with standards approved by the Secretary; (2) will not impose any toll, or permit any such toll to be charged, for use by vehicles or persons of any portion of the facilities constructed or operated under the provisions of this section; (3) will provide for the maintenance of such facilities in a condition to adequately serve the needs of present and future traffic; (4) will implement standards for traffic operations and uniform traffic control devices which are approved by the Secretary.

(d) (1) Three per centum of the sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section shall be available for expenditure only for engineering and economic surveys and investigations, for the planning of future highway programs and the financing thereof, for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof, and for research and development, necessary in connection with the planning, design, and maintenance of the highway system, and the regulation and taxation of their use.

(2) In addition to the percentage provided in paragraph (1) of the subsection, not to exceed 2 per centum of sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section may be expended upon request of the Governor and with the approval of the Secretary for the purposes enumerated in paragraph (1) of this subsection.

(e) None of the funds authorized to be appropriated for carrying out this section shall be obligated or expended for maintenance of the highway system.

(f) The provisions of chapters 1 and 5 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. (Added Pub. L. 91–605, title I, § 112(a), Dec. 31, 1970, 84 Stat. 1720.)

AUTHORIZATION OF APPROPRIATIONS

Section 112(c), (d), of Pub. L. 91–605 provided that:

"(c) There are hereby authorized to be appropriated for carrying out subsection (a) of section 215 of title 23, United States Code [subsec. (a) of this section], out of any sums in the Treasury not otherwise appropriated—

"(1) not to exceed $2,000,000 per fiscal year for the Virgin Islands, for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

"(2) not to exceed $2,000,000 per fiscal year for Guam for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

"(3) not to exceed $500,000 per fiscal year for American Samoa for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

"(d) Sums authorized to be appropriated for the fiscal year ending June 30, 1971, shall be available for obligation immediately upon enactment of this section in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code. Sums authorized to be appropriated for the fiscal year ending June 30, 1972, and the fiscal year ending June 30, 1973, shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code."

§ 216. Darien Gap Highway.

(a) The United States shall cooperate with the Government of the Republic of Panama and with the Government of Colombia in the construction of approximately two hundred and fifty miles of highway in such countries in the location known as the "Darien Gap" to connect the Inter-American Highway authorized by section 212 of this title with the Pan American Highway System of South America. Such highway shall be known as the "Darien Gap Highway". Funds authorized by this section shall be obligated and expended subject to the same terms, conditions, and requirements with respect to the Darien Gap Highway as are funds authorized for the Inter-American Highway by subsection (a) of section 212 of this title.

(b) The construction authorized by this section shall be under the administration of the Secretary who shall consult with the appropriate officials of the Department of State with respect to matters involving the foreign relations of this Government, and such negotiations with the Governments of the Republic of Panama and Colombia as may be required to carry out the purposes of this section shall be conducted through, or authorized by, the Department of State.

(c) The provisions of this section shall not create nor authorize the creation of any obligations on the part of the Government of the United States with respect to any expenditures for highway survey or construction heretofore or hereafter undertaken in Panama or Colombia, other than the expenditures authorized by the provision of this section.

(d) Appropriations made pursuant to any authorization for the Darien Gap Highway shall be available for expenditure by the Secretary for necessary administrative and engineering expenses in connection with the Darien Gap Highway program.

(e) For the purposes of this section the term "construction" does not include any costs of rights-of-way, relocation assistance, or the elimination of hazards of railway grade crossings. (Added Pub. L. 91-605, title I, § 113(a), Dec. 31, 1970, 84 Stat. 1721.)

AUTHORIZATION OF APPROPRIATIONS

Section 113(c) of Pub. L. 91-605 provided that: "There is hereby authorized to be appropriated not to exceed $100,000,000, to remain available until expended to enable the Secretary of Transportation to carry out section 216 of title 23, United States Code [this section]."

Chapter 3.—GENERAL PROVISIONS

Sec.
301. Freedom from tolls.
302. State highway department.
303. Bureau organization.
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305. Archeological and paleontological salvage.
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320. Bridges on Federal dams.
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322. Demonstration project—rail crossings.

AMENDMENTS

1970—Pub. L. 91-605, title I, § 115(b), title II, § 205(b), Dec. 31, 1970, 84 Stat. 1723, 1743, added items 321 and 322.

1966—Pub. L. 89-564, title I, § 102(b)(2), Sept. 9, 1966, 80 Stat. 735, deleted item 313 relating to Highway Safety Conference.

1965—Pub. L. 89-285, title III, § 301(b), Oct. 22, 1965, 79 Stat. 1032, added "and scenic enhancement" following "Landscaping" in item 319.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 103 of this title.

§ 301. Freedom from tolls.

Except as provided in section 129 of this title with respect to certain toll bridges and toll tunnels, all highways constructed under the provisions of this title shall be free from tolls of all kinds. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 912.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 129 of this title.

§ 302. State highway department.

(a) Any State desiring to avail itself of the provisions of this title shall have a State highway department which shall have adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title. Among other things, the organization shall include a secondary road unit. In meeting the provisions of this subsection, a State may engage to the extent necessary or desirable, the services of private engineering firms.

(b) The State highway department may arrange with a county or group of counties for competent highway engineering personnel suitably organized and equipped to the satisfaction of the State highway department, to supervise construction and maintenance on a county-unit or group-unit basis, for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 912; Pub. L. 89-574, § 11, Sept. 13, 1966, 80 Stat. 770.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-574 authorized States, in meeting the provisions of this subsection, to engage, to the extent necessary or desirable, the services of private engineering firms.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 303. Bureau organization.

(a)(1) In addition to the Administrator of the Federal Highway Administration authorized by section 3(e) of the Department of Transportation Act, there shall be a Deputy Federal Highway Administrator appointed by the Secretary of Transportation, with the approval of the President. The Deputy Federal Highway Administrator shall perform such duties as the Federal Highway Administrator shall prescribe. There shall also be an Assistant Federal Highway Administrator who shall be the chief engineer of the Administration and shall be appointed, with the approval of the President, by the Secretary of Transportation under the classified civil service and who shall perform such functions, powers, and duties as the Federal Highway Administrator shall prescribe.

(2) The Administrator of the Federal Highway Administration shall be compensated at the annual rate of basic pay of level II of the Executive Schedule in section 5313 of title 5, United States Code. The

Deputy Federal Highway Administrator shall be compensated at the annual rate of basic pay of level IV of the Executive Schedule in section 5315 of title 5, United States Code. The Assistant Federal Highway Administrator shal be compensated at the annual rate of basic pay of level V of the Executive Schedule in section 5316 of title 5, United States Code.

(b) The Secretary is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service Commission, to rent buildings outside of the city of Washington, to purchase such supplies, material, equipment, office fixtures and apparatus, to advertise in the city of Washington for work to be performed in areas adjacent thereto, and to incur, and authorize the incurring of, such travel and other expenses as he may deem necessary for carrying out the functions under this title.

(c) The Secretary is authorized to procure temporary services in accordance with the provisions of section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), but at rates for individuals not in excess of $100 per diem. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 912; Pub. L. 87–392, § 1, Oct. 4, 1961, 75 Stat. 822; Pub. L. 88–426, title III, § 305(24), Aug. 14, 1964, 78 Stat. 425; Pub. L. 91–605, title I, § 114(a), Dec. 31, 1970, 84 Stat. 1722.)

REFERENCES IN TEXT

Section 3(e) of the Department of Transportation Act, referred to in subsec. (a), is classified to section 1652(e) of Title 49, Transportation.

Section 15 of the act of Aug. 2, 1946, referred to in subsec. (c), was classified to section 55a of Title 5, Executive Departments and Government Officers and Employees, and is now covered by section 3109(b) of Title 5, Government Organization and Employees.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605 substituted reference to the Administrator of the Federal Highway Administration as authorized by section 3(e) of the Department of Transportation Act [section 1652(e) of Title 49, Transportation], for reference to a Federal Highway Administrator of the Bureau of Public Roads in the Department of Commerce, appointed by the President with the advice and consent of the Senate, authorized the Deputy Federal Highway Administrator to be appointed by the Secretary of Transportation rather than by the Secretary of Commerce, and further authorized the approval of the President in such appointment, provided for an Assistant Federal Highway Administrator to be appointed by the Secretary of Transportation with the approval of the President, and provided for the compensation of the Administrator, the Deputy Administrator, and the Assistant Administrator by reference to the Executive Schedule.

1964—Subsec. (a). Pub. L. 88–426 repealed provisions which prescribed the compensation of the Administrator and the Deputy Administrator.

1961—Subsec. (a). Pub. L. 87–392 substituted the position of Deputy Federal Highway Administrator for that of the Commissioner of Public Roads, and set his salary at a rate $1,000 less than the rate for the Federal Highway Administrator.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

RETROACTIVE EFFECT

Section 114(b) of Pub. L. 91–605 provided that: "All provisions of law enacted before the date of enactment of this Act [Dec. 31, 1970] which are inconsistent with the amendment made by subsection (a) of this section [amending subsec. (a) of this section] are hereby repealed to the extent of such inconsistency."

PRESIDENTIAL AUTHORIZATION OF ACTING DEPUTY ADMINISTRATOR; COMPENSATION

Section 114(c) of Pub. L. 91–605 provided that: "The President may authorize any person who immediately before the date of enactment of this Act [Dec. 31, 1970] held the office of Director of Public Roads to act as Deputy Administrator of the Federal Highway Administration created by the amendment made by subsection (a) of this section [amending subsec. (a) of this section] until the first Deputy Administrator is appointed in accordance with such amendment. The President may authorize any person acting as Deputy Administrator in accordance with this subsection to receive compensation at the rate authorized for the Office of Deputy Administrator. Such compensation, if authorized, shall be in lieu of, and not in addition to, any other compensation from the United States to which such person may be entitled."

TRANSFER OF OFFICE OF FEDERAL HIGHWAY ADMINISTRATOR AND CONTINUATION UNDER TITLE OF DIRECTOR OF PUBLIC ROADS

Transfer of office of Federal Highway Administrator to and continuation within Department of Transportation under the title Director of Public Roads, see section 1652(f)(4) of Title 49, Transportation.

COMMISSIONER OF PUBLIC ROADS DEEMED TO MEAN FEDERAL HIGHWAY ADMINISTRATOR

Act Aug. 3, 1956, ch. 937, § 2, 70 Stat. 990, provided that: "The term 'Commissioner of Public Roads', as used in all laws, orders, and regulations, shall be deemed to mean 'Federal Highway Administrator' on and after August 3, 1956."

COMPENSATION FOR FEDERAL HIGHWAY ADMINISTRATOR

Pub. L. 89–564, title II § 205, Sept. 9, 1966, 80 Stat. 736, providing for the compensation at the rate prescribed for level IV of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, was repealed by Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 224. See section 5316 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1652.

§ 304. Participation by small business enterprises.

It is declared to be in the national interest to encourage and develop the actual and potential capacity of small business and to utilize this important segment of our economy to the fullest practicable extent in construction of the Federal-aid highway systems, including the Interstate System. In order to carry out that intent and encourage full and free competition, the Secretary should assist, insofar as feasible, small business enterprises in obtaining contracts in connection with the prosecution of the highway program. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 913.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 305. Archeological and paleontological salvage.

Funds authorized to be appropriated to carry out this title to the extent approved as necessary by the highway department of any State, may be used for

archeological and paleontological salvage in that State in compliance with the Act entitled "An Act for the preservation of American antiquities", approved June 8, 1906 (34 Stat. 225), and State laws where applicable. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 913; Pub. L. 86–657, § 8(e), July 14, 1960, 74 Stat. 525.)

REFERENCES IN TEXT

The act entitled "An Act for the preservation of American antiquities", approved June 8, 1906, referred to in the text, is classified to sections 431, 432 and 433 of Title 16, Conservation.

AMENDMENTS

1960—Pub. L. 86–657 substituted "appropriated to carry out this title to the extent approved" for "appropriated under the Federal-Aid Highway Act of 1956, to the extent approved."

§ 306. Mapping.

In carrying out the provisions of this title, the Secretary may, wherever practicable, authorize the use of photogrammetric methods in mapping, and the utilization of commercial enterprise for such services. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 913.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 307. Research and planning.

(a) The Secretary is authorized in his discretion to engage in research on all phases of highway construction, modernization, development, design, maintenance, safety, financing, and traffic conditions, including the effect thereon of State laws and is authorized to test, develop, or assist in the testing and developing of any material, invention, patented article, or process. The Secretary may publish the results of such research. The Secretary may carry out the authority granted hereby, either independently, or in cooperation with any other branch of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other organization, or person. The Secretary is also authorized, acting independently or in cooperation with other Federal departments, agencies, or instrumentalities, to make grants for research fellowships for any purpose for which research is otherwise authorized by this section. The funds required to carry out the provisions of this subsection shall be taken out of the administrative and research funds authorized by section 104 of this title, funds authorized to carry out section 403 of this title, and such funds as may be deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating organization or person. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts or agreements made under the authority of this subsection.

(b) The Secretary shall include in the highway research program herein authorized studies of economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and of the feasibility of uniformity in State regulations with respect to such standards and he shall report from time to time to the Committees on Public Works of the Senate and of the House of Representatives on the progress and findings with respect to such studies. The highway research program herein authorized shall also include studies to identify and measure, quantitatively and qualitatively, those factors which relate to economic, social, environmental, and other impacts of highway projects.

(c) (1) Not to exceed 1½ per centum of the sums apportioned for each fiscal year prior to the fiscal year 1964 to any State under section 104 of this title shall be available for expenditure upon request of the State highway department, with the approval of the Secretary, with or without State funds, for engineering and economic surveys and investigations; for the planning of future highway programs and the financing thereof; for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof; and for research and development, necessary in connection with the planning, design, construction, and maintenance of highways and highway systems, and the regulation and taxation of their use.

(2) One and one-half per centum of the sums apportioned for each fiscal year beginning with the fiscal year 1964 to any State under section 104 of this title shall be available for expenditure by the State highway department only for the purposes enumerated in paragraph (1) of this subsection.

(3) In addition to the percentage provided in paragraph (2) of this subsection, not to exceed one-half of one per centum of sums apportioned for each fiscal year beginning with the fiscal year 1964 under paragraphs (1), (2), and (3) of section 104(b) of this title shall be available for expenditure upon request of the State highway department for the purposes enumerated in paragraph (1) of this subsection, including demonstration projects in connection with such purposes.

(4) Sums made available under paragraphs (2) and (3) of this subsection shall be matched by the State in accordance with section 120 of this title unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(d) As used in this section the term "safety" includes, but is not limited to, highway safety systems, research, and development relating to vehicle, highway, and driver characteristics, accident investigations, communications, emergency medical care, and transportation of the injured. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 913; Pub. L. 87–866, § 11, Oct. 23, 1962, 76 Stat. 1148; Pub. L. 88–157, § 6, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89–564, title I, § 103, Sept. 9, 1966, 80 Stat. 735; Pub. L. 91–605, title I, §§ 115(c), 126, 136(c), Dec. 31, 1970, 84 Stat. 1723, 1729, 1735.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605, § 115(c), authorized Secretary to make grants for research fellowships for any purpose for which research is otherwise authorized by this section.

Subsec. (b). Pub. L. 91–605, § 136(c), authorized the highway research program to include studies to identify

and measure, quantitatively and qualitatively, those factors which relate to economic, social, environmental, and other impacts of highway projects.

Subsec. (c)(3). Pub. L. 91–605, § 126, authorized percentage of appropriation for demonstration projects in connection with the purposes enumerated in par. (1) of this subsection.

1966—Subsec. (a). Pub. L. 89–564, § 103(1), inserted ", funds authorized to carry out section 403 of this title," immediately following "section 104 of this title".

Subsec. (d). Pub. L. 89–564, § 103(2), added subsec. (d).

1963—Subsec. (c)(1). Pub. L. 88–157 authorized development expenditures.

1962—Subsec. (c). Pub. L. 87–866 designated existing provisions as par. (1), substituted "each fiscal year prior to the fiscal year 1964" for "any year" in such par. (1) and added pars. (2)—(4).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

AUTHORIZATION OF ADDITIONAL APPROPRIATIONS

Section 105 of Pub. L. 89–564 provided that: "For the purpose of carrying out sections 307(a) and 403 of title 23, United States Code, there is hereby authorized to be appropriated the additional sum of $10,000,000 for the fiscal year ending June 30, 1967; $20,000,000 for the fiscal year ending June 30, 1968; and $25,000,000 for the fiscal year ending June 30, 1969."

AVAILABILITY OF REPORTS OF RESEARCH PRODUCTS TO THE PUBLIC

Completed reports on research projects, demonstration projects, and other related activities conducted under this section and section 403 of this title to be made available to the public in a manner which does not identify individuals, see section 106 of Pub. L. 89–564, set out as a note under section 403 of this title.

STUDY OF RELATIONSHIP OF HIGHWAY CONSTRUCTION TO PUBLIC TRANSPORTATION SERVICES; REPORT TO CONGRESS

Section 144 of Pub. L. 91–605 provided that: "The Secretary is authorized and directed to undertake a study and analysis of the use of existing highway facilities for highway public transportation service, the need for additional highway facilities or the adjustment of existing facilities to accommodate such service, and the appropriate funding of such additional highway facilities and to report to the Congress his findings and recommendations not later than January 1, 1972."

ALASKA HIGHWAY

Section 119 of Pub. L. 91–605 provided that:

"(a) The President, acting through the Secretaries of State and Transportation, is authorized to undertake negotiations with the Government of Canada for the purpose of entering into a suitable agreement authorizing paving and reconstructing the Alaska Highway from Dawson Creek, Canada (including a connecting highway to Haines, Alaska), to the Alaska border, including, but not limited to, necessary highway realinement.

"(b) The President shall report to Congress not later than one year after the date of enactment of this section [Dec. 31, 1970] the results of his negotiations under this section."

ALASKA HIGHWAY STUDY

Section 13 of Pub. L. 87–866 provided that:

"(a) The Secretary of Commerce, in cooperation with the State of Alaska, is hereby authorized to make engineering studies and estimates and planning surveys relative to a highway construction program for the State of Alaska, and, in accordance with treaties or other agreements to be negotiated with Canada by the Secretary of State in consultation with the Secretary of Commerce, engineering studies, estimates, and planning surveys relative to connecting Alaskan roads with Canadian roads at the International boundary.

"(b) On or before May 15, 1964, the Secretary of Commerce shall submit a report to the Congress which shall include—

"(1) an analysis of the adequacy of the Federal-aid highway program to provide for a satisfactory program in both the populated and the undeveloped areas in Alaska;

"(2) specific recommendations as to the construction of roads through undeveloped areas of Alaska and connection of such roads with Canadian roads at the International boundary; and

"(3) a feasible program for implementing such specific recommendations, including cost estimates, recommendations as to the sharing of cost responsibilities, and other pertinent matters.

"(c) From time to time, either before or after submission of the report provided for in subsection (b) of this section, the Secretary of Commerce may submit recommendations to the Congress with respect to the construction of particular highways to carry out the purposes of this section.

"(d) Nothing in this section shall be construed as creating any obligation in the Congress, express or implied, to carry out the recommendations referred to in subsections (b) and (c).

"(e) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to be available until expended, the sum of $800,000 for the purpose of making the studies, surveys, and report authorized by subsections (a) and (b) hereof."

NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAY MILEAGE STUDY FOR ALASKA AND HAWAII

Pub. L. 86–342, title I, § 105, Sept. 21, 1959, 73 Stat. 612, directed the Secretary of Commerce to make a study of the need for the extension of the National System of Interstate and Defense Highways within the States of Alaska and Hawaii, and report the results of such study to the Congress within ten days subsequent to January 4, 1960. The report was required to include recommendations as to the approximate routes and mileages thereof which should be included in such system within those States.

INVESTIGATION AND REPORT TO ASSURE AN EQUITABLE DISTRIBUTION OF THE TAX BURDEN

Section 210 of act June 29, 1956, ch. 462, title II, 70 Stat. 401, as amended by Pub. L. 85–823, § 1, Aug. 28, 1958, 72 Stat. 983, directed the Secretary of Commerce, in cooperation with other Federal officers and agencies (particularly the Interstate Commerce Commission) and with the State highway departments, to make a study and investigation of—

(1) the effects on design, construction, and maintenance of Federal-aid highways of (A) the use of vehicles of different dimensions, weights, and other specifications, and (B) the frequency of occurrences of such vehicles in the traffic stream,

(2) the proportionate share of the design, construction, and maintenance costs of the Federal-aid highways attributable to each class of persons using such highways, such proportionate share to be based on the effects referred to in paragraph (1) and the benefits derived from the use of such highways, and

(3) any direct and indirect benefits accruing to any class which derives benefits from Federal-aid highways, in addition to benefits from actual use of such highways, which are attributable to public expenditures for such highways and required the final report to be made no later than January 3, 1961.

TESTS TO DETERMINE MAXIMUM DESIRABLE DIMENSIONS AND WEIGHTS FOR VEHICLES

Section 108 (k) of act June 29, 1956, ch. 462, title I, 70 Stat. 381, as amended by Pub. L. 85–823, § 2, Aug. 28, 1958, 72 Stat. 983, directed the Secretary of Commerce to take all action possible to expedite the conduct of a series of tests planned or conducted by the Highway Research Board of the National Academy of Sciences, in cooperation with the Bureau of Public Roads, the several States, and other persons and organizations, for the purpose of determining the maximum desirable dimensions

and weights for vehicles operated on the Federal-aid highway systems, including the Interstate System, and, after the conclusion of such tests, but not later than January 3, 1961, to make recommendations to the Congress with respect to such maximum desirable dimensions and weights.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 116, 322, 403 of this title; title 40 section 461.

§ 308. Cooperation with Federal and State agencies and foreign countries.

(a) The Secretary is authorized to perform by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies, and reimbursement for such services, which may include depreciation on engineering and road-building equipment used, shall be credited to the appropriation concerned.

(b) Appropriations for the work of the Bureau of Public Roads shall be available for expenses of warehouse maintenance and the procurement, care, and handling of supplies, materials, and equipment for distribution of projects under the supervision of the Bureau of Public Roads, or for sale or distribution to other Government agencies, cooperating foreign countries, and State cooperating agencies, and the cost of such supplies and materials or the value of such equipment, including the cost of transportation and handling, may be reimbursed to current applicable appropriations. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 914.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 309. Cooperation with other American Republics.

The President is authorized to utilize the services of the Bureau of Public Roads in fulfilling the obligations of the United States under the Convention on the Pan-American Highway Between the United States and Other American Republics (51 Stat. 152), cooperating with several governments, members of the Organization of American States, in connection with the survey and construction of the Inter-American Highway, and for performing engineering service in the other American Republics for and upon the request of any agency or governmental corporation of the United States. To the extent authorized in appropriation acts, administrative funds available in accordance with subsection (a) of section 104 of this title shall be available annually for the purpose of this section. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 914.)

§ 310. Civil defense.

In order to assure that adequate consideration is given to civil defense aspects in the planning and construction of highways constructed or reconstructed with the aid of Federal funds, the Secretary of Commerce is authorized and directed to consult, from time to time, with the Federal Civil Defense Administrator relative to the civil defense aspects of highways so constructed or reconstructed. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 914.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 311. Highway improvements strategically important to the national defense.

Funds made available under subsection (a) of section 104 of this title may be used to pay the entire engineering costs of the surveys, plans, specifications, estimates, and supervision of construction of projects for such urgent improvements of highways strategically important from the standpoint of the national defense as may be undertaken on the order of the Secretary and as the result of request of the Secretary of Defense or such other official as the President may designate. With the consent of a State, funds made available under subsection (b) of section 104 of this title may be used to the extent deemed necessary and advisable by the Secretary to carry out the provisions of this section. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 312. Detail of Army, Navy, and Air Force officers.

The Secretary of Defense, upon request of the Secretary, is authorized to make temporary details to the Bureau of Public Roads of officers of the Army, the Navy, and the Air Force, without additional compensation, for technical advice and for consultation regarding highway needs for the national defense. Travel and subsistence expenses of officers so detailed shall be paid from appropriations available to the Department of Commerce on the same basis as authorized by law and by regulations of the Department of Defense for such officers. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 313. Repealed. Pub. L. 89-564, title I, § 102(a), Sept. 9, 1966, 80 Stat. 734.

Section, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915, authorized the Secretary to cooperate with state highway

departments and other agencies in the promotion of highway safety and authorized the expenditure of $150,000 out of the administrative funds made available in accordance with section 104(a) of this title for the purposes of this section. See chapter 4 of this title.

REGISTER OF REVOCATIONS OF MOTOR VEHICLE OPERATOR'S LICENSES

Pub. L. 86-660, July 14, 1960, 74 Stat. 526, as amended by Pub. L. 87-359, Oct. 4, 1961, 75 Stat. 779, and Pub. L. 89-563, title IV, § 401, Sept. 9, 1966, 80 Stat. 730, provided:

"That the Secretary of Commerce shall establish and maintain a register identifying each individual reported to him by a State, or political subdivision thereof, as an individual with respect to whom such State or political subdivision has denied, terminated, or temporarily withdrawn (except a withdrawal for less than six months based on a series of nonmoving violations) an individual's license or privilege to operate a motor vehicle.

"SEC. 2. Only at the request of a State, a political subdivision thereof, or a Federal department or agency, shall the Secretary furnish information contained in the register established under the first section of this Act, and such information shall be furnished only to the requesting party and only with respect to an individual applicant for a motor vehicle operator's license or permit.

"SEC. 3. As used in this Act, the term 'State' includes each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Canal Zone, and American Samoa."

INTERSTATE COMPACTS FOR HIGHWAY SAFETY

Pub. L. 85-684, Aug. 20, 1958, 72 Stat. 635, as amended by Pub. L. 88-466, Aug. 20, 1964, 78 Stat. 564, provided:

"That the consent of Congress is hereby given to any two or more or the several States, and one or more of the several States and the District of Columbia, to enter into agreements or compacts—

"(1) for cooperative effort and mutual assistance in the establishment and carrying out of traffic safety programs, including, but not limited to, the enactment of uniform traffic laws, driver education and training, coordination of traffic law enforcement, research into safe automobile and highway design, and research programs of the human factors affecting traffic safety, and

"(2) for the establishment of such agencies, joint or otherwise, as they deem desirable for the establishment and carrying out of such traffic safety programs."

EX. ORD. NO. 10858. PRESIDENT'S COMMITTEE FOR TRAFFIC SAFETY

Ex. Ord. No. 10858, Jan. 13, 1960, 25 F.R. 373, as amended by Ex. Ord. No. 10968, Oct. 10, 1961, 26 F.R. 9667, set out as a note under this section, which established the President's Committee for Traffic Safety, was revoked by section 16 of Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, set out as a note under section 1652 of Title 49, Transportation.

EX. ORD. NO. 10898. ESTABLISHING THE INTERDEPARTMENTAL HIGHWAY SAFETY BOARD

Ex. Ord. No. 10898, Dec. 2, 1960, 25 F.R. 12429, as amended by Ex. Ord. No. 10986, Jan. 12, 1962, 27 F.R. 439; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, set out as a note under this section, which established the Interdepartmental Highway Safety Board, was revoked by Ex. Ord. No. 11515, Mar. 13, 1970, 35 F.R. 4543.

§ 314. Relief of employees in hazardous work.

The Secretary is authorized in an emergency to use appropriations to the Department of Commerce for carrying out the provisions of this title for medical supplies, services, and other assistance necessary for the immediate relief of employees of the Bureau of Public Roads engaged in hazardous work. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 315. Rules, regulations, and recommendations.

Except as provided in sections 204 (d), 205 (a), 206 (b), 207 (b), and 208 (c) of this title, the Secretary is authorized to prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this title. The Secretary may make such recommendations to the Congress and State highway departments as he deems necessary for preserving and protecting the highways and insuring the safety of traffic thereon. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 316. Consent by United States to conveyance of property.

For the purposes of this title the consent of the United States is given to any railroad or canal company to convey to the State highway department of any State, or its nominee, any part of its right-of-way or other property in that State acquired by grant from the United States. (Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915.)

§ 317. Appropriation for highway purposes of lands or interests in lands owned by the United States.

(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.

(c) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary and such lands or materials shall immediately revert to the control

of the Secretary of the Department from which they had been appropriated.

(d) The provisions of this section shall apply only to projects constructed on a Federal-aid system or under the provisions of chapter 2 of this title. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 916.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 318. Highway relocation due to airport.

Federal highway funds shall not be used for the reconstruction or relocation of any highway giving access to an airport constructed or extended after December 20, 1944, or for the reconstruction or relocation of any highway which has been or may be closed or the usefulness of which has been or may be impaired by the location or construction of any airport constructed or extended after December 20, 1944, unless, prior to such construction or extension as the case may be, the State highway department and the Secretary have concurred with the officials in charge of the airport that the location of such airport or extension thereof and the consequent reconstruction or relocation of the highway are in the public interest. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 916.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 319. Landscaping and scenic enhancement.

(a) The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public.

(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse. There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed $120,000,000 for the fiscal year ending June 30, 1966, not to exceed $120,000,000 for the fiscal year ending June 30, 1967, and not to exceed $20,000,000 for the fiscal year ending June 30, 1970. The provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this subsection after June 30, 1967. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 916; Pub. L. 89–285, title III, § 301(a), Oct. 22, 1965, 79 Stat. 1032; Pub. L. 89–574, § 8(b), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90–495, § 6(f), Aug. 23, 1968, 82 Stat. 818.)

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–495 added provisions authorizing an appropriation of not to exceed $20,000,000 for the fiscal year ending June 30, 1970.

1966—Subsec. (b). Pub. L. 89–574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this subsection after June 30, 1967, the provisions of chapter 1 of this title relating to the obligations, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this subsection.

1965—Pub. L. 89–285 rearranged the section structurally, made provision for apportionment of an amount, in addition to the state's annual apportionment, equivalent to 3 per centum of the fund annually apportioned to the state for federal-aid highways to acquire interests and improvements for restoration, preservation, and enhancement of scenic beauty adjacent to Federal-aid highways, authorized appropriations of $120,000,000 for fiscal year ending June 30, 1966, and $120,000,000 for fiscal year ending June 30, 1967, and prohibited use of Highway Trust Fund moneys in carrying out the scenic enhancement provisions.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective August 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

ACQUISITION OF DWELLINGS

Prohibition against the use of eminent domain to acquire any dwelling (including related buildings) under the terms of Pub. L. 89–285, see section 305 of Pub. L. 89–285, set out as a note under section 131 of this title.

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

Prohibition against the taking of private property or the restriction of reasonable and existing use by such taking without just compensation under the terms of Pub. L. 89–285, see section 401 of Pub. L. 89–285, set out as a note under section 131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 137 of this title.

§ 320. Bridges on Federal dams.

(a) Each executive department, independent establishment, office, board, bureau, commission, authority, administration, corporation wholly owned or controlled by the United States, or other agency of the Government of the United States, hereinafter collectively and individually referred to as "agency", which on or after July 29, 1946, has jurisdiction over and custody of any dam constructed or to be constructed and owned by or for the United States, is authorized, with any funds available to it, to design and construct any such dam in such manner that it will constitute and serve as a suitable and adequate foundation to support a public highway bridge upon and across such dam, and to design and construct upon the foundation thus provided a public highway bridge upon and across such dam. The highway department of the State in which such dam shall be located, jointly with the Secretary, shall first determine and certify to such agency that such bridge is economically desirable and needed as a link in the State or Federal-aid highway systems, and shall request such agency to design and construct such dam so that it will serve as a suitable and adequate foundation for a public highway bridge and to design and construct such public highway bridge upon and across such dam, and shall agree to reimburse such agency pursuant to subsection (d) of this section for any additional costs which it may be required to incur because of the design and construction of such dam so that it will serve as a foundation for a public highway bridge and for expenditures which it may find it necessary to make in designing and constructing such public highway bridge upon and across such dam. In no case shall the design and construction of a bridge upon and across such dam be undertaken hereunder except by the agency having jurisdiction over and custody of the dam, acting directly or through contractors employed by it, and after such agency shall determine that it will be structurally feasible and will not interfere with the proper functioning and operation of the dam.

(b) Construction of any bridge upon and across any dam pursuant to this section shall not be commenced unless and until the State in which such bridge is to be located, or the appropriate subdivision of such State, shall enter into an agreement with such agency and with the Secretary to construct, or cause to be constructed, with or without the aid of Federal funds, the approach roads necessary to connect such bridge with existing public highways and to maintain, or cause to be maintained, such approach roads from and after their completion. Such agreement may also provide for the design and construction of such bridge upon and across the dam by such agency of the United States and for reimbursing such agency the costs incurred by it in the design and construction of the bridge as provided in subsection (d) of this section. Any such agency is hereby authorized to convey to the State, or to the appropriate subdivision thereof, without costs, such easements and rights-of-way in its custody or over lands of the United States in its custody and control as may be necessary, convenient, or proper for the location, construction, and maintenance of the approach roads referred to in this section including such roadside parks or recreational areas of limited size as may be deemed necessary for the accommodation of the traveling public. Any bridge constructed pursuant to this section upon and across a dam in the custody and jurisdiction of any agency of the United States, including such portion thereof, if any, as may extend beyond the physical limits of the dam, shall constitute and remain a part of said dam and be maintained by the agency. Any such agency may enter into any such contracts and agreements with the State or its subdivisions respecting public use of any bridge so located and constructed as may be deemed appropriate, but no such bridge shall be closed to public use by the agency except in cases of emergency or when deemed necessary in the interest of national security.

(c) All costs and expenses incurred and expenditures made by any agency in the exercise of the powers and authority conferred by this section (but not including any costs, expenses, or expenditures which would have been required in any event to satisfy a legal road or bridge relocation obligation or to meet operating or other agency needs) shall be recorded and kept separate and apart from the other costs, expenses, and expenditures of such agency, and no portion thereof shall be charged or allocated to flood control, navigation, irrigation, fertilizer production, the national defense, the development of power, or other program, purpose, or function of such agency.

(d) Not to exceed $16,761,000 of any money heretofore or hereafter appropriated for expenditure in accordance with the provisions of this title or prior Acts shall be available for expenditure by the Secretary in accordance with the provisions of this section, as an emergency fund, to reimburse any agency for any additional costs or expenditures which it may be required to incur because of the design and construction of any such dam so that it will constitute and serve as a foundation for a public highway bridge upon and across such dam and to reimburse any such agency for any costs, expenses, or expenditures which it may be required to make in designing and constructing any such bridge upon and across a dam in accordance with the provisions of this section, except such costs, expenses, or expenditures as would have been required of such agency in any event to satisfy a legal obligation to relocate a highway or bridge or to meet operating or other agency needs, and there is authorized to be appropriated any sum or sums necessary to reimburse the funds so expended by the Secretary from time to time under the authority of this section. Of each bridge constructed upon and across a dam under the provisions of this section, there may be financed wholly with Federal funds that portion thereof which is located within the physical limits of the masonry structure, or structures, of the dam, and the Secretary shall in his sole discretion determine what additional portion of the bridge, if any, may be so financed, such determination to be final and conclusive. The remainder of the bridge, and any necessary related approach roads, shall be financed by the State or its appropriate subdivision with or without the aid

of Federal funds; but said portion of the bridge so financed by the State or its subdivisions, including such portion thereof, if any, as may extend beyond the physical limits of the dam, shall nevertheless be designed and constructed solely by the agency having custody and jurisdiction of the dam as provided in subsection (a) of this section.

(e) In making, reviewing, or approving the design of any bridge or approach structure to be constructed under this section, the agency shall, in matters relating to roadway design, loadings, clearances and widths, and traffic safeguards, give full consideration to and be guided by the standards and advice of the Secretary.

(f) The authority conferred by this section shall be in addition to and not in limitation of authority conferred upon any agency by any other law, and nothing in this section contained shall affect or be deemed to relate to any bridge approach structure, or highway constructed or to be constructed by any such agency in furtherance of its lawful purposes and requirements or to satisfy a legal obligation incurred independently of this section. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 917; Pub. L. 88–342, title I, § 108, Sept. 21, 1959, 73 Stat. 613; Pub. L. 88–423, § 4(c) Aug. 13, 1964, 78 Stat. 398; Pub. L. 91–605, title I, § 116(a), Dec. 31, 1970, 84 Stat. 1724.)

AMENDMENTS

1970—Subsec. (d). Pub. L. 91–605 substituted "$16,761,000" for "$13,000,000".

1964—Subsec. (b). Pub. L. 88–423 substituted "which such bridge is to be located, or the appropriate subdivision of such State, shall enter into an agreement with such agency and with" for "such State, shall enter into an agreement with such agency and with which such bridge is to be located, or the appropriate subdivision of."

1959—Subsec. (d). Pub. L. 86–342 substituted "$13,000,000" for "$10,000,000."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

RESTRICTION ON INCREASED AUTHORIZATION OF APPROPRIATIONS

Section 116(b) of Pub. L. 91–605 provided that: "All sums appropriated under authority of the increased authorization of $3,761,000 established by the amendment made by subsection (a) of this section [amending subsec. (d) of this section] shall be available for expenditure only in connection with the construction of a bridge across Markland Dam on the Ohio River near Markland, Indiana, and Warsaw, Kentucky. No such sums shall be appropriated until all applicable requirements of section 320 of title 23 of the United States Code [this section] have been complied with by the appropriate Federal agency, the Secretary of Transportation, and the States of Kentucky and Indiana."

§ 321. National Highway Institute.

(a) The Secretary is authorized and directed to establish and operate in the Federal Highway Administration a National Highway Institute hereafter referred to as the "Institute". The Institute shall develop and administer, in cooperation with the State highway departments, training programs of instruction for Federal Highway Administration and State and local highway department employees engaged or to be engaged in Federal-aid highway work. Such programs may include, but not be limited to, courses in modern developments, techniques, and procedures, relating to highway planning, environmental factors, acquisition of rights-of-way, engineering, construction, maintenance, contract administration, and inspection. The Secretary shall administer all authority vested in him by this title or by any other provision of law for the development and conduct of educational and training programs relating to highways through the Institute. Sums authorized to be deducted for administrative purposes by subsection (a) of section 104 of this title shall be available for carrying out this subsection.

(b) Not to exceed one-half of 1 per centum of all funds apportioned for any fiscal year beginning after beginning after June 30, 1970, to any State under paragraphs (1), (2), (3), and (6) of section 104(b) of this title shall be available for expenditure by the State highway department, subject to approval by the Secretary, for payment of not to exceed 70 per centum of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

(c) Education and training of Federal, State, and local highway employees authorized by this section may be provided by the Secretary, or, in the case where such education and training is to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contracts with public and private agencies, institutions, and individuals. (Added Pub. L. 91–605, title I, § 115(a), Dec. 31, 1970, 84 Stat. 1723.)

§ 322. Demonstration project—rail crossings.

(a) The Secretary shall carry out a demonstration project for the elimination of all public ground-level rail-highway crossings along the route of the high-speed ground transportation demonstration projects between Washington, District of Columbia, and Boston, Massachusetts, conducted under authority of the Act entitled "An Act to authorize the Secretary of Commerce to undertake research and development in high-speed ground transportation, and for other purposes", approved September 30, 1965 (49 U.S.C. 1631 et seq.).

(b) the Secretary shall carry out a demonstration project for the elimination or protection of certain public ground-level rail-highway crossings in, or in the vicinity of, Greenwood, South Carolina.

(c)(1) If the highway involved is on any Federal-aid system, the Federal share of the cost of such work shall be 90 per centum and the railroad's share of such cost shall be 10 per centum.

(2) If the highway involved is not on any Federal-aid system, the Federal share of the cost of such work shall be 80 per centum and the railroad's share of such cost shall be 10 per centum and the remaining 10 per centum of such cost shall be paid by the State in which such crossing is located.

(d) Before paying any part of the cost of the demonstration projects authorized by this section, the Secretary shall enter into such agreements with the States and railroads involved to insure that all non-Federal costs will be provided as required by this section.

(e) The Secretary, in cooperation with State highway departments, shall conduct a full and complete investigation and study of the problem of providing increased highway safety at public and private ground-level rail-highway crossings on a nationwide basis through the elimination of such crossings or otherwise, including specifically high-speed rail operations in all parts of the country, and report to Congress his recommendations resulting from such investigation and study not later than July 1, 1972, including an estimate of the cost of such a program. Funds authorized to carry out section 307 of this title are authorized to be used to carry out the investigation and study required by this subsection.

(f) There is authorized to be appropriated not to exceed $9,000,000 from the Highway Trust Fund to carry out paragraph (1) of subsection (c) of this section. There is authorized to be appropriated out of the general fund not to exceed $22,000,000 to carry out paragraph (2) of subsection (c) of this section. (Added Pub. L. 91-605, title II, § 205(a), Dec. 31, 1970, 84 Stat. 1742.)

Chapter 4.—HIGHWAY SAFETY

Sec.
401. Authority of the Secretary.
402. Highway safety programs.
403. Highway safety research and development.
404. National Highway Safety Advisory Committee.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 section 1652.

§ 401. Authority of the Secretary.

The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. (Added Pub. L. 89-564, title I, § 101, Sept. 9, 1966, 80 Stat. 731.)

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-605, title II, § 201, Dec. 31, 1970, 84 Stat. 1739, provided that: "This title [enacting sections 144 and 322 of this title, amending sections 401 note and 402 note, and enacting provisions set out as notes under this section and section 402 of this title] may be cited as the 'Highway Safety Act of 1970'."

SHORT TITLE

Section 208 of Pub. L. 89-564 provided that: "This Act [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted provisions set out as notes under this section and sections 303, 307, 402 and 403 of this title] may be cited as the 'Highway Safety Act of 1966'."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

NATIONAL HIGHWAY SAFETY BUREAU

Administration of National Traffic and Motor Vehicle Safety Act through the Bureau and its Director, see Ex. Ord. No. 11357, June 6, 1967, 32 F.R. 8225, set out as a note under section 1392 of Title 15, Commerce and Trade.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; CREATION; APPOINTMENT OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR; DUTIES; RETROACTIVE EFFECT

Section 201 of Pub. L. 89-564, as amended by Pub. L. 89-670, § 8(h), Oct. 15, 1966, 80 Stat. 943; Pub. L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 224; Pub. L. 91-605, title II, § 202(a), Dec. 31, 1970, 84 Stat. 1739, provided that:

"(a) There is hereby established within the Department of Transportation a National Highway Traffic Safety Administration (hereafter in this section referred to as the 'Administration'). The Administration shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the annual rate of basic pay of level III of the Executive Schedule in section 5314 of title 5, United States Code. There shall be a Deputy Administrator of the National Highway Traffic Safety Administration who shall be appointed by the Secretary of Transportation, with the approval of the President, and who shall be compensated at the annual rate of basic pay of level V of the Executive Schedule in section 5316 of title 5, United States Code. The Administrator shall perform such duties as are delegated to him by the Secretary. On all matters pertaining to the design, construction, maintenance, and operation of highways, the Administrator shall consult with the Federal Highway Administrator.

"(b)(1) The Secretary shall carry through the Federal Highway Administration those provisions of the Highway Safety Act of 1966 (including chapter 4 of title 23, United States Code) [enacting this chapter, amending sections 105 and 307 of this title, repealing sections 135 and 313 of this title, and enacting provisions set out as notes under this section and sections 303, 307, 402, and 403 of this title] for highway safety programs, research, and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety.

"(2) The Secretary shall carry out, through the Administration, all other provisions of such Act (including chapter 4 of title 23, United States Code) for highway safety programs, research and development not specifically referred to in paragraph (1) of this subsection.

"(c) The Secretary is authorized to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718) [section 1381 et seq. of Title 15, Commerce and Trade] through the Administration and Administrator authorized by this section.

"(d) All provisions of law enacted before the date of enactment of the Highway Safety Act of 1970 [Dec. 31, 1970] which are inconsistent with this section as amended by such Act of 1970 are hereby repealed to the extent of such inconsistency."

DIRECTOR OF THE NATIONAL HIGHWAY SAFETY BUREAU AS ACTING ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Pub. L. 91-605, title II, § 202(b), Dec. 31, 1970, 84 Stat. 1740, provided that: "The President may authorize any person who immediately before the date of enactment of this Act [Dec. 31, 1970] held the office of Director of the National Highway Safety Bureau to act as Administrator of the National Highway Traffic Safety Administration created by the amendment made by subsection (a) of this section [amending section 201 of Pub. L. 89-564, set out as a note under this section] until the first Administrator is appointed in accordance with such amendment. The President may authorize any person serving as Acting Administrator in accordance with this subsection to receive compensation at the rate authorized for the office of Administrator. Such compensation, if authorized, shall be in lieu of, and not in addition to, any other compensation from the United States to which such person may be entitled."

ANNUAL REPORT TO CONGRESS ON ADMINISTRATION OF HIGHWAY SAFETY ACT OF 1966

Section 202 of Pub. L. 89-564 provided that:

"(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 1 of each year a comprehensive report on the administration of the Highway Safety Act of 1966 (including chapter 4 of title 23 of the United States Code) for the preceding calendar year. Such report should include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of all safety standards issued or in effect in such year; (3) the scope of observance of applicable Federal standards; (4) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during the year; (5) a summary of all current research grants and contracts together with a description of the problems to be considered by such grants and contracts; (6) an analysis and evaluation of completed research activities and technological progress achieved during such year together with the relevant policy recommendations flowing therefrom; (7) the effectiveness of State highway safety program (including local highway safety programs) and (8) the extent to which technical information was being disseminated to the scientific community and consumer-oriented material was made available to the motoring public.

"(b) The annual report shall also contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of highway safety and to strengthen the national highway safety program."

SUBMISSION TO CONGRESS OF DETAILED ESTIMATES OF COST OF CARRYING OUT HIGHWAY SAFETY ACT OF 1966

Section 207 of Pub. L. 89-564 provided that: "In order to provide the basis for evaluating the continuing programs authorized by this Act, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1969, the Secretary, in cooperation with the Governors or the appropriate State highway safety agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act. The Secretary shall submit such detailed estimate and recommendations for Federal, State, and local matching funds to the Congress not later than January 10, 1968."

AUTOMOBILE INSURANCE INVESTIGATION

Authorization of Secretary of Transportation to conduct comprehensive study and investigation of compensation system for motor vehicle accident losses, and for other purposes, see Pub. L. 90-313, May 22, 1968, 82 Stat. 126, set out as a note under section 1653 of Title 49, Transportation.

§ 402. Highway safety programs.

(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary. Such uniform standards shall be expressed in terms of performance criteria. Such uniform standards shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian performance. In addition such uniform standards shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, and emergency services. Such standards as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations. The Secretary shall be authorized to amend or waive standards on a temporary basis for the purpose of evaluating new or different highway safety programs instituted on an experimental, pilot, or demonstration basis by one or more States, where the Secretary finds that the public interest would be served by such amendment or waiver.

(b) (1) The Secretary shall not approve any State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program through a State agency which shall have adequate powers, and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program.

(B) authorize political subdivisions of such State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards of the Secretary promulgated under this section.

(C) provide that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of such State in carrying out local highway safety programs authorized in accordance with subparagraph (B) of this paragraph.

(D) provide that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for highway safety programs will be maintained at a level which does not fall below the average level of such expenditures for its last two full fiscal years preceding the date of enactment of this section.

(E) provide for comprehensive driver training programs, including (1) the initiation of a State program for driver education in the school systems or for a significant expansion and improvement of such a program already in existence, to be administered by appropriate school officials under the supervision of the Governor as set forth in subparagraph (A) of this paragraph; (2) the training of qualified school instructors and their certification; (3) appropriate regulation of other driver training schools, including licensing of the schools and certification of their instructors; (4) adult driver training programs, and programs for the retraining of selected drivers; and (5) adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

(2) The Secretary is authorized to waive the requirement of subparagraph (C) of paragraph (1) of this subsection, in whole or in part, for a fiscal year for any State whenever he determines that there is an insufficient number of local highway safety programs to justify the expenditure in such State of such percentage of Federal funds during such fiscal year.

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such funds shall be apportioned 75 per centum in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this subsection, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. The annual apportionment to each State shall not be less than one-third of 1 per centum of the total apportionment. After December 31, 1969, the Secretary shall not apportion any funds under the subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section. Federal and highway funds apportioned on or after January 1, 1970, to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State is implementing an approved highway safety program. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of the preceding sentence to a State. Any amount which is withheld from apportionment to any State under this section shall be reapportioned to the other States in accordance with the applicable provision of law.

(d) All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. In applying such provisions of chapter 1 in carrying out this section the term "State highway department" as used in such provisions shall mean the Governor of a State for the purposes of this section, and except that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions (exclusive of Federal funds) for carrying out the State highway safety program shall be available for the purpose of crediting such State during such fiscal year for the non-Federal share of the cost of any project under this section without regard to whether such expenditures were actually made in connection with such project.

(e) Uniform standards promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform standards for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Nothing in this section authorizes the appropriation or expenditure of funds for (1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into standards) or (2) any purpose for which funds are authorized by section 403 of this title.

(h) Except in the case of those State safety program elements with respect to which uniform standards have been promulgated by the Secretary before December 31, 1970, the Secretary shall not promulgate any other uniform safety standard under this section unless at least 90 days prior to the effective date of such standard he shall have submitted such standard to Congress. (Added Pub. L. 89-564, title I, § 101, Sept. 9, 1966, 80 Stat. 731, and amended Pub. L. 90-495, § 13, Aug. 23, 1968, 82 Stat. 822; Pub. L. 91-605, title II, §§ 202(c), (d), (e), 203(a), Dec. 31, 1970, 84 Stat. 1740, 1741.)

AMENDMENTS

1970—Subsec. (b)(1)(A). Pub. L. 91-605, § 203(a), required the Governor of a State be responsible for the administration of the State highway safety program through a State agency suitably organized and possessed of adequate powers to carry out such programs to the satsifaction of the Secretary.

Subsec. (c). Pub. L. 91-605, § 202(c), provided a formula for apportionments to States, after June 30, 1969, to carry out this section, whereby 75% of the appropriation is based on the ratio which the population of each State bears to the total population of all the States and 25% of the appropriation is based on the ratio which the public road mileage in each State bears to the total public road mileage in all States, defined "public road", provided the annual apportionment to each State not to be less than one-third of 1% of the total apportionment, struck out provisions authorizing appropriations after June 30, 1969 to be apportioned as Congress shall provide and struck out provisions mandating the Secretary to report to Congress his recommendations for a nondiscretionary formula of apportionment for the fiscal year ending June 30, 1970, and the fiscal years thereafter.

Subsec. (d). Pub. L. 91-605, § 202(d), provided that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions for carrying out the State highway safety program be available for crediting such State for the non-Federal share of the cost of any project under this section without regard to whether such expenditures were actually made in connection with such project.

Subsec. (h). Pub. L. 91–605, § 202(e), added subsec. (h).

1968—Subsec. (c). Pub. L. 90–495 substituted "December 31, 1969" for "December 31, 1968" as the last day on which the Secretary may apportion funds to States which are not implementing highway safety programs approved by the Secretary and substituted "January 1, 1970" for "January 1, 1969" as the date after which funds apportioned to States not having approved safety programs shall be reduced until a safety program is implemented.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 203(b) of Pub. L. 91–605 provided that: "The amendment made by subsection (a) of this section [amending subsec. (b)(1)(A) of this section] shall take effect December 31, 1971."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

AUTHORIZATION OF APPROPRIATIONS

Section 104 of Pub. L. 89–564 provided that: "For the purpose of carrying out section 402 of title 23, United States Code, there is hereby authorized to be appropriated the sum of $67,000,000 for the fiscal year ending June 30, 1967; $100,000,000 for the fiscal year ending June 30, 1968; and $100,000,000 for the fiscal year ending June 30, 1969."

STUDY OF RELATIONSHIP BETWEEN CONSUMPTION OF ALCOHOL AND HIGHWAY SAFETY

Section 204 of Pub. L. 89–564 directed the Secretary of Commerce to make a thorough and complete study of the relationship between the consumption of alcohol and its effect upon highway safety and drivers of motor vehicles, in consultation with such other government and private agencies as may be necessary. Such study shall cover review and evaluation of State and local laws and enforcement methods and procedures relating to driving under the influence of alcohol, State and local programs for the treatment of alcoholism, and such other aspects of this overall problem as may be useful. The results of this study were required to be reported to the Congress by the Secretary on or before July 1, 1967, with recommendations for legislation if warranted.

NATIONAL HIGHWAY SAFETY BUREAU

Provisions of section to be carried out by National Highway Safety Bureau, see section 201 of Pub. L. 89–564, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 404 of this title; title 42 section 1857f–6b.

§ 403. Highway safety research and development.

The Secretary is authorized to use funds appropriated to carry out this section to carry out safety research which he is authorized to conduct by subsection (a) of section 307 of this title. In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for (1) grants to State or local agencies, institutions, and individuals for training or education of highway safety personnel, (2) research fellowships in highway safety, (3) development of improved accident investigation procedures, (4) emergency service plans, (5) demonstration projects, and (6) related activities which are deemed by the Secretary to be necessary to carry out the purposes of this section. (Added Pub. L. 89–564, title I, § 101, Sept. 9, 1966, 80 Stat. 733.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

FORM AND USE OF REPORTS OF HIGHWAY TRAFFIC ACCIDENTS OR RESEARCH PROJECTS IN COURT; AVAILABILITY TO PUBLIC

Section 106 of Pub. L. 89–564 provided that: "All facts contained in any report of any Federal department or agency or any officer, employee, or agent thereof, relating to any highway traffic accident or the investigation thereof conducted pursuant to chapter 4 of title 23 of the United States Code shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident, and any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigation. Any such report shall be made available to the public in a manner which does not identify individuals. All completed reports on research projects, demonstration projects, and other related activities conducted under sections 307 and 403 of title 23, United States Code, shall be made available to the public in a manner which does not identify individuals."

AUTHORIZATION OF ADDITIONAL APPROPRIATIONS

Authorization of appropriation of additional sum of $10,000,000 for the fiscal year ending June 30, 1967, $20,000,000 for the fiscal year ending June 30, 1968, and $25,000,000 for the fiscal year ending June 30, 1969, for the purpose of carrying out this section and section 307(a) of this title, see section 105 of Pub. L. 89–564, set out as a note under section 307 of this title.

NATIONAL HIGHWAY SAFETY BUREAU

Provisions of this section to be carried out by National Highway Safety Bureau, see section 201 of Pub. L. 89–564, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 307, 402 of this title.

§ 404. National Highway Safety Advisory Committee.

(a)(1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, who shall be Chairman, the Federal Highway Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger car, bus, and truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are expert in this field.

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that

(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of one year after the date such committee members are appointed by the President, twelve at the end of two years after the date such committee members are appointed by the President, and eleven at the end of three years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. None of the members appointed by the President who has served a three-year term, other than Federal officers or employees, shall be eligible for reappointment within one year following the end of his preceding term.

(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2) for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and recommend to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accidents; and (2) to review, prior to issuance, standards proposed to be issued by order of the Secretary under the provisions of section 402(a) of this title and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of Commerce such staff and facilities as are necessary to carry out the functions of such Committee. (Added Pub. L. 89–564, title I, § 101, Sept. 9, 1966, 80 Stat. 733, and amended Pub. L. 90–150, Nov. 24, 1967, 81 Stat. 507.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a)(2)(A), is September 9, 1966.

CODIFICATION

The provisions of section 73b–2 of title 5, referred to in this section, have been incorporated in revised title 5 section 5703.

AMENDMENTS

1967—Subsec. (a)(1). Pub. L. 90–150, § 1(1), substituted "Department of Transportation" for "Department of Commerce", increased number of Committee appointees from twenty-nine to thirty-five, and provided for selection of members from representatives of national organizations of passenger car, bus, and truck owners.

Subsec. (a)(2)(A). Pub. L. 90–150, § 1(2), substituted provisions for expiration of term of office of initial appointees one, two, and three years after date of appointment for twelve, twelve, and eleven members, respectively, for former provisions for such expiration one, two, and three years following enactment date of Sept. 9, 1966, for ten, ten, and nine members, respectively, and prohibited reappointment within one year after end of preceding term of member serving a three-year term of office.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a)(1), (6) of Title 49, Transportation.

Chapter 5.—HIGHWAY RELOCATION ASSISTANCE

Sec.
501. Declaration of policy.
502. Assurances of adequate relocation assistance program.
503. Administration of relocation assistance program.
504. Federal reimbursement.
505. Relocation payments.
506. Replacement housing.
507. Expenses incidental to transfer of property.
508. Relocation services.
509. Relocation assistance programs on Federal highway projects.
510. Construction of replacement housing.
511. Authority of Secretary.
512. Definitions.

AMENDMENTS

1970—Pub. L. 91–605, title I, §§ 117(a), (c), Dec. 31, 1970, 84 Stat. 1724, renumbered items 510 and 511 as items 511 and 512, respectively, and added new item 510 "Construction of replacement housing."

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 103, 108, 215 of this title.

§ 501. Declaration of policy.

Congress hereby declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and nonprofit organizations displaced as a result of the Federal highway programs and the construction of Federal-aid highways is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Therefore, Congress determines that relocation payments and advisory assistance should be provided to all persons so displaced in accordance with the provisions of this title. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 830.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

SHORT TITLE

Section 1 of Pub. L. 90–495 provided that: "This Act [enacting this chapter and sections 135, 139, 140, and 141 of this title, amending sections 101, 101 note, 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319, and 402 of this title, section 636 of Title 15, Commerce and Trade, and section 1653 of Title 49, Transportation, repealing section 133 of this title and enacting provisions set out as notes under this section and sections 101, 104, 108, 125, 134, 502, and 510 of this title] may be cited as the 'Federa-Aid Highway Act of 1968'."

EMINENT DOMAIN

Section 32 of Pub. L. 90–495 provided that: "Nothing contained in chapter 5 of title 23, United States Code [this chapter], shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of such chapter 5 [Aug. 23, 1968]." Section repealed by Pub. L. 91–646, title II, § 220 (a)(11), Jan. 2, 1971, 84 Stat. 1903. See italicized note set out above.

§ 502. Assurances of adequate relocation assistance program.

The Secretary shall not approve any project under section 106 or section 117 of this title which will cause the displacement of any person, business, or farm operation unless he receives satisfactory assurances from the State Highway department that—

(1) fair and reasonable relocation and other payments shall be afforded to displaced persons in accordance with sections 505, 506, and 507 of this title;

(2) relocation assistance programs offering the services described in section 508 of this title shall be afforded to displaced persons; and

(3) within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the Secretary, equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment.

(Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 830.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section 37 of Pub. L. 90–495, as amended by Pub. L. 91–605, title I, § 120, Dec. 31, 1970, 84 Stat. 1725, provided that:

"(a) Except as otherwise provided in subsection (b) of this section, this Act and the amendments made by this Act [enacting sections 135, 139, 140, 141, and 501—511 of this title amending sections 101, 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319, and 402 of this title, section 636 of Title 15 Commerce and Trade and section 1653 of Title 49, Transportation, repealing section 133 of this title, enacting provisions set out as notes under sections 101, 104, 108, 125, 134, 501, 502, and 510 of this title] shall take effect on the date of its enactment [August 23, 1968], except that until July 1, 1970, sections 502, 505, 506, 507, and 508 of title 23, United States Code, as added by this Act, shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. Except as otherwise provided in subsection (b) of this section, after July 1, 1970, such sections shall be completely applicable to all States. Section 133 of title 23, United States Code, shall not apply to any State if sections 502, 505, 506, 507, and 508 of title 23, United States Code, are applicable in that State, and effective July 1, 1970, such section 133 is repealed.

"(b) In the case of any State (1) which is required to amend its constitution to comply with sections 502, 505, 506, 507, and 508 of title 23, United States Code, and (2) which cannot submit the required constitutional amendment for ratification prior to July 1, 1970, the date of July 1, 1970, contained in subsection (a) of this section shall be extended to July 1, 1972."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 509, 510 of this title.

§ 503. Administration of relocation assistance program.

In order to prevent unnecessary expenses and duplication of functions, a State highway department may make relocation payments or provide relocation assistance or otherwise carry out the functions required under this chapter by utilizing the facilities, personnel, and services of any other Federal, State, or local governmental agency having an established organization for conducting relocation assistance programs. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 831.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

§ 504. Federal reimbursement.

(a) The Secretary shall approve, as a part of the cost of construction of a project under any Federal-aid highway program which he administers, the cost of providing the payments and services described in section 502, except that notwithstanding any other law, the Federal share of the first $25,000 of such payments to any person, on account of any real property acquisition or displacement occurring prior to July 1, 1970, shall be increased to 100 per centum of such cost.

(b) Any project agreement with a State highway department executed before the date of enactment of this chapter with respect to property which has not been acquired as of the date of enactment of this chapter under any such program shall be amended to include the cost of providing the payments and services described in section 502 with respect to such property. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 831.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (b), is the date of enactment of Pub. L. 90–495, which was approved Aug. 23, 1968.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 506 of this title.

§ 505. Relocation payments.

(a) Payments for actual expenses.

Upon application approved by the State agency, a person displaced by any highway project approved under section 106 or section 117 of this title may elect to receive actual reasonable expenses in moving himself, his family, his business, or his farm operation, including personal property.

(b) Optional payments—Dwellings.

Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive—

(1) a moving expense allowance, determined according to a schedule established by the Secretary, not to exceed $200; and

(2) a dislocation allowance of $100.

(c) Optional payments—Business and farm operations.

Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this section in lieu of the payment authorized by subsection (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or $5,000, whichever is the lesser. In the case of a business, no payment shall be made under this subsection unless the State agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not part of a commercial enterprise having at least one other establishment, not being acquired by the State or by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two-year period. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 831.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, except that until July 1, 1970, section to be applicable to a State only to the extent that such State is able under its laws to comply with this section, but after July 1, 1970, section to be completely applicable to all States except where any State requires its constitution amended to comply with this section and cannot submit the required constitutional amendment for ratification prior to July 1, 1970, such date shall be extended to July 1, 1972, see section 37 of Pub. L. 90–495, as amended by Pub. L. 91–605, title I, § 120, Dec. 31, 1970, 84 Stat. 1725, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 509 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7–135 of the District of Columbia Code.

§ 506. Replacement housing.

(a) In addition to amounts otherwise authorized by this title, the State agency shall make a payment to the owner of real property acquired for a project which is improved by a single-, two-, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment, not to exceed $5,000, shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the Secretary, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired for the project. No such payment shall be required or included as a project cost under section 504 of this title if the owner-occupant receives a payment required by the State law of eminent domain which is determined by the Secretary to have substantially the same purpose and effect as this section and to be part of the cost of the project for which Federal financial assistance is available.

(b)(1) In addition to the amounts otherwise authorized by this title, the State agency shall make an interest payment to compensate such owner for any increased rate of interest which such owner is required to pay for financing such replacement dwelling.

(2) This interest payment shall be computed and allowed only if there was an existing mortgage against the dwelling transferred to the State and such mortgage was a valid lien on said premises for at least one year prior to the institution of negotiations for the acquisition of such property, and if the mortgage for the replacement dwelling bears a higher rate of interest than the interest rate on the mortgage of the transferred dwelling; but, in no event shall such interest on the replacement dwelling be greater than the maximum interest allowable under State law.

(3) The value of the interest payment shall be the difference in the interest rate existing on the balance of any mortgage on a transferred dwelling and the interest rate on the mortgage of the replacement dwelling for the remainder of the term of any such mortgage on such transferred dwelling reduced to discounted present value.

(4) The discount rate as above provided shall be the maximum rate of interest permitted to be paid on savings deposits by any savings bank within the State pursuant to the rules and regulations of the Federal Deposit Insurance Corporation.

(c) In addition to amounts otherwise authorized by this title, the State agency shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (a) of this section which dwelling was actually and lawfully occupied by such individual or family for not less than 90 days prior to the initiation of negotiations for acquisition of such property. Such payment, not to exceed $1,500, shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed 2 years, or to make the down payment on the purchase of, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 832, and amended Pub. L. 91–605, title I, § 137, Dec. 31, 1970, 84 Stat. 1735.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–605 added subsec. (b). Former subsec. (b) redesignated as subsec. (c).

Subsec. (c). Pub. L. 91–605 redesignated former subsec. (b) as subsec. (c).

EFFECTIVE DATE

Section effective Aug. 23, 1968, except that until July 1, 1970, section to be applicable to a State only to the extent that such State is able under its laws to comply with this section, but after July 1, 1970, section to be completely applicable to all States except where any State requires its constitution amended to comply with this section and cannot submit the required constitutional amendment for ratification prior to July 1, 1970, such date shall be extended to July 1, 1972, see section 37 of Pub. L. 90–495, as amended by Pub. L. 91–605, title I, § 120, Dec. 31, 1970, 84 Stat. 1725, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 509 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7-135 of the District of Columbia Code.

§ 507. Expenses incidental to transfer of property.

(a) In addition to amounts otherwise authorized by this title, the State shall reimburse the owner of real property acquired for a project for reasonable and necessary expenses incurred for (1) recording fees, transfer taxes, and similar expenses incidental to conveying such property; (2) penalty costs for prepayment of any mortgage entered into in good faith encumbering such real property if such mortgage is on record or has been filed for record under applicable State law on the date of final approval by the State of the location of such project; and (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the State, or the effective date of the possession of such real property by the State, whichever is earlier.

(b) No payment received under this chapter shall be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law. (Added Pub. L. 90-495, § 30, Aug. 23, 1968, 82 Stat. 832.)

Repeal

Provisions of this section repealed by Pub. L. 91-646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91-646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (b), is classified to Title 26, Internal Revenue Code.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, except that until July 1, 1970, section to be applicable to a State only to the extent that such State is able under its laws to comply with this section, but after July 1, 1970, section to be completely applicable to all States except where any State requires its constitution amended to comply with this section and cannot submit the required constitutional amendment for ratification prior to July 1, 1970, such date shall be extended to July 1, 1972, see section 37 of Pub. L. 90-495, as amended by Pub. L. 91-605, title I, § 120, Dec. 31, 1970, 84 Stat. 1725, set out as a note under section 502 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 509 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7-135 of the District of Columbia Code.

§ 508. Relocation services.

(a) Each State shall provide a relocation advisory assistance program which shall include such measures, facilities, or services as may be necessary or appropriate in order—

(1) to determine the needs, if any, of displaced families, individuals, business concerns, and farm operators for relocation assistance;

(2) to assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, housing meeting the standards established by the Secretary for decent, safe, and sanitary dwellings, equal in number to the number of, and available to, such displaced families and individuals and reasonably accessible to their places of employment;

(3) to assist owners of displaced businesses and displaced farm operators in obtaining and becoming established in suitable locations; and

(4) to supply information concerning the Federal Housing Administration home acquisition program under section 221(d)(2) of the National Housing Act, the small business disaster loan program under section 7(b)(3) of the Small Business Act, and other State or Federal programs offering assistance to displaced persons.

(b) Nothing in this chapter shall be construed to prohibit any person from exercising any right or remedy available to him under State law with respect to any action of a State agency in carrying out this chapter. (Added Pub. L. 90-495, § 30, Aug. 23, 1968, 82 Stat. 833.)

Repeal

Provisions of this section repealed by Pub. L. 91-646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91-646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

REFERENCES IN TEXT

Section 221(d)(2) of the National Housing Act, referred to in subsec. (a)(4), is classified to section 1715*l*(d)(2) of Title 12, Banks and Banking.

Section 7(b)(3) of the Small Business Act, referred to in subsec. (a)(4), is classified to section 636(b)(3) of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section effective Aug. 23, 1968, except that until July 1, 1970, section to be applicable to a State only to the extent that such State is able under its laws to comply with this section, but after July 1, 1970, section to be completely applicable to all States except where any State requires its constitution amended to comply with this section and cannot submit the required constitutional amendment for ratification prior to July 1, 1970, such date shall be extended to July 1, 1972, see section 37 of Pub. L. 90–495, as amended by Pub. L. 91–605, title I, § 120, Dec. 31, 1970, 84 Stat. 1725, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 509 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7–135 of the District of Columbia Code.

§ 509. Relocation assistance programs on Federal highway projects.

Notwithstanding any other provision of law, on and after the effective date of this title any Federal agency which acquires real property for use in connection with a highway project authorized by section 107 and chapter 2 of this title or any other Federal law shall, in accordance with regulations issued by the Secretary, provide the payments and services described in sections 502, 505, 506, 507, and 508, of this title. When real property is acquired by a State or local governmental agency for such a Federal project for purposes of this chapter, the acquisition shall be deemed an acquisition by the Federal agency having authority over such project. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 833.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

§ 510. Construction of replacement housing.

(a) The Secretary may approve as a part of the cost of construction of any project on any Federal-aid system the cost of (A) constructing new housing, (B) acquiring existing housing, (C) rehabilitating existing housing, and (D) relocating existing housing, as replacement housing for individuals and families where a proposed project on the Federal-aid system cannot proceed to actual construction because replacement housing is not available and cannot otherwise be made available as required by section 502 of this title. For the purposes of this subsection the term "housing" includes all appurtenances thereto.

(b) State highway departments shall, wherever practicable, utilize the services of State or local governmental housing agencies in carrying out this section. (Added Pub. L. 91–605, title I, § 117(b), Dec. 31, 1970, 84 Stat. 1724.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

CODIFICATION

A prior section 510, as added Pub. L. 91–495, § 30, Aug. 23, 1968, 82 Stat. 834 was renumbered section 511 by Pub. L. 91–605, Title I, § 117(a), Dec. 31, 1970, 84 Stat. 1724.

THE UNIFORM RELOCATION ASSISTANCE AND LAND ACQUISITION POLICIES ACT OF 1970

Section 147 of Pub. L. 91–605 provided that: "The amendments made by section 117 [enacting this section, amending section 101 of this title, and renumbering sections 511 and 512 of this title], 120 [amending note set out under section 502 of this title], and 137 of this Act [amending section 506 of this title] shall not take effect if before the effective date of this Act [Dec. 31, 1970] the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 has been enacted into law." The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, enacted as Pub. L. 91–646, 84 Stat. 1894, was approved Jan. 2, 1971, whereas this Act (Title I of Pub. L. 91–605) was approved Dec. 31, 1970, therefore the amendments made by sections 117, 120, and 137 of Title I, of Pub. L. 91–605 will take effect.

§ 511. Authority of Secretary.

(a) To carry into effect the provisions of this chapter, the Secretary is authorized to make such rules and regulations as he may determine to be necessary to assure—

(1) that the payments authorized by this chapter shall be fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the State agency making such determination.

(b) The Secretary may make such other rules and regulations consistent with the provisions of this chapter as he deems necessary or appropriate to carry out this chapter. (Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 834, § 511, formerly § 510, renumbered Pub. L. 91–605, title I, § 117(a), Dec. 31, 1970, 84 Stat. 1724.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

ANNUAL REPORT TO CONGRESS

Section 33 of Pub. L. 90–495 provided that: "The Secretary of Transportation shall report annually to Congress, but no later than January 15 of each year, concerning his administration of chapter 5 of title 23, United States Code [this chapter], together with his recommendations, including any necessary legislation with respect to such chapter." Section repealed by Pub. L. 91–646, title II, § 220(a)(11), Jan. 2, 1971, 84 Stat. 1903. See italicized note above.

§ 512. Definitions.

As used in this chapter—

(1) The term "person" means—

(A) any individual, partnership, corporation, or association which is the owner of a business;

(B) any owner, part owner, tenant, or sharecropper who operates a farm;

(C) an individual who is the head of a family; or

(D) an individual not a member of a family.

(2) The term "family" means two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship.

(3) The term "displaced person" means any person who moves from real property on or after the effective date of this chapter as a result of the acquisition or reasonable expectation of acquisition of such real property, which is subsequently acquired, in whole or in part, for a Federal-aid highway, or as the result of the acquisition for a Federal-aid highway of other real property on which such person conducts a business or farm operation.

(4) The term "business" means any lawful activity conducted primarily—

(A) for the purchase and resale, manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public; or

(C) by a nonprofit organization.

(5) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(6) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government and any corporation wholly owned by the Government.

(7) The term "State agency" means a State highway department or any agency designated by a State highway department to administer the relocation assistance program authorized by this chapter.

(Added Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 834, § 512, formerly § 511, renumbered Pub. L. 91–605, title I, § 117(a), Dec. 31, 1970, 84 Stat. 1724.)

Repeal

Provisions of this section repealed by Pub. L. 91–646, title II, § 220(a)(10), Jan. 2, 1971, 84 Stat. 1903. Such repeal not to be applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State. Until July 1, 1972, such sections 4630 and 4655 of Title 42 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and after July 1, 1972, such sections shall be completely applicable to all States. See section 221 of Pub. L. 91–646, set out as a note under section 4601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 502 of this title.

TITLE 24.—HOSPITALS, ASYLUMS, AND CEMETERIES

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Chapter 1.—NAVY HOSPITALS, NAVAL HOME, ARMY AND NAVY HOSPITAL, AND HOSPITAL RELIEF FOR SEAMEN AND OTHERS

Sec.

1 to 5. Repealed.
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34. Hospitalization of persons outside continental limits of United States; persons entitled; availability of other facilities; rate of charges; disposition of payments.
35. Limitation of medical, surgical or hospital services.
36. Repealed.
37. Manufacture of products by patients at naval hospitals; ownership of products.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

§§ 1, 2. Repealed. July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714.

Section 1, acts Mar. 3, 1875, ch. 156, § 3, 18 Stat. 485; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, which defined word seamen, is now covered by section 201 of Title 42, The Public Health and Welfare.

Section 2, R. S. § 4801, which provided for the acceptance of gifts in aid of marine hospitals, is now covered by section 219 of Title 42, The Public Health and Welfare.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed these sections, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

§§ 3 to 5. Repealed. June 15, 1943, ch. 125, § 3, 57 Stat. 153, eff. July 1, 1943.

Section 3, R. S. §§ 1614, 4808, related to deduction from pay of seamen for Navy hospital fund.

Section 4, R. S. § 4809, related to fines on seamen appropriated for Navy hospitals.

Section 5, act June 7, 1900, ch. 859, 31 Stat. 697, related to forfeitures from desertion for naval hospital fund.

§ 6. Pension paid to fund for benefit of naval hospital.

Whenever any officer, seaman, or marine entitled to a pension is admitted to a naval hospital, his pension, while he remains there, shall be deducted from his accounts and paid to the Secretary of the Navy for the benefit of the fund from which such hospital is maintained. (R. S. § 4813; Mar. 3, 1899, ch. 421, 30 Stat. 1027; June 30, 1914, ch. 130, 38 Stat. 398.)

DERIVATION

R. S. § 4813 from act Feb. 26, 1811, ch. 26, § 5, 2 Stat. 650.

§ 6a. Same; disposition of amounts deducted.

Pensions of inmates of a naval home or naval hospital, required by law prior to July 1, 1943, to be deducted from the account of the pensioner and applied for the benefit of the fund from which such home or hospital is maintained, shall be deposited into the Treasury of the United States as miscellaneous receipts. (June 15, 1943, ch. 125, § 3, 57 Stat. 153.)

EFFECTIVE DATE

Section 3 of act June 15, 1943, provided in part that this section shall be effective July 1, 1943.

CROSS REFERENCES

Deduction of pension, see section 6 of this title.

§§ 7 to 12. Repealed. July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714.

Section 7, R. S. § 4806; acts Mar. 3, 1875, ch. 156, § 4, 18 Stat. 485; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; July 26, 1916, ch. 256, 39 Stat. 390; 1939 Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 F. R. 2728, 2729, 53 Stat. 1424, 1425, which provided for the lease and sale of hospitals, is now covered by section 248 of Title 42, The Public Health and Welfare.

Section 8, acts Aug. 4, 1894, ch. 213, 28 Stat. 229; Jan. 28, 1915, ch. 20, § 2, 38 Stat. 801; July 30, 1937, ch. 545, § 2, 50 Stat. 548; 1939 Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 F. R. 2728, 2729, 53 Stat. 1424, 1425, which provided for the admission of Coast Guard personnel and their families to hospitals is now covered by

section 253 of Title 42, The Public Health and Welfare. Act Jan. 28, 1915, ch. 20, § 2, 38 Stat. 801 was also repealed by act Aug. 4, 1949, ch. 393, § 20, 63 Stat. 561.

Section 9, act June 23, 1913, ch. 3, § 1, 38 Stat. 24, which provided for hospital relief of officers and employees of the Public Health Service, is now covered by sections 249 and 253 of Title 42, The Public Health and Welfare.

Section 10, act July 1, 1918, ch. 113, § 1, 40 Stat. 694, which provided for hospital relief for officers and crews of the Fish and Wildlife Service, is now covered by section 249 of Title 42, The Public Health and Welfare.

Section 11, acts Mar. 3, 1875, ch. 156, § 6, 18 Stat. 486; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; 1939 Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 F. R. 2728, 2729, 53 Stat. 1424, 1425, which provided for the care of foreign seamen, is now covered by section 249 of Title 42, The Public Health and Welfare.

Section 11a, R. S. § 4805; acts Mar. 3, 1875, ch. 156, § 6, 18 Stat. 486; 1939 Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 F. R. 2728, 2729, 53 Stat. 1424, 1425, which provided that foreign vessels were liable for hospital charges for care of their seamen, is now covered by section 249 of Title 42, The Public Health and Welfare.

Section 12, R. S. § 4804, which provided for the exclusion of employees on canal boats in coasting trade from hospital care, is now covered by section 249 of Title 42, The Public Health and Welfare.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed these sections, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9 (b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

§ 13. Admission of cases for study.

There may be admitted into marine hospitals for study persons with infectious or other diseases affecting the public health, and not to exceed ten cases in any one hospital at one time. (June 5, 1920, ch. 235, § 1, 41 Stat. 884.)

§ 14. Establishment of Navy hospitals.

The Secretary of the Navy shall procure at suitable places proper sites for Navy hospitals, and if the necessary buildings are not procured with the site, shall cause such to be erected, having due regard to economy, and giving preference to such plans as with most convenience and least cost will admit of subsequent additions, when the funds permit and circumstances require; and shall provide, at one of the establishments, a permanent asylum for disabled and decrepit Navy officers, seamen, and marines: *Provided,* That no sites shall be procured or hospital buildings erected or extensions to existing hospitals made unless authorized by Congress. (R. S. § 4810; Mar. 4, 1913, ch. 148, 37 Stat. 902.)

DERIVATION

Acts Feb. 26, 1811, ch. 26, § 3, 2 Stat. 650; July 10, 1832, ch. 149, § 5, 4 Stat. 573.

§ 14a. Annual appropriations for maintenance, operation, and improvement of naval hospitals.

Commencing with the fiscal year 1944, annual appropriations in such amounts as may be necessary are authorized from the general fund of the Treasury for the maintenance, operation, and improvement of naval hospitals. (June 15, 1943, ch. 125, § 1 (c), 57 Stat. 152.)

§ 15. Superintendence of Navy hospitals.

The Secretary of the Navy shall have the general charge and superintendence of Navy hospitals. (R. S. § 4807.)

DERIVATION

Acts Feb. 26, 1811, ch. 26, § 1, 2 Stat. 650; July 10, 1832, ch. 194, § 5, 4 Stat. 573.

§ 16. Allowance of rations to Navy hospitals.

For every Navy officer, seaman, or marine admitted into a Navy hospital, the institution shall be allowed one ration per day during his continuance therein, to be deducted from the account of the United States with such officer, seaman, or marine. (R. S. § 4812.)

DERIVATION

Act Feb. 26, 1811, ch. 26, § 5, 2 Stat. 650.

CROSS REFERENCES

Naval patients, deductions for care in other Government hospitals, see section 6201 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 6201.

§ 16a. Additional personnel for patients of Veterans' Administration in naval hospitals.

On and after May 29, 1945, additional commissioned, warranted, appointed, enlisted, and civilian personnel of the Medical Department of the Navy, required for the care of patients of the United States Veterans' Administration in naval hospitals, may be employed in addition to the numbers annually appropriated for. (May 29, 1945, ch. 130, § 1, 59 Stat. 208.)

CODIFICATION

Section is from the Naval Appropriation Act, 1946, act May 29, 1945. Similar provisions were contained in the following prior appropriation acts:

1944—June 22, 1944, ch. 269, § 1, 58 Stat. 308.

1943—June 26, 1943, ch. 147, § 1, 57 Stat. 204.

§ 17. Government of Naval Asylum.

The asylum for disabled and decrepit Navy officers, seamen, and marines shall be governed in accordance with the rules and regulations prescribed by the Secretary of the Navy. (R. S. § 4811.)

DERIVATION

Act Feb. 26, 1811, ch. 26, § 4, 2 Stat. 650.

§ 18. Rules and regulations for Army and Navy Hospital.

The Army and Navy hospital at Hot Springs, Arkansas, shall be subject to such rules, regulations, and restrictions as shall be provided by the President of the United States and shall remain under the jurisdiction and control of the Department of the Army. (June 30, 1882, ch. 254, § 1, 22 Stat. 121; June 18, 1930, ch. 525, § 2, 46 Stat. 781.)

CODIFICATION

Section, except last clause of last sentence, is from act June 30, 1882. Last clause of last sentence is from act June 18, 1930, ch. 525, § 2, 46 Stat. 781.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

EX. ORD. NO. 10272. DELEGATION OF AUTHORITY TO THE SECRETARY OF THE ARMY

Ex. Ord. No. 10272, July 10, 1951, 16 F. R. 6711, provided: By virtue of the authority vested in me by section 1 of the act of August 8, 1950, c. 646, 64 Stat. 419 [section 301 of Title 3], and as President of the United States, it is hereby ordered that the Secretary of the Army be, and he is hereby, designated and empowered to exercise the authority vested in the President by section 1 of the act of June 30, 1882, 22 Stat. 117, 121, as amended [this section], to provide rules, regulations, and restrictions with respect to the Army and Navy hospital at Hot Springs, Arkansas: *Provided*, That the rules, regulations, and restrictions prescribed under the authority of this order shall, so far as feasible, be uniform with those obtaining with respect to other hospitals under the jurisdiction of the Department of the Army, and that those prescribed by the Executive order of August 25, 1892, as amended by Executive Order No. 6885 of October 23, 1934, shall continue in force and effect until amended, modified, or revoked by the Secretary of the Army in action taken pursuant to this order.

§ 19. Tubercular hospital at Fort Bayard.

The hospital at Fort Bayard, New Mexico, for the treatment of tuberculosis, shall be opened to the treatment of the officers and men of the Navy and Marine Corps. (Mar. 2, 1907, ch. 2511, 34 Stat. 1172.)

§ 20. Discipline of patients at Army and Navy Hospital.

All persons admitted to treatment in the Army and Navy General Hospital at Hot Springs, Arkansas, shall, while patients in said hospital, be subject to the rules and articles for the government of the armies of the United States. (Mar. 3, 1909, ch. 252, 35 Stat. 748.

REPEALS

Act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714 as amended and renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506, repealed act Mar. 3, 1919, ch. 98, § 3, 40 Stat. 1303, formerly cited to this section, which transferred lands and buildings from the War Department to the Treasury Department for the use of the Public Health Service.

§ 21. Repealed. June 12, 1948, ch. 450, § 4, 62 Stat. 380.

Section, act May 12, 1917, ch. 12, 40 Stat. 58, related to limitation on cost of Army hospital buildings.

§ 21a. Naval Home; maintenance and operation.

The Secretary of the Navy is authorized to provide for the maintenance and operation of the Naval Home, including the transportation, admission, entertainment, support, and care of beneficiaries, hospitalization of beneficiaries in naval hospitals, transportation and subsistence of attendants of beneficiaries where required, and the burial and care of graves of deceased beneficiaries. (Aug. 2, 1946, ch. 756, § 11, 60 Stat. 854.)

COMPENSATION OF GOVERNOR OF NAVAL HOME

Section 401 of Pub. L. 85–117, title IV, Aug. 2, 1957, 71 Stat. 316, which appropriated $2,295,000,000 for military personnel of the Navy, provided in part: "That no part of this or any other appropriation shall be used to pay any officer, while on active duty as Governor of the Naval Home, any amount in excess of the maximum pay and allowances of a rear admiral, upper half."

DELEGATION OF POWERS AND AUTHORITY

Section 39 of act Aug. 2, 1946, authorized the Secretary of the Navy to delegate to such persons in the Naval Establishment and to such extent as he may deem proper, with or without authority to make successive redelegations, the authority conferred upon the Secretary by this section, except the authority to prescribe regulations. Such section 39 was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, less its applicability to this section and section 37 of this title.

§ 22. Disposition of moneys of deceased inmates of Naval Home.

All moneys belonging to a deceased beneficiary of the Naval Home or derived from the sale of his personal effects, not claimed by his legal heirs or next of kin, shall be deposited with the pay officer of the Naval Home, and if any sum so deposited shall be unclaimed for a period of two years from the death of such beneficiary it shall be deposited in the Treasury to the credit of the naval pension fund: *Provided*, That the governor of the Naval Home is authorized and directed, under such regulations as may be prescribed by the Secretary of the Navy, to make diligent inquiry in every instance after the death of an inmate to ascertain the whereabouts of his heirs or next of kin: *Provided further*, That claims may be presented at any time within five years after moneys have been so deposited in the Treasury, and, when supported by competent proof in any case after such deposit in the Treasury, shall be certified to Congress for consideration. (June 30, 1914, ch. 130, 38 Stat. 398.)

CROSS REFERENCES

Naval pension fund abolished, see section 725h of Title 31, Money and Finance.

Personal funds of deceased inmates of Naval Home to be held in trust, see section 725s (a) (5) of Title 31, Money and Finance.

§ 23. Disposition of pension of beneficiary in Naval Home.

The pensions of beneficiaries of the Naval Home shall be disposed of in the same manner as prescribed for inmates of the Soldiers' Home, as provided for in section 52 of this title, under such regulations as the Secretary of the Navy may prescribe, except that in the case of death of any beneficiary leaving no heirs at law nor next of kin any pension due him shall, subject to the foregoing provisions, escheat to the naval pension fund. (June 30, 1914, ch. 130, 38 Stat. 398.)

CROSS REFERENCES

Naval pension fund abolished, see section 725h of Title 31, Money and Finance.

§ 24. Moneys derived from Naval Home turned into pension fund.

All moneys derived from the sale of material at the Naval Home, which was originally purchased from moneys appropriated from the income from the naval pension fund, and all moneys derived from the rental of Naval Home property, shall be turned into the naval pension fund. (Mar. 4, 1917, ch. 180, 39 Stat. 1175.)

CROSS REFERENCES

Naval pension fund abolished, see section 725h of Title 31, Money and Finance.

§ 25. Employment of beneficiaries in service of Naval Home.

For the performance of such additional services in and about the Naval Home as may be necessary the Secretary of the Navy is authorized to employ, on the recommendation of the governor, beneficiaries in said home whose compensation shall be fixed by the Secretary and paid from the appropriation for the support of the home. (Aug. 22, 1912, ch. 335, 37 Stat. 334.)

§§ 26 to 28. Repealed. July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714.

Section 26, acts Mar. 3, 1919, ch. 98, § 1, 40 Stat. 1302; Aug. 9, 1921, ch. 57, § 7, 42 Stat. 149; July 3, 1930, ch. 863, § 1, 46 Stat. 1016, which provided for additional hospital and sanatorium facilities, is now covered by sections 249, 251, and 253 of Title 42, The Public Health and Welfare, and section 763c of Title 33, Navigation and Navigable Waters.

Section 26a, R. S. § 4803; acts June 26, 1884, ch. 121, § 15, 23 Stat. 57; Mar. 3, 1905, ch. 1484, § 1, 33 Stat. 1217; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; 1939 Reorg. Plan No. I, §§ 201, 205 (b), eff. July 1, 1939, 4 F. R. 2728, 2729, 53 Stat. 1424, 1425, which provided for the use of certain funds for the relief of sick and disabled seamen, is now covered by section 249 of Title 42, The Public Health and Welfare.

Section 27, act Mar. 3, 1919, ch. 98, § 2, 40 Stat. 1302, which provided for the transfer of hospitals to Treasury Department for the Public Health Service, is now covered by section 248 of Title 42, The Public Health and Welfare.

Section 28, acts Mar. 3, 1919, ch. 98, § 3, 40 Stat. 1303; Mar. 4, 1921, ch. 156, 41 Stat. 1365, provided for the transfer of property and equipment by Secretary of War to the Treasury Department for use of the Public Health Service.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed these sections, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88-581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89-239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and 1113 by Pub. L. 91-572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

§§ 29, 29a. Repealed. Oct. 31, 1951, ch. 654, § 1 (45), 65 Stat. 703.

Sections, acts Mar. 15, 1920, ch. 100, §§ 1, 4, 41 Stat. 530, 531; Mar. 4, 1921, ch. 156, 41 Stat. 1365, related to transfer of surplus war material for use of Public Health Service, and are now covered by sections 483 and 484 of Title 40, Public Buildings, Property, and Works.

§ 30. Payments to donors of blood for persons undergoing treatment at Government expense.

Any person, whether or not in the employ of the United States, who shall furnish blood from his or her veins for transfusion into the veins of a person entitled to and undergoing treatment at Government expense, whether in a Federal hospital or institution or in a civilian hospital or institution, or who shall furnish blood for blood banks or for other scientific and research purposes in connection with the care of any person entitled to treatment at Government expense, shall be entitled to be paid therefor such reasonable sum, not to exceed $50, for each blood withdrawal as may be determined by the head of the department or independent agency concerned, from public funds available to such department or independent agency for medical and hospital supplies: *Provided*, That no payment shall be made under this authority to any person for blood withdrawn for the benefit of the person from whom it is withdrawn. (Feb. 9, 1927, ch. 91, 44 Stat. 1066; June 2, 1939, ch. 173, 53 Stat. 803; July 30, 1941, ch. 332, 55 Stat. 609.)

AMENDMENTS

1941—Act July 30, 1941, omitted requirement that donor had to be in the Military Establishment or a Government employee and that patient had to be in a Government hospital to have donor qualify for payment.

1939—Act June 2, 1939, included the furnishing of blood by employees of the United States Government.

§ 31. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

Section, act Jan. 19, 1929, ch. 85, 45 Stat. 1090, related to care of naval patients in other Government hospitals where naval hospital facilities are not available, and is now covered by section 6201 of Title 10, Armed Forces.

§§ 32, 33. Repealed. June 7, 1956, ch. 374, § 306 (2), 70 Stat. 254.

Sections, act May 10, 1943, ch. 95, §§ 2, 3, 57 Stat. 80, 81, authorized the hospitalization of dependents of naval and Marine Corps personnel, prescribed the rate of charges, and defined the term "dependents". See chapter 55 of Title 10, Armed Forces.

EFFECTIVE DATE OF REPEAL

Repeal of these sections by act June 7, 1956, effective six months after June 7, 1956.

REPEAL OF APPROPRIATIONS

Section 1 of act May 10, 1943, ch. 95, 57 Stat. 80, formerly set out as a note under section 32 of this title, which appropriated funds for the purpose of expanding facilities for the hospitalization of dependents of the Navy and Marine Corps, was also repealed by Act June 7, 1956.

§ 34. Hospitalization of persons outside continental limits of United States; persons entitled; availability of other facilities; rate of charges; disposition of payments.

In addition to those persons, including the dependents of naval and Marine Corps personnel, now authorized to receive hospitalization at naval hospitals, hospitalization and dispensary service may be provided at naval hospitals and dispensaries outside of the continental limits of the United States and in Alaska, to the officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or his subcontractor, to the dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *Provided*, That such hospitalization and dispensary service to other than the dependents of naval and Marine Corps personnel shall be permitted only where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. The charge for hospitalization or dispensary service for persons other than dependents of naval and Marine Corps personnel as specified in this section shall be at such rates as the President shall from time to time prescribe, and shall be deposited as provided in section 32 of this title. (May 10, 1943, ch. 95, § 4, 57 Stat. 81.)

REFERENCES IN TEXT

Section 32 of this title, referred to in text, was repealed by act June 7, 1956, ch. 374, § 306(2), 70 Stat. 254. See chapter 55 of Title 10, Armed Forces.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Director of the Bureau of the Budget [now the Office of Management and Budget], see section 1(17) of Ex. Ord. No. 11230, June 28, 1965, 30 F.R. 8447, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 11116. RATES OF CHARGES FOR HOSPITALIZATION AND DISPENSARY SERVICES

Ex. Ord. No. 11116, Aug. 5, 1963, 28 F.R. 8075, as amended by Ex. Ord. No. 11230, June 28, 1965, 30 F.R. 8447, provided:

By virtue of the authority vested in me by Section 4 of the Act of May 10, 1943 (24 U.S.C. 34) [this section], and by Section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. *Rates.* Rates of charges for hospitalization and dispensary services are hereby prescribed, under the last sentence of Section 4 of the Act of May 10, 1943, c. 95, 57 Stat. 81 (24 U.S.C. 34) [this section], and for the purposes of that section, as follows:

(1) Inpatient care, per diem:
  (i) For employees of the United States who are not citizens of the United States and their dependents, $5.00
  (ii) For all others, 37.00
(2) Each outpatient treatment, examination, or consultation:
  (i) For employees of the United States and their dependents, 1.00
  (ii) For all others, 8.00

SEC. 2. *Delegation.* (a) [Superseded by Ex. Ord. No. 11230, § 2(12), June 28, 1965, 30 F.R. 8447].

(b) The provisions of Section 1 of this order shall be subject to amendment, supersedure, or revocation, in whole or in part and at any time or times after the effective date of this order, under authority of Section 1(w) of Executive Order No. 10530 (as added by Section 2(a) of this order).

SEC. 3. *Revocation.* Executive Order No. 9411 of December 23, 1943, is hereby revoked.

SEC. 4. *Effective date.* The provisions of this order shall become effective on January 1, 1964.

JOHN F. KENNEDY

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35 of this title.

§ 35. Limitation of medical, surgical or hospital services.

Hospitalization of the dependents of naval and Marine Corps personnel and of the persons outside the naval service mentioned in section 34 of this title shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to in-patient hospital care and shall not include dental prosthesis or orthodontia. (May 10, 1943, ch. 95, § 5, 57 Stat. 81.)

PARTIAL REPEAL

Act June 7, 1956, ch. 374, § 306 (2), 70 Stat. 254, repealed section except insofar as it relates to persons outside the Naval Service mentioned in section 34 of this title. See Effective Date of Partial Repeal note under this section.

EFFECTIVE DATE OF PARTIAL REPEAL

Partial repeal of this section by act June 7, 1956, effective six months after June 7, 1956, see section 307 of act June 7, 1956. See Partial Repeal note under this section.

§ 36. Repealed. June 7, 1956, ch. 374, § 306 (2), 70 Stat. 254.

Section, act May 10, 1943, ch. 95, § 6, 57 Stat. 41, made sections 32—36 of this title applicable to dependents of personnel of the Coast Guard.

EFFECTIVE DATE OF REPEAL

Repeal of this section by act June 7, 1956, effective six months after June 7, 1956.

§ 37. Manufacture of products by patients at naval hospitals; ownership of products.

The Secretary of the Navy is authorized to furnish materials for the manufacture or production by patients of products incident to the convalescence and rehabilitation of such patients in naval hospitals and other naval medical facilities, and ownership thereof shall be vested in the patients manufacturing or producing such products, except that the ownership of items manufactured or produced specifically for the use of a naval hospital or other naval medical facility shall be vested in the Government and such items shall be accounted for and disposed of accordingly. (Aug. 2, 1946, ch. 756, § 27, 60 Stat. 856.)

DELEGATION OF POWERS AND AUTHORITY

Section 39 of act Aug. 2, 1946, authorized the Secretary of the Navy to delegate to such persons in the Naval Establishment and to such extent as he may deem proper, with or without authority to make successive redelegations, the authority conferred upon the Secretary by this section, except the authority to prescribe regulations. Such section 39 was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, less its applicability to this section and section 21a of this title.

Chapter 2.—THE SOLDIERS' HOME

Sec.
41. Board of commissioners; composition.
42. Report of president.
43. Officers.
44. Funds.
44a. Same; deductions from pay of enlisted men and warrant officers.
45. Donations.
46. Deposit of funds; interest; principal.
46a. Deposit of interest on funds; when expendable.
46b. Laws governing administration of funds appropriated from Permanent Fund.
47. Custodian of funds; transfer of funds for outdoor relief.
48. Borrowing money on credit of home.
49. Persons entitled to membership in and benefits of home.
50. Persons excluded.
51. Rights of pensioners and surrender of pensions.
52. Allotment of pensions.
53. Discharge.
54. Inmates subject to Articles of War.
55. Uniform for inmates.
56. Outdoor relief to persons entitled to admission.
57. Limitation of expenditures; purchase of supplies.
58. Repealed.
59. Annual report of board; transmission to Congress.
60. Inspection report.

CROSS REFERENCES

Delivery of unclaimed property to Soldiers' Home by Secretaries of Army or Air Force, see section 2575 of Title 10, Armed Forces.

Saint Elizabeth Hospital, admission of insane inmates of Soldiers' Home to, see section 194 of this title.

§ 41. Board of commissioners; composition.

The Surgeon General, The Adjutant General, the Quartermaster General, the Chief of Engineers, the Judge Advocate General, the Chief of Finance, and the Governor of the Soldiers' Home shall constitute a board of commissioners for the Soldiers' Home, and the senior in rank of the members thereof shall be the president of said board of commissioners any four of whom shall be a quorum for the transaction

of business, whose duty it shall be to examine and audit the accounts of the treasurer quarter-yearly, and to visit and inspect the Soldiers' Home at least once in every month. The majority shall also have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of the Army for approval; and may do any other acts necessary for the Government and interests of the same, as authorized by this chapter. (R. S. § 4815; Mar. 3, 1883, ch. 130, § 10, 22 Stat. 565; Mar. 4, 1909, ch. 299, § 1, 35 Stat. 1004; May 11, 1926, ch. 285, 44 Stat. 499.)

DERIVATION

Acts Mar. 3, 1851, ch. 25, § 1, 9 Stat. 595; Mar. 3, 1859, ch. 83, § 4, 11 Stat. 434.

REFERENCES IN TEXT

In the original "this chapter" refers to chapter two of Title LIX of the Revised Statutes. Said chapter two was incorporated into the Code as sections 41—44, 45, 49—51, and 53 of this title.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain membership functions, insofar as they pertain to the Air Force, which functions were not previously transferred from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order No. 40 [App. C(3)], July 22, 1949.

LEASE OF SITES TO THE UNITED STATES FOR CONSTRUCTION OF OFFICE BUILDINGS

Act Dec. 17, 1941, ch. 591, title III, 55 Stat. 821, authorized the Board of Commissioners of the United States Soldiers' Home to lease to the United States, for a period of ten years and upon the payment of a rental, a site or sites upon which may be erected some of the buildings herein authorized (general office buildings).

§ 42. Report of president.

The president of the board of commissioners shall submit annually to the Secretary of the Army, for transmission to Congress, a full statement of the financial and other affairs of the home for the preceding fiscal year. (Mar. 4, 1909, ch. 299, § 1, 35 Stat. 1004; May 11, 1926, ch. 285, 44 Stat. 499.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(48)], July 22, 1949.

§ 43. Officers.

The officers of the Soldiers' Home shall consist of a governor, a deputy governor, and a secretary, for each separate site of the home, the latter to be also treasurer; and the officers shall be taken from the Army, and appointed or removed, from time to time, as the interests of the institution may require. The governor and all other officers of the home shall be selected by the President of the United States, and the treasurer of the home shall be required to give a bond in the penal sum of $20,000 for the faithful performance of his duty. (R. S. § 4816; Mar. 3, 1883, ch. 130, § 7, 22 Stat. 565.)

DERIVATION

Act Mar. 3, 1851, ch. 25, § 3, 9 Stat. 595.

§ 44. Funds.

For the support of the Soldiers' Home the following funds are set apart and appropriated: All stoppages or fines adjudged against soldiers by sentence of courts martial, over and above any amount that may be due for the reimbursement of Government, or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which may be unclaimed for the period of three years subsequent to the death of such soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased. (R. S. § 4818.)

DERIVATION

Acts Mar. 3, 1851, ch. 25, § 7, 9 Stat. 596; July 5, 1862, ch. 133, § 2, 12 Stat. 508.

CROSS REFERENCES

Funds of Soldiers' Home to be held in trust, see section 725s(a)(59) of Title 31, Money and Finance.

§ 44a. Same; deductions from pay of enlisted men and warrant officers.

Beginning with March, 1936, there shall be deducted each month from the pay of each enlisted man and warrant officer on the active list of the Regular Army, exclusive of the Philippine Scouts, a sum not to exceed 25 cents, which sum shall be passed to the credit of the permanent fund, United States Soldiers Home (trust fund) in the Treasury of the United States; the exact sum to be so deducted to be fixed from time to time by the Secretary of the Army, within the limit prescribed above, on the recommendation of the Board of Commissioners of said Home as to the amount required to meet the needs of the Home. (Feb. 13, 1936, ch. 66, 49 Stat. 1137.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions relating to finance and fiscal matters, insofar as they pertain to the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order No. 25 [§ 1bb], Oct. 14, 1958.

CROSS REFERENCES

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

§ 45. Donations.

The commissioners are authorized to receive all donations of money or property made by any person for the benefit of the institution, and hold the same for its sole and exclusive use. (R. S. § 4819; June 12, 1906, ch. 3078, 34 Stat. 242; May 11, 1908, ch. 163, 35 Stat. 110.)

DERIVATION

Acts Mar. 3, 1851, ch. 25, § 7, 9 Stat. 596; Mar. 3, 1859, ch. 83, § 7, 11 Stat. 434.

SURPLUS PROPERTY

The Civil Functions Appropriation Act, 1949, act June 25, 1948, ch. 655, § 1, 62 Stat. 1023, provided in part: "That any owning or disposal agency is authorized to transfer surplus property, other than real estate, to the Uniited States Soldiers' Home without reimbursement or transfer of funds."

Similar provisions were carried in the War Department Civil Appropriation Act, 1948, act July 31, 1947, ch. 411, § 1, 61 Stat. 691, and in the First Deficiency Appropriation Act, 1946, act Dec. 28, 1945, ch. 589, title I, 59 Stat. 641.

CROSS RFEFRENCES

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

§ 46. Deposit of funds; interest; principal.

All funds of the home not needed for current use, and not on March 3, 1883, invested in United States registered bonds, shall, as soon as received, or as soon as investments of that date can be converted into money without loss, be deposited in the Treasury of the United States to the credit of the home, as a permanent fund, and shall draw interest at the rate of 3 per centum per annum, which shall be paid quarterly to the treasurer of the home; and the proceeds of such registered bonds, as they are paid, shall be deposited in like manner. No part of the principal sum so deposited shall be withdrawn for use except upon a resolution of the board of commissioners stating the necessity and approved by the Secretary of the Army. (Mar. 3, 1883, ch. 130, § 8, 22 Stat. 565.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 40 [App. A (49)], July 22, 1949.

CROSS REFERENCES

Custody of funds of Soldiers' Home, see section 47 of this title.

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

§ 46a. Deposit of interest on funds; when expendable.

Effective July 1, 1935, interest earned pursuant to law on funds of the United States Soldiers' Home deposited in the Treasury of the United States shall be credited to the trust fund "Soldiers' Home, Permanent Fund", and shall not be expendable except in consequence of an appropriation made by Congress. (Apr. 9, 1935, ch. 54, title II, § 1, 49 Stat. 147.)

CROSS REFERENCES

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

§ 46b. Laws governing administration of funds appropriated from Permanent Fund.

Notwithstanding any other provisions of law, the administration, control, procurement, expenditure, accounting, audit, and methods thereof, of funds appropriated from the Soldiers' Home Permanent Fund (trust fund) shall be according to the laws governing and in effect prior to July 1, 1935, relating specifically to the United States Soldiers' Home, and in accordance with procedure followed prior to such date. (July 19, 1937, ch. 511, § 1, 50 Stat. 519.)

CROSS REFERENCES

Funds of Soldiers' Home to be held in trust, see section 725s (a) (59) of Title 31, Money and Finance.

§ 47. Custodian of funds; transfer of funds for outdoor relief.

The Treasurer of the United States is authorized and directed to receive and keep on deposit, subject to the checks or drafts of the treasurer of the Soldiers' Home in the District of Columbia, all funds which may be furnished the said treasurer of the Soldiers' Home or in any manner come into his possession for use in defraying the current expenses of maintaining the said Soldiers' Home, and, upon the request of said treasurer of the Soldiers' Home, there shall be transferred, from funds to his credit with the United States Treasurer, and placed to his credit with the designated depository of the United States in New York City, New York, such sums as he may require monthly or quarterly for payments on account of "outdoor relief" to members of said Soldiers' Home residing at a distance therefrom. (Jan. 16, 1891, ch. 74, 26 Stat. 719; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

CROSS REFERENCES

Deposit of interest on funds of Soldiers' Home, see section 46 of this title.

§ 48. Borrowing money on credit of home.

No officers of the home shall borrow any money on the credit of the home for any purpose, nor shall any pledge of any of its property or securities for any purpose be valid. (Mar. 3, 1883, ch. 130, § 9, 22 Stat. 565.)

§ 49. Persons entitled to membership in and benefits of home.

The following persons shall be members of the Soldiers' Home, and entitled to the rights and benefits conferred, in this chapter and no others:

First. Every soldier of the Army of the United States who has served, or may serve, honestly and faithfully twenty years in the same.

Second. Every soldier and every discharged soldier, whether regular or volunteer, who has suffered, or may suffer, by reason of disease or wounds

incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability was not occasioned by his own misconduct.

Third. The invalid and disabled soldiers, whether regulars or volunteers, of all wars. (R. S. §§ 4814, 4821.)

DERIVATION

R. S. § 4814 from act Mar. 3, 1851, ch. 25, § 1, 9 Stat. 595; act Mar. 3, 1859, ch. 83, §§ 5, 7, 11 Stat. 434.

R. S. § 4821, from act Mar. 3, 1851, ch. 25, § 4, 9 Stat. 596; act Mar. 3, 1859, ch. 83, § 5, 11 Stat, 434.

REFERENCES IN TEXT

In the oriignal "this chapter" refers to chapter two of Title LIX of the Revised Statutes. Said chapter two was incorporated into the Code as sections 41—44, 45, 49—51, and 53 of this title.

§ 50. Persons excluded.

The benefits of the Soldiers' Home shall not be extended to any soldier, in the regular or volunteer service, convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer, or habitual drunkard be received, without such evidence of subsequent service, good conduct, and reformation of character as is satisfactory to the commissioners. (R. S. § 4822.)

DERIVATION

Act Mar. 3, 1851, ch. 25, § 6, 9 Stat. 596.

§ 51. Rights of pensioners and surrender of pensions.

The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits. (R. S. § 4280.)

DERIVATION

Acts Mar. 3, 1851, ch. 25, § 5, 9 Stat. 596; Mar. 3, 1859, ch. 83, § 6, 11 Stat. 434.

§ 52. Allotment of pensions.

Any inmate of the home who is receiving a pension from the Government, and who has a child, wife, or parent living, shall be entitled, by filing with the Veterans' Administration a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all inmates of the home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the home. The money thus derived shall not become a part of the funds of the home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension money as they think best for his interest and consistent with the discipline and good order of the home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the home. In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the home. (Mar. 3, 1883, ch. 130, § 4, 22 Stat. 564; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 3, 1930, ch. 863, § 1 46 Stat. 1016.)

TRANSFER OF FUNCTIONS

"Veterans' Administration" was substituted for "Bureau of Pensions" in view of act July 3, 1930, ch. 863, § 1, 46 Stat. 1016, which consolidated the Bureau of Pensions, the National Home for Disabled Volunteer Soldiers, and the United States Veterans' Bureau into an establishment to be known as the "Veterans' Administration" Act July 3, 1930, was repealed by section 2202 (125) of Pub. L. 85-56, title XXII, June 17, 1957, 71 Stat. 163. Section 201 of Pub. L. 85-56 continued the Veterans' Administration as an independent establishment in the executive branch of the Government. See section 201 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23 of this title.

§ 53. Discharge.

Any soldier admitted into the Soldiers' Home for disability who recovers his health, so as to become fit again for military service, if under fifty years of age, shall be discharged. (R. S. § 4823.)

DERIVATION

Act Mar. 3, 1851, ch. 25, § 5, 9 Stat. 596.

§ 54. Inmates subject to Articles of War.

CODIFICATION

Section, R. S. § 4824, has been omitted as covered by the Uniform Code of Military Justice. See chapter 47 of Title 10, Armed Forces.

§ 55. Uniform for inmates.

A suitable uniform shall be furnished to every inmate of the home, without cost to him. (Mar. 3. 1883, ch. 130, § 5, 22 Stat. 565.)

§ 56. Outdoor relief to persons entitled to admission.

The board of commissioners are authorized to aid persons who are entitled to admission to the home, by outdoor relief, in such manner and to such an extent as they may deem proper; but such relief shall not exceed the average cost of maintaining an inmate of the home. (Mar. 3, 1883, ch. 130, § 6, 22 Stat. 565.)

§ 57. Limitation of expenditures; purchase of supplies.

No new building shall be erected or new grounds purchased, nor shall any expenditure of more than $5,000 be made, until the action of the board thereon shall be approved by the Secretary of the Army. All supplies that can be purchased upon contract shall be so purchased, after due notice by advertisement, of the lowest responsible bidder. Such bidder shall give bond, with proper security, for the performance of his contract. (Mar. 3, 1883, ch. 130, § 3, 22 Stat. 564.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which

in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 58. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

Section, acts June 4, 1897, ch. 2, § 1, 30 Stat. 54; June 28, 1950, ch. 383, title IV, § 402, (d), 64 Stat. 272, provided for the sale of medical and hospital supplies to the Soldiers' Home in the District of Columbia, and is now covered by sections 4624 and 9624 of Title 10, Armed Forces.

§ 59. Annual report of board; transmission to Congress.

The board of commissioners of the Soldiers' Home shall every report in writing to the Secretary of the Army, giving a full statement of all receipts and disbursements of money, of the manner in which the funds are invested, of any changes in the investments, and the reasons therefor, of all admissions and discharges, and generally of all facts that may be necessary to a full understanding of the condition and management of the home. The Secretary of the Army shall have power to call for and require any omitted facts which in his judgment should be stated to be added. This annual report shall be, by the Secretary of the Army, together with the report of the inspecting officer provided for in section 60 of this title, transmitted to Congress at the first session thereafter, and he shall also cause the same to be published in orders to the Army, a copy thereof to be deposited in each garrison and post library. (Mar. 3, 1883, ch. 130, § 1, 22 Stat. 564.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(50)], July 22, 1949.

§ 60. Inspection; report.

The Inspector General of the Army shall designate officers of the Inspector General's Department under his jurisdiction to inspect thoroughly, once each year, the United States Soldiers' Home, Washington, District of Columbia, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing to the Secretary of the Army, including in his report such suggestions as he desires to make. (Mar. 3, 1883, ch. 130, § 2, 22 Stat. 564; Jan. 27, 1948, ch. 35, 62 Stat. 5.)

AMENDMENTS

1948—Act Jan. 27, 1948, relieved the Inspector General of the Army from personally inspecting the Soldiers' Home.

SECRETARY OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(51)], July 22, 1949.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 59 of this title.

Chapter 3.—THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS

ESTABLISHMENT AND MANAGEMENT

Sec.
71 to 78. Repealed.
79. Jurisdiction over sites of branch homes ceded to States.
80 to 84. Repealed.

OFFICERS AND EMPLOYEES

91 to 96. Repealed.
97. Officers and employees; compensation; expenses; bonds.

FUNDS AND ACCOUNTS

111 to 123. Repealed.

BENEFICIARIES AND PENSIONS

131. Repealed.
131a, 131b. Omitted.
132 to 139. Repealed.

BATTLE MOUNTAIN SANITARIUM RESERVE

151. Battle Mountain Sanitarium Reserve; establishment; rights to lands, not affected.
152. Name; control, rules and regulations.
153. Perfecting bona fide claims to lands; exchange of private lands.
154. Unlawful intrusion, or violation of rules and regulations.

ESTABLISHMENT AND MANAGEMENT

§§ 71 to 77a. Repealed. Pub. L. 85-857, § 14 (1, 6, 9, 16, 35, 59), Sept. 2, 1958, 72 Stat. 1268, 1269, 1271, 1272.

Section 71, R. S. § 4825, related to the organization of the National Home for Disabled Volunteer Soldiers.

Section 72, act July 1, 1916, ch. 209, § 1, 39 Stat. 297, provided that the headquarters of the National Home for Disabled Volunteer Soldiers should be established and maintained at the National Military Home, Ohio.

Section 73, R. S. § 4826; act June 7, 1924, ch. 291, title II, 43 Stat. 518, provided for the election of civilian managers of the National Home for Disabled Volunteer Soldiers.

Acts Mar. 2, 1887, ch. 316, § 4, 24 Stat. 44; Mar. 3, 1891, No. 21, 26 Stat. 117; June 23, 1913, ch. 3, § 1, 38 Stat. 43; Oct. 19, 1914, No. 49, 38 Stat. 780, set out in a note under former section 73 of this title, which related to the number of citizen managers of the National Home for Disabled Volunteer Soldiers, were repealed by Pub. L. 85-857, § 14 (8), (13), (31), (33), Sept. 2, 1958, 72 Stat. 1269, 1270.

Section 74, R. S. § 4827; act June 7, 1924, ch. 291, title II, 43 Stat. 518, provided for the election of officers of the Board of Managers of the National Home for Disabled Volunteer Soldiers.

Section 75, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412, related to expenses and salaries of managers and officers of the National Home for Disabled Volunteer Soldiers.

Section 76, R. S. § 4834; acts Mar. 3, 1885, ch. 360, 23 Stat. 510; Mar. 3, 1887, ch. 362, 24 Stat. 539, prescribed the duties of the Board of Managers of the National Home for Disabled Volunteer Soldiers.

Section 77, R. S. § 4830, related to sites for military homes and to the purchase and erection of buildings.

Section 77a, act Feb. 20, 1929, ch. 272, § 1, 45 Stat. 1248, related to a site for a home at Dayton, Ohio.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 78. Repealed. Pub. L. 85-56, title XXII, § 2202 (58), June 17, 1957, 71 Stat. 164, eff. Jan. 1, 1958.

Section, act July 19, 1897, ch. 1, 30 Stat. 121, authorized the Board of Managers of the National Home for Disabled

Volunteer Soldiers to condemn land for domiciliary purposes.

§ 79. Jurisdiction over sites of branch homes ceded to States.

CODIFICATION

Section, act Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1175, ceded jurisdiction over certain property in the States of Wisconsin and Kansas to the respective States.

§§ 80 to 82. Repealed. Pub L. 85-857, § 14 (3, 18, 19), Sept. 2, 1958, 72 Stat. 1268, 1270.

Section 80, act Mar. 3, 1879, ch. 182, § 1, 20 Stat. 390, related to the purchase of supplies and expenditures for new buildings.

Section 81, act July 1, 1898, ch. 546, § 1, 30 Stat. 640, related to the purchase, shipment, and distribution of supplies for the National Home for Disabled Volunteer Soldiers.

Section 82, act June 11, 1896, ch. 420, § 1, 29 Stat. 445, authorized the sale of medical and hospital supplies by the Medical Department of the Army to the National Home for Disabled Volunteer Soldiers.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 83. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

Section, acts Feb. 8, 1889, ch. 116, 25 Stat. 657; May 26, 1900, ch. 586, 31 Stat. 216, which authorized the issuance of obsolete cannon or ordnance. See sections 4686 and 9686 of Title 10, Armed Forces.

§ 84. Repealed. Pub. L. 85-857, § 14 (16), Sept. 2, 1958, 72 Stat. 1269.

Section, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412, related to an annual inspection of the National Home for Disabled Volunteer Soldiers.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

OFFICERS AND EMPLOYEES

§ 91. Repealed. Pub. L. 85-857, § 14 (1), Sept. 2, 1958, 72 Stat. 1268.

Section, R. S. § 4829; acts Apr. 11, 1892, ch. 40, 27 Stat. 15; Feb. 9, 1897, ch. 205, 29 Stat. 517, provided for the officers of the National Home for Disabled Volunteer Soldiers.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 92. Repealed. Pub. L. 85-56, title XXII, § 2202 (66), June 17, 1957, 71 Stat. 162, eff. Jan. 1, 1958.

Section, act June 28, 1902, ch. 1301, § 1, 32 Stat. 472, prescribed the qualifications of officers of the National Home for Disabled Volunteer Soldiers, and officers under the Board of Managers thereof.

§§ 93 to 96. Repealed. Pub. L. 85-857, § 14 (16, 23, 25), Sept. 2, 1958, 72 Stat. 1269, 1270.

Section 93, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412, required the classification and provided for the compensation of officers and employees of the National Home for Disabled Volunteer Soldiers.

Section 94, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412, related to bonds of general treasurer and treasurers of branch homes.

Section 95, act June 6, 1900, ch. 791, § 1, 31 Stat. 636, related to the performance of the duties of the general treasurer by the assistant general treasurer and assistant inspector general.

Act July 1, 1898, ch. 546, 30 Stat. 597, set out as a note under former section 95 of this title, which authorized the appointment of a clerk to perform the duties of general treasurer in his absence, was repealed by Pub. L. 85-857, § 14 (20), Sept. 2, 1958, 72 Stat. 1270.

Section 96, act Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1178, provided for the designation of an officer to act in the absence of the treasurer or quartermaster at any of the branch homes of the National Home for Disabled Volunteer Soldiers.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 97. Officers and employees; compensation; expenses; bonds.

CODIFICATION

Section, act Mar. 3, 1887, ch. 362, 24 Stat. 540, was omitted since the National Home for Disabled Volunteer Soldiers was dissolved.

FUNDS AND ACCOUNTS

§§ 111 to 123. Repealed. Pub. L. 85-857, § 14 (1, 2, 7, 9, 14—16, 22, 25, 27, 34, 46), Sept. 2, 1958, 72 Stat. 1268-1271.

Section 111, R. S. § 4831; act Mar. 3, 1875, ch. 129, § 1, 18 Stat. 359, authorized the Board of Managers of the National Home for Disabled Volunteer Soldiers to receive donations of money or property.

Section 112, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 412, related to receipts from sales of subsistence stores or other property of the National Home for Disabled Volunteer Soldiers.

Section 113, act Mar. 2, 1923, ch. 178, title II, 42 Stat. 1424, related to the use of moneys alloted for the support of World War veterans.

Acts June 30, 1922, ch. 253, title II, 42 Stat. 763; Mar. 2, 1923, ch. 178, title II, 42 Stat. 1424, set out in notes under former section 113 of this title, which related to use of moneys alloted for the support of World War veterans, were repealed by Pub. L. 85-857, § 14 (44), (46), Sept. 2, 1958, 72 Stat. 1271.

Section 114, act June 6, 1900, ch. 785, § 1, 31 Stat. 294, related to availability of appropriations for the construction of buildings at any of the branches of the National Home for Disabled Volunteer Soldiers.

Section 115, act Mar. 3, 1903, ch. 1007, § 1, 32 Stat. 1137, related to availability of appropriations for branch homes of the National Home for Disabled Volunteer Soldiers.

Section 116, act Mar. 3, 1915, ch. 75, § 1, 38 Stat. 850, prohibited the use of appropriations for repairs for the construction of new buildings.

Section 117, act July 9, 1886, ch. 756, § 2, 24 Stat. 129, related to security for deposits of moneys pertaining to the National Home for Disabled Volunteer Soldiers.

Section 118, act Mar. 3, 1893, ch. 210, § 1, 27 Stat. 653, related to supervision of accounts of the volunteer soldiers' homes.

Section 119, act Aug. 18, 1894, ch. 301, § 1, 28 Stat. 411, related to disbursements, accounts, supplies and to the posthumous fund.

Section 120, acts Mar. 3, 1887, ch. 362, 24 Stat. 539; June 10, 1921, ch. 18, § 304, 42 Stat. 24, related to expenditures of the National Home for Disabled Volunteer Soldiers.

Section 121, acts Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1178; June 10, 1921, ch. 18, § 304, 42 Stat. 24, related to the auditing and settlement of accounts of the National Home for Disabled Volunteer Soldiers.

Section 122, act Mar. 3, 1875, ch. 129, § 1, 18 Stat. 359, related to the employment of clerks, appropriations, estimates, requisitions, and accounts of the National Home for Disabled Volunteer Soldiers.

Section 123, acts Aug. 5, 1892, ch. 380, § 1, 27 Stat. 384; June 10, 1921, ch. 18, § 304, 42 Stat. 24, required the statement of expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers, to be included in the annual budget.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

BENEFICIARIES AND PENSIONS

§ 131. Repealed. Pub. L. 85–857, § 14 (49), Sept. 2, 1958, 72 Stat. 1271.

Section, acts June 7, 1924, ch. 291, title II, 43 Stat. 519; Mar. 26, 1928, ch. 245, 45 Stat. 366, enumerated the persons who were entitled to the benefits of the National Home for Disabled Volunteer Soldiers.

Section 14 (49) (A) of Pub. L. 85–857, provided in part that the amendment to the act of June 7, 1924, by act March 26, 1928, was solely an amendment to the paragraph which began "The following persons" on page 519 of volume 43 of the United States Statutes at Large, which paragraph was classified to former section 131 of this title.

Acts May 26, 1900, ch. 586, 31 Stat. 217; Jan. 28, 1901, ch. 184, § 5, 51 Stat. 745; May 27, 1908, ch. 200, § 1, 35 Stat. 372; Mar. 4, 1909, ch. 209, § 1, 35 Stat. 212; Mar. 3, 1915, ch. 75, § 1, 38 Stat. 853; Oct. 6, 1917, ch. 79, § 1, 40 Stat. 368; June 5, 1920, ch. 235, § 1, 41 Stat. 905, set out in notes under former section 131 of this title, were repealed by Pub. L. 85–857, § 14 (21), (24), (30), (34), (36), (41), Sept. 2, 1958, 72 Stat. 1270, 1271.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§§ 131a, 131b. Omitted.

CODIFICATION

Sections, acts Mar. 4, 1927, ch. 504 § 2, 44 Stat. 1421; Feb. 20, 1929, ch. 272, § 2, 45 Stat. 1238, which related to persons entitled to the benefits of the National Home for Disabled Volunteer Soldiers, has been omitted from the Code, since the Home was dissolved.

§ 132. Repealed. Pub. L. 85–56, title XXII, § 2202 (100), June 17, 1957, 71 Stat. 166, eff. Jan. 1, 1958.

Section, act June 5, 1920, ch. 235, § 1, 41 Stat. 905, authorized the Board of Managers of the National Home for Disabled Volunteer Soldiers to make rules governing assignment of classes eligible for domiciliary care.

§§ 133 to 135. Repealed. Pub. L. 85–857, § 14 (1, 10, 12, 50, 52, 64), Sept. 2, 1958, 72 Stat. 1268, 1269, 1271, 1272.

Section 133, R. S. § 4833; acts Aug. 23, 1894, ch. 316, § 1, 28 Stat. 492; May 29, 1928, ch. 901, § 1 (123), 45 Stat. 995, authorized the Board of Managers of the National Home for Disabled Volunteer Soldiers to aid persons by outdoor relief, and provided for transfers from branch homes.

Section 134, acts Aug. 27, 1888, ch. 914, § 1, 25 Stat. 450; Mar. 2, 1889, ch. 411, 25 Stat. 975; Jan. 27, 1920, ch. 56, 41 Stat. 399; Feb. 12, 1925, ch. 225, 43 Stat. 933; Apr. 15, 1926, ch. 146, 44 Stat. 294; Feb. 23, 1927, ch. 167, 44 Stat. 1145; Dec. 22, 1927, ch. 5, § 1, 45 Stat. 39; Mar. 23, 1928, ch. 232, § 1, 45 Stat. 363; Feb. 28, 1929, ch. 366, 45 Stat. 1385; May 28, 1930, ch. 348, 46 Stat. 466; July 3, 1930, ch. 863, § 2, 46 Stat. 1016; Feb. 23, 1931, ch. 281, § 1, 46 Stat. 1375; June 30, 1932, ch. 330, § 1, 47 Stat. 472; Aug. 1, 1939, ch. 408, § 1, 53 Stat. 1145; Dec. 17, 1943, ch. 347, § 1, 57 Stat. 603; May 18, 1948, ch. 299, § 1, 62 Stat. 237; Sept. 23, 1950, ch. 1003, 64 Stat. 981; Aug. 21, 1954, ch. 782, § 1, 68 Stat. 757, related to aid to State or Territorial homes for disabled soldiers and sailors of the United States.

Acts Aug. 1, 1939, ch. 408, § 2, 53 Stat. 1145; Dec. 17, 1943, ch. 347, § 2, 57 Stat. 603; May 18, 1948, ch. 299, § 2, 62 Stat. 237; Aug. 21, 1954, ch. 782, § 2, 68 Stat. 757, set out in a note under former section 134 of this title, were repealed by Pub. L. 85–857, § 14 (74), (85), (95), (106), Sept. 2, 1958, 72 Stat. 1272, 1273.

Section 135, act June 7, 1924, ch. 295, § 2, 43 Stat. 534, enumerated persons entitled to admission to the hospital erected at the Pacific branch of the National Home for Disabled Volunteer Soldiers.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 136. Repealed. Pub. L. 85–56, title XXII, § 2202 (1), (85), June 17, 1957, 71 Stat. 162, 165, eff. Jan. 1, 1958.

Section, acts June 25, 1910, ch. 384, §§ 1–11, 36 Stat. 736; Dec. 26, 1941, ch. 634, 55 Stat. 868, related to disposition of deceased veterans' personal property. See section 5220 et seq. of Title 38, Veterans' Benefits.

§ 137. Repealed. July 3, 1930, ch. 863, § 7, 46 Stat. 1018.

Section, R. S. § 4835, related to application of Articles of War to inmates of National Home for Disabled Volunteer Soldiers.

§§ 138, 139. Repealed. Pub. L. 85–857, § 14 (4, 5, 26), Sept. 2, 1958, 72 Stat. 1269, 1270.

Section 138, acts Feb. 26, 1881, ch. 80, § 2, 21 Stat. 350; Aug. 7, 1882, ch. 433, § 1, 22 Stat. 322; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312, related to the payment of pensions of inmates of the National Home for Disabled Volunteer Soldiers.

Section 139, act July 1, 1902, ch. 1351, § 1, 32 Stat. 564, related to the disposition of balance of pension money due deceased inmates of the National Home for Disabled Volunteer Soldiers.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

BATTLE MOUNTAIN SANITARIUM RESERVE

§ 151. Battle Mountain Sanitarium Reserve; establishment; rights to lands, not affected.

There are reserved from settlement, entry, sale, or other disposal all those certain tracts, pieces, or parcels of land lying and being situate in the State of South Dakota and within the boundaries particularly described as follows: Beginning at the southwest corner of section 18, township 7 south, range 6 east, Black Hills meridian; thence east to the southeast corner of said section 18; thence south to the southwest corner of the northwest quarter of section 20; thence east to the southeast corner of the northeast quarter of section 21; thence north to the northeast corner of the southeast quarter of section 9; thence west to the center of section 7; thence south to the southwest corner of the southeast quarter of section 7; thence west to the northwest corner of section 18; thence south to the place of beginning, all in township 7 south, range 6 east, Black Hills meridian, in Fall River County, South Dakota: *Provided,* That nothing herein contained shall be construed to affect any valid rights acquired in connection with any of the lands embraced within the limits of said reserve. (Mar. 22, 1906, ch. 1127, § 2, 34 Stat. 83.)

§ 152. Name; control, rules and regulations.

Said reserve shall be known as the Battle Mountain Sanitarium Reserve, and shall be under the exclusive control of the Administrator of Veterans' Affairs in connection with the Battle Mountain Sanitarium at Hot Springs, South Dakota, whose duty it shall be to prescribe such rules and regulations and establish such service as he may deem necessary for the care and management of the same. (Mar. 22, 1906, ch. 1127, § 2, 34 Stat. 83; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

TRANSFER OF FUNCTIONS

"Administrator of Veterans' Affairs" was substituted for "Board of Managers of the National Home for Disabled Volunteer Soldiers" in view of act July 3, 1930. See note under section 52 of this title.

§ 153. Perfecting bona fide claims to lands; exchange of private lands.

In all cases of unperfected bona fide claims lying within the said boundaries of said reserve, which claims have been properly initiated prior to September 2, 1902, said claims may be perfected upon compliance with the requirements of the laws respecting settlement, residence, improvements, and so forth, in the same manner in all respects as claims are perfected to other Government lands: *Provided,* That to the extent that the lands within said reserve are held in private ownership the Secretary of the Interior is authorized in his discretion to exchange therefor public lands of like area and value, which are surveyed, vacant, unappropriated, not mineral, not timbered, and not required for reservoir sites or other public uses or purposes. The private owners must, at their expense and by appropriate instruments of conveyance, surrender to the Government a full and unencumbered right and title to the private lands included in any exchange before patents are issued for or any rights attached to the public lands included therein, and no charge of any kind shall be made for issuing such patents. Upon completion of any exchange the lands surrendered to the Government shall become a part of said reserve in a like manner as if they had been public lands at the time of the establishment of said reserve. Nothing contained in this section shall be construed to authorize the issuance of any land scrip, and the State of South Dakota is granted the privilege of selecting from the public lands in said State an equal quantity of land in lieu of such portions of section sixteen included within said reserve as have not been sold or disposed of by said State and are not covered by an unperfected bona fide claim as above mentioned. (Mar. 22, 1906, ch. 1127, § 3, 34 Stat. 83.)

§ 154. Unlawful intrusion, or violation of rules and regulations.

All persons who shall unlawfully intrude upon said reserve, or who shall without permission appropriate any object therein or commit unauthorized injury or waste in any form whatever upon the lands or other public property therein, or who shall violate any of the rules and regulations prescribed hereunder, shall, upon conviction, be fined in a sum not more than $1,000, or be imprisoned for a period not more than twelve months, or shall suffer both fine and imprisonment, in the discretion of the court. (Mar. 22, 1906, ch. 1127, § 4, 34 Stat. 83.)

Chapter 4.—SAINT ELIZABETHS HOSPITAL

ESTABLISHMENT AND MANAGEMENT; PENSIONS, MONEYS, AND APPROPRIATIONS

Sec.
161. Establishment.
162, 163 Repealed.
164. Powers and duties of Board of Visitors.
165. Superintendent; disbursing agent; pension money of inmates.
166. Deputy disbursing agent; appointment; bond; powers.
167. Repealed.
168. Readjustment of salaries; credit to accounts of disbursing agent.
168a. Payment by executive departments for care of patients for whom responsible.
169. Disposition of money paid for care of patients.
169a. Facilities for feeding employees and others; disposition of proceeds.
170. Disbursement of appropriations for insane.
171. Determining per capita cost of patients.
172. Sale of surplus products and waste materials.
173, 174. Repealed.
175. Telephone system.
176. Disposition of articles made by patients.
177. Disposition of moneys belonging to deceased inmates; claims thereto.
178, 179. Repealed.
180. American Red Cross buildings on hospital reservation.
181. Gifts; acceptance by Secretary of Health, Education, and Welfare.
182. Same; money; deposit, investment, and expenditure of income.
183. Same; intangible personalty; deposit, liquidation, and expenditure of income.
184. Same; realty or tangible personalty; use, lease, liquidation, etc.
185. Appropriations, availability for various expenditures.

INMATES; BURDEN OF EXPENSES THEREOF; DETENTION OF INSANE

191. Admission; insane persons of Army, Navy, Air Force, Marine Corps, and Coast Guard.
191a. Repealed.
192. Admission; insane prisoners of war and interned persons.
193. Repealed.
194. Admission; insane inmates of Soldiers' Home.
195. Same; insane inmates of National Home for Disabled Volunteer Soldiers.
195a. Same; beneficiaries of Bureau of Indian Affairs.
196. Transfer of American citizens adjudged insane in Canal Zone.
196a. Repealed.
196b. Transfer of persons adjudged insane in Virgin Islands.
197. Contracts for care, maintenance, and treatment of insane members of Army.
198. Care of insane natives of Philippine Islands serving in Army.
199. Transfer of insane from military hospitals to nearest public hospitals.
200. Transfer of part of appropriations to public hospitals for support of patients.
201—207. Omitted.
208 to 210h. Repealed.
211. Admission of insane persons accused of crime.
211a. Admission of insane convicts.
211b. Insane persons accused of crime; delivery to court on restoration to sanity.
212. Transfer of insane convicts.
213. Accommodation of insane convict in State asylums; compensation.
214. Return to prison on restoration to sanity.
215—220. Omitted.
221. Discharge of patients on bond.
222. Insane persons not to be confined in jail.

ESTABLISHMENT AND MANAGEMENT; PENSIONS, MONEYS, AND APPROPRIATIONS

§ 161. Establishment.

There shall be in the District of Columbia a Government hospital for the insane, which shall be known and designated as Saint Elizabeths Hospital, and its objects shall be the most humane care and enlightened curative treatment of the insane of the District of Columbia. (R. S. § 4838; July 1, 1916, ch.

209, § 1, 39 Stat. 309; 1946 Reorg. Plan No. 3, § 201, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1098.)

DERIVATION

Act Mar. 3, 1855, ch. 199, § 1, 10 Stat. 682.

CODIFICATION

Reference to the insane of the Army and Navy of the United States was superseded by 1946 Reorg. Plan No. 3, which transferred the functions of the hospital relating to such persons to the Secretary of War [Army] and the Secretary of the Navy. See note under section 191 of this title.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Saint Elizabeths Hospital in Department of Interior and its functions were transferred to Federal Security Agency, to be administered under direction and supervision of Federal Security Administrator; annual report required to be submitted to Congress by superintendent of the Hospital was directed to be submitted through Federal Security Administrator; and annual report required to be furnished to Secretary of Interior by Board of Visitors was directed to be furnished to Federal Security Administrator, by 1940 Reorg. Plan No. IV, § 11 (a) eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236, set out in the Appendix to Title 5. See, also, sections 13—15 of that plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

§§ 162, 163. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

Sections, R. S. §§ 4840, 4841; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to appointment of a Board of Visitors for St. Elizabeths Hospital, and for the selection of a president of the Board.

§ 164. Powers and duties of Board of Visitors.

CODIFICATION

Section R. S. § 4842; July 1, 1916, ch. 209, § 1, 39 Stat. 309; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1236, along with former sections 162 and 163 of this title, provided for the appointment, powers and duties of the Board of Visitors of Saint Elizabeths Hospital. This Board of Visitors and its functions were abolished by 1946 Reorg. Plan No. 2, § 9, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1096, set out in the Appendix to Title 5, Government Organization and Employees.

§ 165. Superintendent; disbursing agent; pension money of inmates.

The chief executive officer of Saint Elizabeths Hospital shall be a superintendent, who shall be appointed by the Secretary of Health, Education, and Welfare, and shall give bond for the faithful performance of his duties in such sum and with such securities as may be required by the Secretary of Health, Education, and Welfare. The superintendent shall be a well-educated physician, possessing competent experience in the care and treatment of the insane; he shall reside on the premises and devote his whole time to the welfare of the institution; he shall, subject to the approval of the Secretary of Health, Education, and Welfare, appoint a responsible disbursing agent for the institution, who shall give a bond satisfactory to the Secretary of Health, Education, and Welfare, and the said superintendent shall engage and discharge all needful and useful employees in the care of the insane and all laborers on the farm and determine their wages and duties. The said disbursing agent, under the direction of the superintendent, shall have the custody of and pay out all moneys appropriated by Congress for Saint Elizabeths Hospital, or otherwise received for the purposes of the hospital, and all moneys received by the superintendent in behalf of the hospital or its patients, and keep an accurate account or accounts thereof. The said disbursing agent shall deposit in the Treasury of the United States, under the direction of the superintendent, all funds which may be intrusted to the latter by or for the use of patients, which shall be kept in a separate account; and the said disbursing agent is authorized to draw therefrom, under the direction of the said superintendent, from time to time, under such regulations as the Secretary of Health, Education, and Welfare may prescribe, for the use of such patients, but not to exceed for any one patient the amount intrusted to the superintendent on account of such patient. During the time that any pensioner shall be an inmate of Saint Elizabeths Hospital all money due or becoming due upon his or her pension shall be paid by the Veterans' Administration to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or disbursing agent disbursed and used, under regulations to be prescribed by the Secretary of Health, Education, and Welfare, for the benefit of the pensioner, and, in case of a male pensioner, his wife, minor children, and dependent parents, or, if a female pensioner, her minor children, if any, in the order named, and to pay his or her board and maintenance in the hospital, the remainder of such pension money, if any, to be placed to the credit of the pensioner and to be paid to the pensioner or the guardian of the pensioner in the event of his or her discharge from the hospital; or, in the event of the death of said pensioner while an inmate of said hospital, shall, if a female pensioner, be paid to her minor children, and, in the case of a male pensioner, be paid to his wife, if living; if no wife survives him, then to his minor children; and in case there is no wife nor minor children, then the said unexpended balance to his or her credit shall be applied to the general uses of said hospital: *Provided,* That in the case of any pensioner transferred to the hospital from the National Home for Disabled Volunteer Soldiers any pension money to his credit at said home at the time of his said transfer shall be transferred with him to said hospital and placed to his credit therein, to be expended as provided in this section, and in case of his return from said hospital to the home any balance to his credit at said hospital shall in like manner be transferred to said home, to be expended in accordance with the rules established in regard thereto. (R. S. § 4839; Feb. 2, 1909, ch. 58, § 1, 35 Stat. 592; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1422; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 1, 1916, ch. 209, § 1, 39 Stat. 309; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1946 Reorg. Plan No. 2, § 9, eff. July 16, 1946, 11 F. R. 7875, 60 Stat.

1096; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

DERIVATION

Act Mar. 3, 1855, ch. 199, § 3, 10 Stat. 682.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Reference to the Board of Visitors was omitted by 1946 Reorg. Plan No. 2, set out in the Appendix to Title 5, Government Organization and Employees, which abolished the Board of Visitors and its functions.

Disbursement functions of all Government agencies except Department of the Army and Navy Department and the Panama Canal were transferred to Division of Disbursements, Treasury Department, by Executive Order No. 6166, § 4, June 10, 1933, and Executive Order No. 6728, May 29, 1934. The Division was consolidated with other agencies into one agency in the Treasury Department known as the Fiscal Service by 1940 Reorg. Plan No. III, § 1 (a), eff. June 30, 1940, 5 F. R. 2107, 54 Stat. 1231.

DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, § 1, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note under section 52 of this title.

CROSS REFERENCES

Pension money and personal funds of patients, Saint Elizabeths Hospital, to be held in Treasury as trust funds, see section 725s(a) (15, 16) of Title 31, Money and Finance.

§ 166. Deputy disbursing agent; appointment; bond; powers.

Authority is granted to appoint a deputy disbursing agent who shall give a bond satisfactory to the Secretary of Health, Education, and Welfare, and who shall have the same power as the disbursing agent during the absence of that officer. (June 5, 1920, ch. 235, § 1, 41 Stat. 920; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

§ 167. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

Section, act July 19, 1919, ch. 24, § 1, 41 Stat. 205, authorized the Secretary of the Interior to adjust the compensation of officers and employees of Saint Elizabeths Hospital.

§ 168. Readjustment of salaries; credit to accounts of disbursing agent.

The General Accounting Office is authorized to credit the accounts of the special disbursing agent of Saint Elizabeths Hospital with such amounts as he may pay in carrying out the provision of section 167 of this title relating to the readjustment of salaries at the hospital, and the schedule of salaries and allowances for maintenance, where the latter is not provided by the hospital, approved by the Secretary of the Interior August 1 and November 25, 1919, respectively, or as may be modified by the Secretary of Health, Education, and Welfare, notwithstanding the provisions of sections 55 and 74 of Title 5 or section 165 of this title. (Mar. 6, 1920, ch. 94, § 1, 41 Stat. 513; June 10, 1921, ch. 18, § 304, 42 Stat. 24; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

Sections 55 and 74 of Title 5, referred to in the text, were omitted from the Code as superseded. See sections 3109, 5701, 5702, and 5707 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

§ 168a. Payment by executive departments for care of patients for whom responsible.

Any executive department of the Federal Government (including any agency, independent establishment, or wholly owned instrumentality thereof, and including the District of Columbia) requiring Saint Elizabeths Hospital to care for patients for whom such department is responsible, shall, except to the extent that the expense of such care is authorized to be paid from appropriations to the hospital for the care of patients, pay by check to Saint Elizabeths Hospital, upon the Superintendent's request, either in advance or by way of reimbursement at the end of each calendar month or calendar quarter, such amounts as the Superintendent calculates to be due for such care on the basis of a per diem rate approved by the Bureau of the Budget. Bills rendered by the Superintendent on the basis of such calculations shall not be subject to audit or certification in advance of payment; but proper adjustment of amounts which have been paid in advance on the basis of such calculations shall be made monthly or quarterly, as may be agreed upon by the Superintendent of the hospital and the executive department concerned. (Aug. 4, 1947, ch. 478, § 2, 61 Stat. 751.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and

Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of said 1953 Reorg. Plan No. 1.

OFFICE OF MANAGEMENT AND BUDGET

The Bureau of the Budget was designated as the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

§ 169. Disposition of money paid for care of patients.

All sums paid to the Superintendent of Saint Elizabeths Hospital for the care of patients shall be deposited in the Treasury to the credit of the appropriation for the care of patients at the hospital for the year in which such care is provided. (Aug. 4, 1947, ch. 478, § 3, 61 Stat. 751.)

CODIFICATION

Section is also set out in District of Columbia Code, § 32-403.

TRANSFER OF FUNCTIONS

All functions of the Federal Securiy Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of said 1953 Reorg. Plan No. 1.

Saint Elizabeths Hospitals in Department of Interior and its functions, transfer to Federal Security Agency to be administered under direction and supervision of Federal Security Administrator, see note under section 161 of this title.

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

SIMILAR PROVISIONS

Similar provisions were contained in the following acts:
1947—July 8, 1947, ch. 210, title II, § 201, 61 Stat. 272.
1946—July 26, 1946, ch. 672, title II, § 201, 60 Stat. 293.
1945—July 3, 1945, ch. 263, title II, 59 Stat. 372.
1944—June 28, 1944, ch. 302, title II, 58 Stat. 561.
1943—July 12, 1943, ch. 221, title II, 57 Stat. 509.
1942—July 2, 1942, ch. 475, title II, 56 Stat. 585.
1941—July 1, 1941, ch. 269, title II, 55 Stat. 493.
1940—June 18, 1940, ch. 395, § 1, 54 Stat. 460.
1939—May 10, 1939, ch. 119, § 1, 53 Stat. 737.
1938—May 9, 1938, ch. 187, § 1, 52 Stat. 341.
1937—Aug. 9, 1937, ch. 570, § 1, 50 Stat. 615.
1936—June 22, 1936, ch. 691, § 1, 49 Stat. 1802.
1935—May 9, 1935, ch. 101, § 1, 49 Stat. 215.
1934—Mar. 2, 1934, ch. 38, § 1, 48 Stat. 394.
1933—Feb. 17, 1933, ch. 98, § 1, 47 Stat. 856.
1932—Apr. 22, 1932, ch. 125, § 1, 47 Stat. 131.
1931—Feb. 14, 1931, ch. 187, § 1, 46 Stat. 1159.
1930—May 14, 1930, ch. 273, § 1, 46 Stat. 324.
1929—Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1605.
1928—Mar. 7, 1928, ch. 137, § 1, 45 Stat. 242.
1927—Jan. 12, 1927, ch. 27, § 1, 44 Stat. 970.
1926—May 10, 1926, ch. 277, § 1, 44 Stat. 494.
1925—Mar. 3, 1925, ch. 462, 43 Stat. 1183.
1924—June 5, 1924, ch. 264, 43 Stat. 429.

§ 169a. Facilities for feeding employees and others; disposition of proceeds.

The Superintendent of Saint Elizabeths Hospital is authorized to operate and maintain at the hospital necessary facilities for feeding employees and others (at not less than cost, as determined by the Secretary of Health, Education, and Welfare), and the proceeds from such operation shall be deposited in the Treasury to the credit of the appropriation for the operation of Saint Elizabeths Hospital. (Aug. 4, 1947, ch. 478, § 4, 61 Stat. 751; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

§ 170. Disbursement of appropriations for insane.

All appropriations of money by Congress for the support of Saint Elizabeths Hospital shall be drawn from the Treasury on the requisition of the Secretary of Health, Education, and Welfare, and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money. (R. S. § 4858; July 1, 1916, ch. 209, § 1, 39 Stat. 309; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

DERIVATION

Act Mar. 3, 1855, ch. 199, § 7, 10 Stat. 683.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

§ 171. Determining per capita cost of patients.

In determining the per capita cost of maintenance and treatment of patients in Saint Elizabeths Hospital the expenditures for repair of buildings, roadways, and walks shall be included. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 461; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

§ 172. Sale of surplus products and waste materials.

The surplus products and waste material of the hospital may be sold or exchanged for the benefit of the hospital, and proceeds to be used and accounted for the same as its other funds (Aug. 7, 1882, ch. 433, § 1, 22 Stat. 330.)

§§ 173, 174. Repealed. June 30, 1949, ch. 288, title VI, § 602 (a) (20), (21), 63 Stat. 400, eff. July 1, 1949, renumbered Sept. 5, 1950, ch. 849, § 6 (a) (b), 64 Stat. 583.

Section 173, act Aug. 1, 1914, ch. 223, § 1, 38 Stat. 649, related to sale or exchange of typewriter machines and other equipment. See section 481 et seq. of Title 40, Public Buildings, Property and Works.

Section 174, act June 12, 1917, ch. 27, § 1, 40 Stat. 153, related to exchange of laundry machines and other equipment. See section 481 et seq. of Title 40, Public Buildings, Property and Works.

§ 175. Telephone system.

Rental for a system of telephones connecting the superintendent's, physicians', and employees' quarters at the hospital with other locations on the hospital grounds may be paid from the appropriations for the support of the hospital. (Apr. 17, 1917, ch. 3, § 1, 40 Stat. 19.)

§ 176. Disposition of articles made by patients.

The Secretary of Health, Education, and Welfare is authorized to make regulations governing the disposal of articles produced by patients of Saint Elizabeths Hospital in the course of their curative treatment, either by allowing the patient to retain same or by selling the articles and depositing the money received to the credit of the appropriation from which the materials for making the articles were purchased. (Mar. 6, 1920, ch. 94, § 1, 41 Stat. 513; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

§ 177. Disposition of moneys belonging to deceased inmates; claims thereto.

All moneys belonging to deceased inmates of Saint Elizabeths Hospital and deposited in the Treasury by the disbursing agent as agent, shall be covered into the Treasury unless claimed by his or her legal heirs within five years from the death of the inmate. And the Superintendent of Saint Elizabeths Hospital is authorized and directed, under such regulations as may be prescribed by the Secretary of Health, Education, and Welfare, to make diligent inquiry in every instance after the death of an inmate to ascertain the whereabouts of his or her legal heirs. Claims may be presented at any time, and when established by competent proof in any case more than five years after the death of an inmate shall be certified to Congress for consideration. (June 30, 1906, ch. 3914, § 1, 34 Stat. 730; Feb. 2, 1909, ch. 58, § 1, 35 Stat. 592; July 1, 1916, ch. 209, § 1, 39 Stat. 309; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Transfer of disbursement functions of most of Government agencies to Fiscal Service, see note under section 165 of this title.

CROSS REFERENCES

Funds of inmates to be held in trust, see sections 725p and 725s of Title 31, Money and Finance.

§ 178. Repealed. Oct. 31, 1951, ch. 654, § 1 (46), 65 Stat. 703.

Section, act Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373, related to revocable permit to hospital to use certain lands.

§ 179. Repealed. Aug. 7, 1946, ch. 770, § 1 (59), 60 Stat. 871.

Section, acts June 4, 1880, ch. 121, § 1, 21 Stat. 156; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to annual report of Superintendent to Congress.

Prior to this repeal, 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236, set out in the Appendix to Title 5, Government Organization and Employees, directed that the annual report required by this section be submitted through the Federal Security Administrator.

§ 180. American Red Cross buildings on hospital reservation.

The Secretary of Health, Education, and Welfare is authorized to permit the American Red Cross to construct or have constructed upon the Saint Elizabeths Hospital reservation in the District of Columbia such building or buildings as he may deem advisable to be used by the American Red Cross in cooperation with the superintendent of such hospital in providing recreational facilities and activities for the patients and personnel of such hospital. Any amounts appropriated and any other moneys made available for the operation and maintenance of the Saint Elizabeths Hospital may be used for the provision of necessary heat, light, water, telephone, and other facilities incidental to the work of the American Red Cross among the patients of the institution. (May 9, 1941, ch. 101, 55 Stat. 186; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

§ 181. Gifts; acceptance by Secretary of Health, Education, and Welfare.

The Secretary of Health, Education, and Welfare is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the improvement, maintenance, or operation of Saint Elizabeths Hospital in the District of Columbia. Conditional gifts may be so accepted if

recommended by the Surgeon General of the Public Health Service, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress. (Nov. 7, 1941, ch. 469, § 1, 55 Stat. 760; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

CODIFICATION

Section is also set out in District of Columbia Code, § 32–408.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of the Surgeon General was abolished by section 3 of 1966 Reorg. Plan No. 3 eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of 1966 Reorg. Plan No. 3, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 183, 184 of this title.

§ 182. Same; money; deposit, investment, and expenditure of income.

Any unconditional gift of money accepted pursuant to the authority granted in section 181 of this title, the net proceeds from the liquidation (pursuant to section 183 or section 184 of this title) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of Saint Elizabeths Hospital, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The income from such investments shall be available for expenditure in the improvement, maintenance, or operation of Saint Elizabeths Hospital, subject to the same examination and audit as provided for appropriations made for Saint Elizabeths Hospital by Congress. (Nov. 7, 1941, ch. 469, § 2, 55 Stat. 760.)

CODIFICATION

Section is also set out in District of Columbia Code, § 32–409.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 184 of this title.

§ 183. Same; intangible personalty; deposit, liquidation, and expenditure of income.

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in section 181 of this title shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them or may liquidate them whenever in his judgment the purposes of the gifts will be served thereby. The income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in section 182 of this title. (Nov. 7, 1941, ch. 469, § 3, 55 Stat. 761.)

CODIFICATION

Section is also set out in District of Columbia Code, § 32–410.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 182 of this title.

§ 184. Same; realty or tangible personalty; use, lease, liquidation, etc.

The Secretary of Health, Education, and Welfare shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in section 181 of this title and he shall permit such property to be used for the improvement, maintenance, or operation of Saint Elizabeths Hospital or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in section 182 of this title: *Provided,* That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health, Education, and Welfare for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the improvement or operation of the Saint Elizabeths Hospital may be liquidated by the Secretary of Health, Education, and Welfare whenever in his judgment the purposes of the gifts will be served thereby. (Nov. 7, 1941, ch. 469, § 4, 55 Stat. 761; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

CODIFICATION

Section is also set out in District of Columbia Code, § 32–411.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 182 of this title.

§ 185. Appropriations, availability for various expenditures.

Appropriations for the care of persons in Saint Elizabeths Hospital shall be available for expenditure for furnishing, repairing, and cleaning such wearing apparel as may be prescribed by the superintendent of the hospital, for use by employees in the performance of their official duties; reimbursing employees, subject to regulations of the Secretary of Health, Education, and Welfare, for the cost of repairing or replacing their personal belongings damaged or destroyed by patients while such employees are engaged in the performance of their official duties; expenses incurred in pursuing, identifying, and returning patients who escape from the hospital or from the custody of any employee, including re-

wards for the capture of such patients; expenses incurred in ascertaining the residence of patients whose care is not, or whose care is no longer, authorized at the hospital, and in returning such patients to their places of residence; expenses incurred in the removal of patients to their friends; and repairs, replacements, and minor improvements to the buildings and grounds of the hospital. (Aug. 4, 1947, ch. 478, § 5, 61 Stat. 751; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

INMATES; BURDEN OF EXPENSES THEREOF; DETENTION OF INSANE

TEMPORARY ADMISSION TO OTHER HOSPITALS

The Federal Security Administrator was authorized to admit, for the duration of World War II and six months thereafter, insane persons (except those from the District of Columbia) to the Public Health Service Hospitals at Lexington, Kentucky, and Fort Worth, Texas, for care and treatment upon the same terms and conditions as such persons may be entitled to admission to St. Elizabeths Hospital, by Ex. Ord. No. 9079, Feb. 26, 1942, 7 F. R. 1609.

PAYMENT OF EXPENSES

Payment, either in advance or by reimbursement at the end of each month, for the care and treatment of certain insane persons in Public Health Service hospitals may be made to the appropriation for the operation and maintenance of the Public Health Service hospitals from the appropriation for the care and maintenance of patients at Saint Elizabeths Hospital, to the extent deemed necessary and proper by the Federal Security Administrator under Ex. Ord. No. 9079, Feb. 26, 1942, 7 F. R. 1609, as amended by Ex. Ord. No. 9498, Nov. 11, 1944, 9 F. R. 13547.

§ 191. Admission; insane persons of Army, Navy, Air Force, Marine Corps, and Coast Guard.

The superintendent, upon the order of the Secretary of the Army, of the Secretary of the Navy, of the Secretary of the Air Force, and of the Secretary of Transportation, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:

First. Insane persons belonging to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Second. Civilians employed in the Quartermaster Corps of the Army who may become insane while in such employment.

Third. Men who, while in the service of the United States, in the Army, Navy, Air Force, or Marine Corps, have been admitted to the hospital, and have been thereafter discharged from it on the supposition that they have recovered their reason, and have, within three years after such discharge, become again insane from causes existing at the time of such discharge, and have no adequate means of support.

Fourth. Indigent insane persons who have been in either of the said services and been discharged therefrom on account of disability arising from such insanity.

Fifth. Indigent insane persons who have become insane within three years after their discharge from such service, from causes which arose during and were produced by said service. (R. S. § 4843; Feb. 9, 1900, ch. 13, 31 Stat. 7; Aug. 24, 1912, ch. 391, § 3, 37 Stat. 591; Aug. 4, 1949, ch. 393, §§ 1, 20, 63 Stat. 495.)

DERIVATION

Acts June 1, 1860, ch. 66, § 1, 12 Stat. 23; July 13, 1866, ch. 179, §§ 1, 2, 14 Stat. 93, 94.

CODIFICATION

Reference to Secretary of Transportation was substituted for reference to Secretary of the Treasury pursuant to Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, under which the Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation. See section 1655(b)(1) of Title 49, Transportation. Section 1655(b)(2) of Title 49, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

References to the Air Force and Secretary of the Air Force were inserted on the authority of section 207 (a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, which established a separate Department of the Air Force. Section 207 (a), (f) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 8011—8013 continued the military Department of the Air Force under the administrative supervision of a Secretary of the Air Force.

AMENDMENTS

1949—Act Aug. 4, 1949, reestablished the Coast Guard and repealed act Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800, formerly credited to this section.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act Aug. 4, 1949, effective the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

REPEALS

The fifth provision of this section is considered by the Judge Advocate General as repealed by former section 717 of Title 38, Pensions, Bonuses, and Veterans' Relief. JAG 705, January 24, 1934.

SECRETARY OF THE AIR FORCE

For transfer from the Secretary of the Army to the Secretary of the Air Force of certain functions relating to the Medical Department, United States Army, insofar as they pertain to the Air Force, see Secretary of Defense Transfer Order Nos. 36, May 12, 1949, and 40 [App. B(76)], July 22, 1949.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain ex-

ceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

This section was affected by 1946 Reorg. Plan No. 3, § 201, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1098, which provided:

"Section 201. *Functions with respect to certain insane persons.*

"(a) The functions of St. Elizabeths Hospital and the Superintendent thereof, and of the Federal Security Agency and the Federal Security Administrator, with respect to the care, treatment, and custody of insane persons, as provided in section 4843 of the Revised Statutes (24 U. S. C. 191) [this section], are hereby transferred or abolished as follows:

"(1) Functions with respect to insane persons belonging to the Army or falling, by reason of employment or service in the Army, within any of the categories enumerated in said section, are transferred to the Secretary of the Army and shall be performed by the Secretary or, subject to his direction and control, by such officers and agencies of the Department of the Army as he may designate.

"(2) Functions with respect to insane persons belonging to the Navy or falling, by reason of prior service in the Navy, within any of the categories enumerated in said section, are transferred to the Secretary of the Navy and shall be performed by the Secretary or, subject to his direction and control, by such officers and agencies of the Department of the Navy as he may designate. (For the purposes of this subpar. (2), the Marine Corps but not the Coast Guard is included in the Navy.)

"(3) Functions with respect to insane persons belonging to the Coast Guard are abolished.

"(b) Nothing in subsection (a) of this section shall affect the functions and authority of St. Elizabeths Hospital, the Superintendent thereof, the Federal Security Agency, or the Federal Security Administrator, with respect to any person heretofore admitted to St. Elizabeths Hospital and a patient therein on the effective date of this plan under the provisions of section 4843 of the Revised Statutes, or the functions and authority of said officers and agencies or of the Public Health Service with respect to Coast Guard members as beneficiaries of the Public Health Service, as provided by section 504 of the Public Health Service Act (58 Stat. 710, 42 U. S. C. 222)."

§ 191a. Repealed. Pub. L. 86-571, § 10(a), July 5, 1960, 74 Stat. 310.

Section, act Oct. 29, 1941, ch. 462, 55 Stat. 756, authorized admission to Saint Elizabeths Hospital of Foreign Service personnel adjudged insane in a foreign country, and is now covered by chapter 9 of this title.

EFFECTIVE DATE OF REPEAL

Section 10 of Pub. L. 86–571 provided in part that the repeal of this section and section 196a of this title shall be effective upon the date of enactment of legislation appropriating funds for carrying out chapter 9 of this title.

§ 192. Admission; insane prisoners of war and interned persons.

Interned persons and prisoners of war, under the jurisdiction of the Navy Department, or the Department of the Army, who are or may become insane, shall be entitled to admission for treatment to Saint Elizabeths Hospital. (July 1, 1916, ch. 209, § 1, 39 Stat. 309; Aug. 29, 1916, ch. 417, 39 Stat. 558; Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Functions with respect to insane persons belonging to the Army and Navy transferred to the Secretary of the Army and the Secretary of the Navy, see note under section 191 of this title.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of the provision of act Aug. 29, 1916, ch. 417, 39 Stat. 558, from which this section was partially derived, for the admission for treatment of interned persons and prisoners of war, under the jurisdiction of the Navy Department, to the Government Hospital for the Insane, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

§ 193. Repealed. July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714.

Section, acts Mar. 3, 1875, ch. 156, § 5, 18 Stat. 486; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; July 1, 1916, ch. 209, § 1, 39 Stat. 309; July 1, 1918, ch. 113, § 1, 40 Stat. 644; 1939 Reorg. Plan No. I, §§ 201, 205, eff. July 1, 1939, 4 F. R. 2728, 2729, 53 Stat. 1424, 1425; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236, which provided for the admission of insane patients of Public Health Service to Saint Elizabeths Hospital, is now covered by section 222 of Title 42, The Public Health and Welfare.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed this section, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

§ 194. Admission; insane inmates of Soldiers' Home.

Any inmate of the Soldiers' Home who may become insane shall, upon an order of the president of the Board of Commissioners of the Soldiers' Home, be admitted to Saint Elizabeths Hospital and treated therein; and the expenses of maintaining any such person shall be paid from the Soldiers' Home fund. (July 7, 1884, ch. 332, 23 Stat. 213; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

TRANSFER OF FUNCTIONS

Functions of St. Elizabeths Hospital with respect to insane persons of the Army and Navy were transferred to the Department of the Army and Navy Department by 1946 Reorg. Plan. No. 3, § 201, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1098; as amended July 26, 1947, ch. 343 title 11, § 205(a), 61 Stat. 501. See note under section 191 of this title.

§ 195. Same; insane inmates of National Home for Disabled Volunteer Soldiers.

Any inmate of the National Home for Disabled Volunteer Soldiers who may become insane shall, upon an order of the Administrator of Veterans' Affairs, be admitted to Saint Elizabeths Hospital and treated therein. (Aug. 7, 1882, ch. 433, § 1, 22 Stat. 330; Feb. 20, 1905, ch. 593, 33 Stat. 731; July 1, 1916, ch. 209, § 1, 39 Stat. 309; July 3, 1930, ch. 863, § 2, 46 Stat. 1016.)

DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, § 1, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note under section 52 of this title.

§ 195a. Same; beneficiaries of Bureau of Indian Affairs.

The Secretary of Health, Education, and Welfare is authorized to admit to Saint Elizabeths Hospital in the District of Columbia, for care and treatment, upon application of the Secretary of the Interior, beneficiaries of the Bureau of Indian Affairs. The cost of such care and treatment shall be paid for by the Bureau of Indian Affairs. (Aug. 4, 1947, ch. 478, § 1, 61 Stat. 751; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

§ 196. Transfer of American citizens adjudged insane in Canal Zone.

Upon the application of the Governor of the Canal Zone, the Secretary of Health, Education, and Welfare may transfer to Saint Elizabeths Hospital, in the District of Columbia, for treatment, any American citizen subject to a hospitalization order issued under section 1637 of Title 5 of the Canal Zone Code, whose legal residence in one of the States, territories, the Commonwealth of Puerto Rico or the District of Columbia for the purpose of eligibility for public medical care it has been impossible to establish. Upon the ascertainment of the legal residence of persons so transferred to Saint Elizabeths Hospital, the superintendent of that hospital shall thereupon transfer them to their respective places of residence, and the expenses attendant thereon shall be paid from the appropriation for the support of Saint Elizabeths Hospital. (June 12, 1917, ch. 27 § 1, 40 Stat. 179; 1940 Reorg. Plan No. IV, § 11(a), eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 18, 1962, Pub. L. 87-845, § 6, 76A Stat. 699.)

AMENDMENTS

1962—Pub. L. 87-845 substituted "Governor of the Canal Zone" for "Governor of the Panama Canal", "Secretary of Health, Education, and Welfare" for "Secretary of the Interior", and provisions authorizing transfer of any American citizen subject to a hospitalization order issued under section 1637 of Title 5 of the Canal Zone Code for provisions which permitted transfer of citizens legally adjudged insane in the Canal Zone, and included legal residence in the Commonwealth of Puerto Rico.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-845 effective Jan. 2, 1963, see note set out under section 14 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

§ 196a. Repealed. Pub. L. 86-571, § 10(b), July 5, 1960, 74 Stat. 310.

Section, acts Mar. 2, 1929, ch. 509, 45 Stat. 1495; June 25, 1936, ch. 804, 49 Stat. 1921, authorized the transfer to Saint Elizabeths Hospital of American citizens adjudged insane in Canada, and is now covered by chapter 9 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective upon the date of enactment of legislation appropriating funds for carrying out chapter 9 of this title, see note set out under section 191a of this title.

§ 196b. Transfer of persons adjudged insane in Virgin Islands.

Upon the application of the Governor of the Virgin Islands, the Secretary of Health, Education, and Welfare is authorized to transfer to Saint Elizabeths Hospital in the District of Columbia for treatment (1) Persons who are permanent residents of the Virgin Islands of the United States and who (A) are citizens or nationals of the United States or nondeportable aliens and (B) have been legally adjudged to be insane in the Virgin Islands or while temporarily in another insular possession or a Territory of the United States or in the continental United States; and (2) persons who are present in but not permanent residents of the Virgin Islands and (A) have been legally adjudged to be insane in the Virgin Islands, (B) are citizens or nationals of the United States or nondeportable aliens, and (C) are persons whose legal residence in one of the States or Territories of the United States or the District of Columbia it has been impossible to establish. The expense of treatment and care may be paid from the appropriation for the support of the hospital.

Upon the ascertainment of the legal residence of persons who have been transferred to Saint Elizabeths Hospital and who are not permanent residents of the Virgin Islands, the Superintendent of the hospital shall transfer such persons to their respective places of residence, and the expense of transfer shall be paid from the appropriation for the support of the hospital. (1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; July 18, 1940, ch. 638, 54 Stat. 766; July 18, 1950, ch. 464, § 1, 64 Stat. 343; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

AMENDMENTS

1950—Act July 18, 1950, authorized the transfer to St. Elizabeths Hospital of insane patients in the Virgin Islands who are legal residents of the islands but who are not American citizens.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency

and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

§ 197. Contracts for care, maintenance, and treatment of insane members of Army.

The Secretary of the Army may, in his discretion, contract for the care, maintenance, and treatment of the insane of the Army in all cases which he was, on March 3, 1901, authorized by law to cause to be sent to Saint Elizabeths Hospital in the District of Columbia. (Mar. 3, 1901, ch. 853, § 1, 31 Stat. 1163; July 1, 1916, ch. 209, § 1, 39 Stat. 309; Sept. 2, 1958, Pub. L. 85-857, § 13 (b), 72 Stat. 1264.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENTS

1958—Pub. L. 85-857 eliminated provisions which authorized the Secretary of the Army to contract for the care, maintenance, and treatment of inmates of the National Home for Disabled Volunteer Soldiers on the Pacific Coast at any State asylum in California.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECRETARY OF THE AIR FORCE

For transfer from the Secretary of the Army to the Secretary of the Air Force of certain functions relating to the Medical Department, United States Army, insofar as they pertain to the Air Force, see Secretary of Defense Transfer Order Nos. 36, May 12, 1949, and 40 [App. B(77)], July 22, 1949.

TRANSFER OF FUNCTIONS

Functions with respect to insane persons under Army jurisdiction, see notes under sections 161 and 191 of this title.

DISSOLUTION OF HOME AND CONSOLIDATION IN VETERANS' ADMINISTRATION

Act July 3, 1930, ch. 863, §§ 1, 2, 5, 46 Stat. 1016, dissolved the National Home for Disabled Volunteer Soldiers and transferred its functions to the Veterans' Administration. See note under section 52 of this title.

§ 198. Care of insane natives of Philippine Islands serving in Army.

The Secretary of the Army may, in his discretion, contract for the care, maintenance, and treatment of the insane natives of the Philippine Islands serving in the Army of the United States at any asylum in the Philippine Islands in all cases which he was, on May 11, 1908, authorized by law to cause to be sent to Saint Elizabeths Hospital in the District of Columbia. (May 11, 1908, ch. 163, 35 Stat. 122; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer from the Secretary of the Army to the Secretary of the Air Force of certain functions relating to the Medical Department, United States Army, insofar as they pertain to the Air Force, see Secretary of Defense Transfer Order Nos. 36, May 12, 1949, and 40 [App. B(78)], July 22, 1949.

TRANSFER OF FUNCTIONS

Functions with respect to insane persons under Army jurisdiction, see notes under sections 161 and 191 of this title.

PHILIPPINE INDEPENDENCE

The Philippine Islands were granted independence pursuant to Proc. No. 2695, July 4, 1946, 11 F. R. 7517, 60 Stat. 1352, which was issued under the authority of section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under section 1394.

§ 199. Transfer of insane from military hospitals to nearest public hospitals.

The Secretary of the Army is authorized to transfer from any military hospital to the nearest available public hospital for the care of the insane any insane patient who is in need of treatment, preference being given to the hospital nearest to the place of the patient's enlistment. The superintendent of such public hospital shall possess the right to retain the aforementioned class of patients in his hospital in the same manner and to the same extent as was, on October 6, 1917, possessed by the superintendent of Saint Elizabeths Hospital. (Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer from the Secretary of the Army to the Secretary of the Air Force of certain functions relating to the Medical Department, United States Army, insofar as they pertain to the Air Force, see Secretary of Defense Transfer Order Nos. 36, May 12, 1949, and 40 [App. B(79)], July 22, 1949.

TRANSFER OF FUNCTIONS

Functions with respect to insane persons under Army jurisdiction, see notes under sections 161 and 191 of this title.

§ 200. Transfer of part of appropriations to public hospitals for support of patients.

The superintendent of Saint Elizabeths Hospital, with the approval of the Secretary of Health, Education, and Welfare, shall transfer to the various public hospitals out of the various appropriations made by Congress for the support and treatment of patients in Saint Elizabeths Hospital a sum sufficient to pay for the support and treatment of patients sent to public hospitals as provided in section 199 of this title, based upon the per capita cost of maintenance in Saint Elizabeths Hospital, said payment not to exceed at any time the exact cost of

support and treatment of such patients. (Oct. 6, 1917, ch. 79, § 1, 40 Stat. 373; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

Functions of St. Elizabeths Hospital with respect to insane persons of the Army and Navy were transferred to the Department of the Army and Navy Department by 1946 Reorg. Plan No. 3, § 201, eff. July 16, 1946, 111 F.R. 7876, 60 Stat. 1098; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501. See note under section 191 of this title.

§§ 201 to 207. Omitted.

CODIFICATION

Sections pertained only to the District of Columbia and are set out in Title 32 of the District of Columbia Code.

Section 201, R. S. § 4844; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, provided for admission of indigent insane persons of the District of Columbia.

Section 202, acts Mar. 3, 1877, ch. 105, 19 Stat. 347; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to expense of indigent insane admitted from District of Columbia.

Section 203, acts Mar. 3, 1879, ch. 182, § 1, 20 Stat. 395; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to payment of part of expense from appropriations for District.

Section 204, R. S. §§ 4853, 4854; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to private patients from the District of Columbia.

Section 205, R. S. § 4849; act July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to insane persons from District of Columbia having property.

Section 206, R. S. § 4850, related to admission of nonresidents of District of Columbia.

Section 207, acts Jan. 31, 1899, ch. 78, § 7, 30 Stat. 811; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to return of nonresident indigent insane in District of Columbia.

§§ 208 to 210h. Repealed. Pub. L. 89-183, § 8, Sept. 14, 1965, 79 Stat. 784, 785, 787.

Sections 208 and 209, acts Mar. 3, 1903, ch. 1006, § 1, 32 Stat. 1943; Feb. 23, 1905, ch. 738, § 1, 33 Stat. 740, related to proceedings to determine mental conditions of insane persons in District of Columbia and to jury in such proceedings and costs, and are now covered in section 21-581 of the District of Columbia Code.

Section 210, acts Feb. 23, 1905, ch. 738, § 2, 33 Stat. 740; July 1, 1916, ch. 209, § 1, 39 Stat. 309; June 25, 1936, ch. 804, 49 Stat. 1921, related to discharge of insane person from District of Columbia institution as cured, and is now covered in section 21-590 of the District of Columbia Code.

Sections 210a to 210h, act Oct. 11, 1949, ch. 672, §§ 1 to 8, 63 Stat. 759 to 761, related to mentally ill persons found in certain Federal reservations as follows:

Section 210a, amended Aug. 30, 1964, Pub. L. 88-505, 78 Stat. 638, commitment of certain persons from Virginia and Maryland for observation and diagnosis, jurisdiction, hearing, and notification;

Section 210b, apprehension and detention, and hearing;

Section 210c, admission upon written application, and release;

Section 210d, authorization to receive persons for observation and diagnosis;

Section 210e, examination, proceedings for adjudication, jurisdiction, and expense of care and treatment;

Section 210f, transfer of military personnel;

Section 210g, persons entitled to care and treatment in a Veterans' Administration facility; and

Section 210h, payment of expenses of transfer.

Sections are now covered in sections 902—909 of Title 21 of the District of Columbia Code.

EFFECTIVE DATE OF REPEAL

Section 7 of Pub. L. 89-183 provided that Pub. L. 89-183 takes effect on Jan. 1, 1966.

§ 211. Admission of insane persons accused of crime.

If any person, charged with crime, be found, in the court before which he is so charged, to be an insane person, such court shall certify the same to the Secretary of Health, Education, and Welfare, who may order such person to be confined in Saint Elizabeths Hospital, and, if he be not indigent, he and his estate shall be charged with expenses of his support in the hospital. (R. S. § 4851; July 1, 1916, ch. 209, § 1, 39 Stat. 309; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

DERIVATION

Act Feb. 7, 1857, ch. 36, § 5, 11 Stat. 158.

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 211a of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 32-407 of the District of Columbia Code.

§ 211a. Admission of insane convicts.

Any person becoming insane during the continuance of his sentence in the United States penitentiary shall have the same privilege of treatment in Saint Elizabeths Hospital during the continuance of his mental disorder as is granted in section 211 of this title to persons who escape the consequences of criminal acts by reason of insanity, unless it be the opinion, both of the physician to the penitentiary and the superintendent of the hospital, that such insane convict is so depraved and furious in his character as to render his custody in the hospital insecure, and his example pernicious. (R. S. § 4852; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

DERIVATION

Act Feb. 7, 1857, ch. 36, § 4, 11 Stat. 157.

CODIFICATION

Section is also set out in District of Columbia Code, § 32-407.

§ 211b. Insane persons accused of crime; delivery to court on restoration to sanity.

When any person confined in Saint Elizabeths Hospital charged with crime and subject to be tried therefor, or convicted of crime and undergoing sentence therefor, shall be restored to sanity, the superintendent of the hospital shall give notice thereof to the judge of the criminal court, and deliver him to the court in obedience to the proper precept. (R. S. § 4855; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

DERIVATION

Act Feb. 7, 1857, ch. 36, § 7, 11 Stat. 158.

§ 212. Transfer of insane convicts.

Upon the application of the Attorney General the Secretary of Health, Education, and Welfare is authorized and directed to transfer to Saint Elizabeths Hospital in the District of Columbia all persons who, having been charged with offenses against the United States, are in the actual custody of its officers, and all persons who have been or shall be convicted of any offense in a court of the United States and are imprisoned in any State prison or penitentiary of any State or Territory, and who during the term of their imprisonment have or shall become and be insane. (June 23, 1874, ch. 465, § 1, 18 Stat. 251; Aug. 7, 1882, ch. 433, § 1, 22 Stat. 330; July 1, 1916, ch. 209, § 1, 39 Stat. 309; 1940 Reorg. Plan No. IV, § 11 (a), eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1236; 1953 Reorg. Plan. No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Transfer of Saint Elizabeths Hospital to Federal Security Agency, see note under section 161 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 214 of this title.

§ 213. Accommodation of insane convict in State asylums; compensation.

In all cases where any person convicted in a court of the United States shall, while imprisoned under such conviction in any State prison or penitentiary, become and be insane, and there shall not be accommodation for such insane person at Saint Elizabeths Hospital, or if for other reasons the Attorney General is of opinion that such insane person should be placed at a State insane asylum rather than at said hospital, then the Attorney General shall have power in his discretion to contract with any State insane or lunatic asylum, within the State in which such convict is imprisoned, for his care and custody while remaining so insane; and in all cases where such convicts shall be transferred to a State asylum for insane convicts, in accordance with the laws of such State, the Attorney General is authorized and directed to compensate the said asylum, or the proper authorities controlling the same, for the care and custody of such insane convicts, until their removal or discharge, in such amounts as he shall deem just and reasonable; but no contract shall be made or compensation paid for the care of such insane person beyond their respective terms of imprisonment. (June 23, 1874, ch. 465, § 2, 18 Stat. 251; July 1, 1916, ch. 209, § 1, 39 Stat. 309.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 214 of this title.

§ 214. Return to prison on restoration to sanity.

Whenever such insane convict shall be restored to sanity, after he or she shall have been transferred under the provisions of sections 212 or 213 of this title, he or she shall be returned to the prison or penitentiary from which the transfer was made, provided the term of imprisonment shall not have expired. The questions of sanity in all cases arising under this section and sections 212 or 213 of this title shall be determined in accordance with the rules and regulations of existing laws, State or national, on that subject, applicable to the prison, penitentiary, or asylum where such convict shall be confined. (June 23, 1874, ch. 465, § 3, 18 Stat. 252.)

§§ 215 to 220. Omitted.

CODIFICATION

Sections pertained only to the District of Columbia.

Section 215, act Apr. 27, 1904, ch. 1618, § 1, 33 Stat. 316, related to apprehension and detention of certain insane persons in District of Columbia.

Section 216, act Apr. 27, 1904, ch. 1618, § 2, 33 Stat. 317, related to arrest at other than public places in District of Columbia.

Section 217, acts Apr. 27, 1904, ch. 1618, § 3, 33 Stat. 317; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to temporary detention of alleged insane persons found in District of Columbia.

Section 218, acts Apr. 27, 1904, ch. 1618, § 4, 33 Stat. 317; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to temporary commitment of persons found in District of Columbia to other hospital, or detention in police station.

Section 219, acts Apr. 27, 1904, ch. 1618, § 5, 33 Stat. 318; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, related to certificate by physician as to sanity or insanity found in District of Columbia.

Section 220, act Apr. 27, 1904, ch. 1618, § 6, 33 Stat. 318, related to making false affidavit or certificate.

§ 221. Discharge of patients on bond.

If any person will give bond with sufficient security, to be approved by the United States District Court for the District of Columbia, or by any judge thereof in vacation, payable to the United States, with condition to restrain and take care of any independent or indigent insane person not charged with a breach of the peace, whether in the hospital or not, until the insane person is restored to sanity, such court or judge thereof may deliver such insane person to the party giving such bond. (R. S. § 4856; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

DERIVATION

Act Feb. 7, 1857, ch. 36, § 9, 11 Stat. 158.

CHANGE OF NAME

Act June 25, 1948, ch. 646, § 32(a), 62 Stat. 991, as amended by act May 24, 1949, ch. 139, § 127, 63 Stat. 107, substituted "United States District Court for the District of Columbia" in lieu of "district court of the United States for the District of Columbia."

Act June 25, 1936, ch. 804, 49 Stat. 1921, substituted "district court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia".

§ 222. Insane persons not to be confined in jail.

CODIFICATION

Section, R. S. § 4857, provided that no insane person not charged with any breach of the peace should ever be confined in the United States jail in the District of Columbia.

Chapter 5.—THE COLUMBIA INSTITUTION FOR THE DEAF

This chapter related only to the District of Columbia. It consisted of sections 231—250 which are set out in Title 31 of the District of Columbia Code.

The Columbia Institution for the Deaf was redesignated Gallaudet College by act June 18, 1954, ch. 324, § 1, 68 Stat. 265.

Chapter 6.—THE FREEDMEN'S HOSPITAL

This chapter related only to the District of Columbia It consisted of sections 261—264 which are set out in Title 32 of the District of Columbia Code.

Chapter 7.—NATIONAL CEMETERIES

Sec.
271. Manner of acquisition of lands.
271a. State donations of land.
272. Appraisement of real estate.
273. Payment of appraised value.
274. Superintendents of cemeteries.
275. Selection of superintendents.
276. Fuel and quarters for superintendents.
277. Repealed.
278. Care and maintenance of cemeteries.
279. Inclosure, headstones, and registers.
279a. Headstones for unmarked graves of Civil War soldiers, members of armed forces, reserve components, National Guard, Air National Guard, and Reserve Officers Training Corps; compilation of list; inscription of names on Memorial.
279b. Same; rules and regulations.
279c. Same; preservation of records.
279d. Markers to honor memory of certain Armed Forces personnel.
280 to 280b. Repealed.
281. Persons to be buried in national cemeteries; removal of remains.
281a. Utilization of surplus military real property for cemeteries.
281b. Same; expansion of existing cemeteries; limitation of area.
281c. Same; regulations by Secretary of the Army.
281d. Utilization of surplus military real property for cemeteries at Fort Logan, Colorado.
281e. Same; selection of lands; care and maintenance; size.
281f. Same; rules and regulations by Secretary of the Army.
281g. Expansion of existing cemeteries.
282. Burial of Confederate veterans.
283 to 285. Omitted.
286. Penalty for defacing cemeteries.
287. Jurisdiction of United States.
288. Single approach to cemeteries authorized.
289. Conveyance to State or municipality of approach road to national cemetery.
290. Encroachment by railroad on rights-of-way.
291 to 295. Repealed.
295a. Arlington Memorial Amphitheater.
(a) Recommendations of Secretary of Defense for memorials and entombments.
(b) Specific authorization from Congress.
(c) Character of memorials.
296. Preservation of historic graveyards in abandoned military posts; conveyance to grantees.

TRANSFER OF FUNCTIONS

Section 2 of Ex. Ord. No. 6166, June 10, 1933, as amended by Ex. Ord. No. 6229, July 27, 1934; Ex. Ord. No. 6614, Feb. 26, 1934; Ex. Ord. No. 6690, Apr. 25, 1934, set out as a note to section 901 of Title 5, Government Organization and Employees, transferred all functions of administrator of certain historical national cemeteries located within the continental limits of the United States, including certain cemeteries administered by the War Department to the Director of National Parks, Buildings, and Reservations in the Department of the Interior.

By Ex. Ord., No. 6228, July 28, 1933, also set out as a note to section 901 of Title 5, the operation of Executive Order No. 6166 as to the transfer of the specified national cemeteries was postponed until further order, except with regard to the following cemeteries located within the continental limits of the United States:

NATIONAL MILITARY PARKS

Chickamauga and Chattanooga National Military Park, Georgia and Tennessee.
Fort Donelson National Military Park, Tennessee.
Fredericksburg and Spotsylvania County Battle Fields, Memorial, Virginia.
Gettysburg National Military Park, Pennsylvania.
Guilford Courthouse National Military Park, North Carolina.
Kings Mountain National Military Park, South Carolina.
Moores Creek National Military Park, North Carolina.
Petersburg National Military Park, Virginia.
Shiloh National Military Park, Tennessee.
Stones River National Military Park, Tennessee.
Vicksburg National Military Park, Mississippi.

NATIONAL PARKS

Abraham Lincoln National Park, Kentucky.
Fort McHenry National Park, Maryland.

BATTLEFIELD SITES

Antietam Battlefield, Maryland
Appomattox, Virginia.
Brices Cross Roads, Mississippi.
Chalmette Monument and Grounds, Louisiana.
Cowpens, South Carolina.
Fort Necessity, Wharton County, Pennsylvania.
Kenesaw Mountain, Georgia.
Monocacy, Maryland.
Tupelo, Mississippi.
White Plains, New York.

NATIONAL MONUMENTS

Big Hole Battlefield, Beaverhead County, Montana.
Cabrillo Monument, Ft. Rosecrans, California.
Castle Pinckney, Charleston, South Carolina.
Father Millet Cross, Fort Niagara, New York.
Fort Marion, St. Augustine, Florida.
Fort Matanzas, Florida.
Fort Pulaski, Georgia.
Meriwether Lewis, Hardin County, Tennessee.
Mound City Group, Chillicothe, Ohio.
Statue of Liberty, Fort Wood, New York.

MISCELLANEOUS MEMORIALS

Camp Blount Tablets, Lincoln County, Tennessee.
Kill Devil Hill Monument, Kitty Hawk, North Carolina.
New Echota Marker, Georgia.
Lee Mansion, Arlington National Cemetery, Virginia.

NATIONAL CEMETERIES

Battleground, District of Columbia.
Antietam, (Sharpsburg) Maryland.
Vicksburg, Mississippi.
Gettysburg, Pennsylvania.
Chattanooga, Tennessee.
Fort Donelson, (Dover) Tennessee.
Shiloh, (Pittsburg Landing) Tennessee.
Stones River, (Murfreesboro) Tennessee.
Fredericksburg, Virginia.
Poplar Grove, (Petersburg) Virginia.
Yorktown, Virginia.

CHANGE OF NAME

The Director of National Parks, Buildings and Reservations was renamed the Director of National Park Service by act Mar. 2, 1934, ch. 38, 48 Stat. 362.

NATIONAL CEMETERIES IN FOREIGN COUNTRIES

The functions of administration pertaining to national cemeteries located in foreign countries, which were transferred to the Department of State, were revoked and the functions of administration pertaining to national cemeteries and memorials located in Europe, together with personnel, records, etc. were transferred to the American Battle Monuments Commission by Ex. Ord. No. 6614, April 25, 1934, set out as a note under section 901 of Title 5, Government Organization and Employees.

§ 271. Manner of acquisition of lands.

The Secretary of the Army shall purchase from the owners thereof, at such price as may be mutually agreed upon between the Secretary and such owners, such real estate as in his judgment is suitable and necessary for the purpose of carrying into effect the provisions for national cemeteries, and obtain from such owners the title in fee simple for the same. And in case the Secretary of the Army is not able to agree with any owner upon the price to be paid for any real estate needed for such purpose, or to obtain from such owner title in fee simple for the same, the Secretary is authorized to enter upon and appropriate any real estate which, in his judgment, is suitable and necessary for such purposes. (R. S. § 4870.)

DERIVATION

Act Feb. 22, 1867, ch. 61, § 4, 14 Stat. 400.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

See note preceding this section.

§ 271a. State donations of land.

The Secretary of the Army is authorized to accept (on behalf of, and without cost to, the United States) from any State title to such land as he deems suitable for national cemetery purposes. Upon the acquisition of such land by the United States, the Secretary of the Army is authorized to establish thereon a national cemetery and to provide for the care and maintenance of such national cemetery. (June 29, 1938, ch. 808, 52 Stat. 1233.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Transfers of functions, see note preceding section 271 of this title.

§ 272. Appraisement of real estate.

The Secretary of the Army or the owners of any real estate thus entered upon and appropriated are authorized to make application for an appraisement of real estate thus entered upon and appropriated, to any district court within any State or district where such real estate is situated; and such court shall, upon such application, and in such mode and under such rules and regulations as it may adopt, make a just and equitable appraisement of the cash value of the several interests of each and every owner of such real estate and improvements thereon. (R. S. § 4871; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

DERIVATION

Act Feb. 22, 1867, ch. 61, § 5, 14 Stat. 400.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Transfers of functions, see note preceding section 271 of this title.

§ 273. Payment of appraised value.

When appraisement of the real estate thus entered upon and appropriated has been made under the order and direction of the court, the fee simple thereof shall, upon payment to the owner of the appraised value, or in case such owner refuses or neglects for thirty days after the appraisement of the cash value of the real estate or improvements as aforesaid, to demand the same from the Secretary of the Army, upon depositing the appraised value in the court making such appraisement, to the credit of such owner, be vested in the United States, and its jurisdiction over such real estate shall be exclusive and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy yards, forts, and arsenals. The Secretary of the Army is authorized and required to pay to the several owner or owners, respectively, the appraised value of the several pieces or parcels of real estate, as specified in the appraisement of any of such courts, or to pay into any of such courts by deposit, as provided in this section, the appraised value; and the sum necessary for such purpose may be taken from any moneys appropriated for the purposes of national cemeteries. (R. S. § 4872.)

DERIVATION

Act Feb. 22, 1867, ch. 61, § 6, 14 Stat. 400.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Transfers of functions, see note preceding section 271 of this title.

§ 274. Superintendents of cemeteries.

The Secretary of the Army shall cause to be erected at the principal entrance of each national cemetery a suitable building to be occupied as a porter's lodge; and shall appoint a meritorious and trustworthy superintendent to reside therein, for the purpose of guarding and protecting the cemetery and giving information to parties visiting the same. (R. S. § 4873.)

DERIVATION

Act Feb. 22, 1867, ch. 61, § 2, 14 Stat. 400.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Transfers of functions, see note preceding section 271 of this title.

§ 275. Selection of superintendents.

Superintendents of national cemeteries shall be selected from among meritorious and trustworthy persons who served in the Armed Forces of the United States, and who either were retired for physical disability, or were discharged or released therefrom under honorable conditions and are entitled to receive compensation for disability under the laws administered by the Veterans' Administration. (Mar. 24, 1948, ch. 143, § 1, 62 Stat. 84; Aug. 30, 1961, Pub. L. 87–178, 75 Stat. 411.)

AMENDMENTS

1961—Pub. L. 87–178 eliminated the requirement that the disability had to be incurred in line of duty for active field service.

REPEALS

Section 2 of act Mar. 24, 1948, repealed section 4874 of Revised Statutes, which related to selection of superintendents, and was formerly set out as this section.

§ 276. Fuel and quarters for superintendents.

The superintendents of the national cemeteries shall be furnished with quarters and fuel at the several cemeteries. (R. S. § 4875; July 30, 1912, ch. 258, 37 Stat. 240.)

DERIVATION

Act May 18, 1872, ch. 173, § 2, 17 Stat. 135.

§ 277. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 646.

Section, acts Feb. 12, 1925, ch. 225, title II, 43 Stat. 926; Apr. 15, 1926, ch. 146, title II, 44 Stat. 288, provided for the appointment and pay of a superintendent of Antietam Battlefield.

§ 278. Care and maintenance of cemeteries.

The Secretary of the Army shall provide for the care and maintenance of the national military cemeteries. (July 24, 1876, ch. 226, § 1, 19 Stat. 99; June 10, 1921, ch. 18, §§ 206, 215, 42 Stat. 21, 23; Sept. 12, 1950, ch. 946, title III, § 301 (96), 64 Stat. 844.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENTS

1950—Act Sept. 12, 1950, repealed the provision requiring submission of an estimate with annual estimates to the Bureau of the Budget, for the purpose of providing for care and maintenance of the national military cemetries.

§ 279. Inclosure, headstones, and registers.

In the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors, the Secretary of the Army is directed to have the same inclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone or block which shall be of durable stone, and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon, when the same are known, and also with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party in a register of burials to be kept at each cemetery and at the Office of Secretary of the Army, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or if these are unknown, it shall be so recorded. (R. S. § 4877.)

DERIVATION

Acts Feb. 22, 1867, ch. 61, § 1, 14 Stat. 399; June 8, 1872, ch. 368, 17 Stat. 345; Mar. 3, 1873, ch. 229, 17 Stat. 545.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 279a. Headstones for unmarked graves of Civil War soldiers, members of armed forces, reserve components, National Guard, Air National Guard, and Reserve Officers Training Corps; compilation of list; inscription of names on Memorial.

The Secretary of the Army is authorized and directed to furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Soldiers of the Union and Confederate Armies of the Civil War.

(2) Members of the Armed Forces of the United States dying in the service and former members whose last service terminated honorably.

(3) Persons buried in post and national cemeteries.

(4) Members of a reserve component of the Armed Forces of the United States, and members of the Army National Guard or the Air National Guard, whose death occurred under honorable conditions while they were—

(A) on active duty for training, or performing full-time service under section 316, 503, 504, or 505 of Title 32;

(B) performing authorized travel to or from that duty or service;

(C) on authorized inactive duty training, including training performed as members of the Army National Guard or the Air National Guard; or

(D) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while they were—

(i) on that duty or service;

(ii) performing that travel or inactive duty training; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(5) Members of the Reserve Officers Training Corps of the Army, Navy, or Air Force whose death occurred under honorable conditions while they were—

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while they were—

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(6) Persons awarded the Medal of Honor.

The Secretary of the Army is authorized and directed to furnish, when requested, an appropriate memorial headstone or marker to commemorate any member of the armed forces of the United States dying in the service, whose remains have not been recovered or identified or were buried at sea, for placement by the applicant in a national cemetery or in any private or local cemetery. The Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force are authorized and directed to compile a list of the names of all members of the armed forces of the United States who died while serving in such forces in the overseas theaters of operations on or after September 3, 1939, and whose bodies have not been recovered or identified or have been buried at sea. Upon the compilation of such list of names and other appropriate data, the American Battle Monuments Commission and the Secretary of the Army are authorized and directed to provide for the inscribing of each such name and pertinent data with respect to the individual on the wall of a chapel or other appropriate memorial erected by the American Battle Monuments Commission or by the Department of the Army. In determining the particular chapel or other memorial on the wall of which any particular name shall be inscribed, the Commission and the Secretary shall follow the general rule of having the name inscribed upon the wall of that chapel or other memorial which is appropriate in view of the circumstances under which the deceased died in the service of his country. (July 1, 1948, ch. 791, § 1, 62 Stat. 1215; Aug. 14, 1958, Pub. L. 85-644, § 1 (1), 72 Stat. 601; Aug. 28, 1958, Pub. L. 85-811, 72 Stat. 978; Sept. 1, 1970, Pub. L. 91-396, 84 Stat. 836.)

AMENDMENTS

1970—Par. (6). Pub. L. 91-396 added par. (6).

1958—Pub. L. 85-811 permitted Secretary to furnish headstones for unmarked graves of members of a reserve component of the Armed Forces, members of Army National Guard or Air National Guard, and members of the Reserve Officers Training Corps of the Army, Navy or Air Force, whose death, injuries, illness, or disease occurred or was contracted under honorable conditions and in specified circumstances incident to service on behalf of the United States.

Pub. L. 85-644 authorized the furnishing, upon request, of headstones or markers for armed forces members whose remains have not been recovered or identified, for placement by applicant in national, private, or local cemeteries.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 279b, 279c of this title.

§ 279b. Same; rules and regulations.

The Secretary of the Army is authorized to prescribe such rules and regulations with respect to the submission of applications for all Government headstones and markers and other pertinent matters as may be necessary to carry out the provisions of sections 279a to 279c of this title. (July 1, 1948, ch. 791, § 2, 62 Stat. 1216; Aug. 14, 1958, Pub. L. 85-644, § 1, (2), 72 Stat. 602.)

AMENDMENTS

1958—Pub. L. 85-644 substituted provisions authorizing Secretary to prescribe rules and regulations as to applications for headstones and markers and other pertinent matters, for provisions directing Secretary to make rules and regulations concerning type, design, weight, and size of headstones.

§ 279c. Same; preservation of records.

The Secretary of the Army shall cause to be preserved in the records of his office, the names when known, and places of burial of all persons for whom headstones or markers are authorized by section 279a of this title. The rank, organization, date of death, and such other information as the Secretary of the Army prescribes shall be included in the record. (July 1, 1948, ch. 791, § 3, 62 Stat. 1216.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 279b of this title.

§ 279d. Markers to honor memory of certain Armed Forces personnel.

The Secretary of the Interior and the Secretary of the Army shall set aside, when available, suitable plots in the national cemeteries under their jurisdiction to honor the memory of members of the Armed Forces missing in action, or who died or were killed while serving in such forces, and whose remains have not been identified, have been buried at sea, or have been determined to be nonrecoverable, and shall, under regulations to be jointly prescribed by them, permit the erection of appropriate markers thereon in honor of any such member or group of members. (Aug. 27, 1954, ch. 1013, 68 Stat. 880; July 3, 1956, ch. 509, 70 Stat. 489.)

AMENDMENTS

1956—Act July 3, 1956, authorized the setting aside of suitable plots for members of the Armed Forces who died or were killed while serving in the Armed Forces, and whose remains have not been identified, have been buried at sea, or have been determined to be nonrecoverable.

§§ 280 to 280b. Repealed. July 1, 1948, ch. 791, § 4, 62 Stat. 1216.

Section 280, act Feb. 3, 1879, ch. 44, 20 Stat. 281, related to headstones in private cemeteries, and is now covered by sections 279a—279c of this title.

Section 280a, act Feb. 26, 1929, ch. 324, 45 Stat. 1307, related to headstones for Confederate soldiers, and is now covered by sections 279a—279c of this title.

Section 280b, act Apr. 18, 1940, ch. 109, 54 Stat. 142, related to standard headstones and is now covered by sections 279a—279c of this title.

§ 281. Persons to be buried in national cemeteries; removal of remains.

(a) Under such regulations as the Secretary of the Army may, with the approval of the Secretary of Defense, prescribe, the remains of the following persons may be buried in national cemeteries:

(1) Any member or former member of the Armed Forces who served on active duty (other than for training) and whose last such service terminated honorably.

(2) Any member of a reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while he is—

(A) on active duty for training, or performing full-time service under section 316, 503, 504, or 505 of Title 32;

(B) performing authorized travel to or from that duty or service;

(C) on authorized inactive duty training, including training performed as a member of the Army National Guard or the Air National Guard; or

(D) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while he is—

(i) on that duty or service;

(ii) performing that travel or inactive duty training; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while he is—

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while he is—

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

(5) The wife, husband, surviving spouse, minor child, and, in the discretion of the Secretary of the Army, unmarried adult child of any of the persons listed in clauses (1)—(4).

(b) The remains of any person listed in subsection (a)(5) of this section may, in the discretion of the Secretary of the Army, be removed from a national cemetery proper and interred in the post section of a national cemetery or in a post cemetery if, upon death, the related person named in subsection (a)(1)—(4) of this section is not buried in the same or an adjoining gravesite. However, the remains of a person listed in subsection (a)(5) of this section may not be removed from a national cemetery proper if the related person is—

(1) lost or buried at sea;

(2) officially determined to be permanently absent in a status of missing or missing in action;

(3) officially determined to be dead for the purpose of terminating his status of missing or missing in action; or

(4) one whose remains have not been recovered. (May 14, 1948, ch. 289, § 1, 62 Stat. 234; Sept. 14, 1959, Pub. L. 86–260, 73 Stat. 547.)

AMENDMENTS

1959—Pub. L. 86–260 authorized the burial of members of the reserve components of the Armed Forces, members of the Army National Guard, the Air National Guard, and of the Reserve Officers' Training Corps of the Army, Navy, or Air Force, and the wife, husband, surviving spouse, minor children and unmarried adult children of such members, if the death of the member occurred while on active duty for training, on authorized inactive duty training, attending an authorized training camp or on an authorized practice cruise, performing authorized travel, or while hospitalized or undergoing treatment at the expense of the United States for injury or disease contracted or incurred under honorable conditions, and prohibited the removal of the remains of the wife, husband, surviving spouse, minor child or unmarried adult child if the related person is lost or buried at sea, officially determined to be permanently absent in a status of missing or missing in action, officially determined to be dead, or one whose remains have not been recovered.

REPEALS

Section 2 of act May 14, 1948, repealed R. S. § 4878; acts Mar. 3, 1897, ch. 378, 29 Stat. 625; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1389; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; Apr. 15, 1920, ch. 140, 41 Stat. 552; June 13, 1935, ch. 223, 49 Stat. 339, formerly cited to this section, which contained provisions somewhat similar to the present text.

Act Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800 was also repealed by act Aug. 4, 1949, ch. 393, § 20, 63 Stat. 561.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 281a of this title.

§ 281a. Utilization of surplus military real property for cemeteries.

When the Secretary of the Army determines that there is need for an additional cemetery or cemeteries for the burial of members of the armed forces of the United States dying in the service or former members whose last discharge therefrom was honorable and certain other persons as provided for by section 281 of this title, he is authorized to utilize and expand existing facilities at Fort Rosecrans, California, and Jefferson Barracks, Missouri, when practicable, through the use of federally owned lands under the jurisdiction of the Department of the Army for military purposes and not needed for such purposes for the establishment thereon of a national cemetery or cemeteries. (Aug. 4, 1947, ch. 467, § 1, 61 Stat. 742.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military De-

partment of the Army under the administrative supervision of a Secretary of the Army.

APPROPRIATIONS

Section 4 of act Aug. 4, 1947, provided: "There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry into effect the purposes of this Act [sections 281a—281c of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 281b, 281c of this title.

§ 281b. Same; expansion of existing cemeteries; limitation of area.

Upon the selection by the Secretary of the Army of such land, as provided in section 281a of this title, the Secretary of the Army is authorized and directed to expand existing national cemeteries and to provide for the care and maintenance thereof. No national cemetery as expanded pursuant to sections 281a to 281c of this title shall have an area in excess of six hundred and forty acres. (Aug. 4, 1947, ch. 467, § 2, 61 Stat. 742.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 281c of this title.

§ 281c. Same; regulations by Secretary of the Army.

The Secretary of the Army is authorized to prescribe such regulations as he may deem necessary for the administration of sections 281a to 281c of this title. (Aug. 4, 1947, ch. 467, § 3, 61 Stat. 742.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 281b of this title.

§ 281d. Utilization of surplus military real property for cemeteries at Fort Logan, Colorado.

When the Secretary of the Army determines that there is need for an additional cemetery or cemeteries for the burial of members of the armed forces of the United States dying in the service or former members whose last discharge therefrom was honorable and certain other persons as provided for by law, he is authorized to utilize such of the federally owned lands under the jurisdiction of the Department of the Army at Fort Logan, Colorado, as are not needed for military purposes for the establishment thereon of a national cemetery. (Mar. 10, 1950, ch. 52, § 1, 64 Stat. 15.)

APPROPRIATIONS

Section 4 of act Mar. 10, 1950, provided that: "There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry into effect the purposes of this Act [sections 281d—281f of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 281e, 281f of this title.

§ 281e. Same; selection of lands; care and maintenance; size.

Upon the selection by the Secretary of the Army of any lands, as provided in section 281d of this title, he is authorized and directed to establish thereon a national cemetery and to provide for the care and maintenance of such cemetery. No national cemetery established pursuant to sections 281d to 281f of this title shall have an area in excess of one hundred and sixty acres. (Mar. 10, 1950, ch. 52, § 2, 64 Stat. 12.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 281f of this title.

§ 281f. Same; rules and regulations by Secretary of the Army.

The Secretary of the Army is authorized to prescribe such regulations as he may deem necessary for the administration of sections 281d to 281f of this title. (Mar. 10, 1950, ch. 52, § 3, 64 Stat. 12.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 281e of this title.

§ 281g. Expansion of existing cemeteries.

The Secretary of the Army is authorized and directed—

(a) To expand existing facilities at the Rock Island National Cemetery, Rock Island, Illinois, by utilizing not to exceed thirty acres of federally owned lands under the jurisdiction of the Department of the Army adjoining the present national cemetery facility, which are surplus to military needs, and to provide for the care and maintenance thereof under the same regulations as prescribed for other national cemeteries under the jurisdiction of the Department of the Army; and

(b) To expand existing facilities at the Fort Leavenworth National Cemetery, Fort Leavenworth, Kansas, by utilizing not to exceed eight acres of federally owned land under the jurisdiction of the Department of the Army, adjoining the present national cemetery facility, which are surplus to military needs, and to provide for the care and maintenance thereof under the same regulations as prescribed for other national cemeteries under the jurisdiction of the Department of the Army.

The Secretary of the Navy is authorized to transfer, without compensation therefor, to the Secretary of the Army for cemeterial purposes such Government-owned land under the jurisdiction of the Department of the Navy, located adjacent to the Barrancas National Cemetery near the city of Pensacola, Florida, as may be determined by the Secretary of the Navy to be available for the expansion of said cemetery. The lands transferred pursuant to the provisions of this section shall be

constituted a part of the Barrancas National Cemetery. (Aug. 10, 1950, ch. 672, §§ 1, 2, 64 Stat. 434.)

CODIFICATION

Section is comprised of sections 1 and 2 of act Aug. 10, 1950.

§ 282. Burial of Confederate veterans.

Persons dying in the District of Columbia or in the immediate vicinity thereof who have served in the Confederate armies during the Civil War may be buried in the Confederate section of the Arlington National Cemetery without additional expense to the United States upon the certificate of Camp Numbered 171, United Confederate Veterans of the District of Columbia, that such persons are entitled to burial under the authority given in this section: *Provided,* That all such interments shall be under the supervision and subject to the approval of the Secretary of the Army. (Aug. 24, 1912, ch. 355, § 1, 37 Stat. 440.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§§ 283 to 285. Omitted.

CODIFICATION

Sections 283 and 284, R.S. §§ 4879, 4880, respectively, related to the military cemetery near City of Mexico and to the regulations for such cemetery, and are now covered by section 132 of Title 36, Patriotic Societies and Observances, and by Ex. Ord. No. 9873, July 17, 1947, 12 F.R. 4777, set out under such section.

Section 285, acts Feb. 24, 1925, ch. 306, § 2, 43 Stat. 970; May 10, 1928, ch. 515, 45 Stat. 494, which authorized the Secretary of War to accept the land comprising the burial place of President Zachary Taylor, and to establish a national cemetery thereon, has been omitted as executed.

§ 286. Penalty for defacing cemeteries.

Every person who willfully destroys, mutilates, defaces, injures, or removes any monument, gravestone, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any national cemetery shall be deemed guilty of a misdemeanor, punishable by a fine of not less than $25, and not more than $100, or by imprisonment for not less than fifteen days, and not more than sixty. The superintendent in charge of any national cemetery is authorized to arrest forthwith any person engaged in committing any misdemeanor prohibited in this section, and to bring such person before any United States commissioner or judge of any district court of the United States within any State or district where any of the cemeteries are situated, for the purpose of holding such person to answer for such misdemeanor, and then and there shall make complaint in due form. (R. S. § 4881; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

DERIVATION

Act Feb. 22, 1867, ch. 61, § 3, 14 Stat. 400.

CHANGE OF NAME

References to United States commissioners to be deemed references to United States magistrates, see Pub. L. 90–578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, which provided that, within each district, references in previously enacted statutes and previous promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 287. Jurisdiction of United States.

From the time any State legislature shall give the consent of such State to the purchase by the United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places he held to be the same as is granted by section 8, Article I, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same. (R. S. § 4882.)

DERIVATION

Act July 1, 1870, ch. 200, § 1, 16 Stat. 188.

§ 288. Single approach to cemeteries authorized.

No part of any appropriation for national cemeteries or the repair of roadways thereto shall be expended in the maintenance of more than a single approach to any national cemetery. (Feb. 12, 1925, ch. 225, title II, 43 Stat. 926; Apr. 15, 1926, ch. 146, title II, 44 Stat. 287; Feb. 23, 1927, ch. 167, title II, 44 Stat. 1138; Mar. 23, 1928, ch. 232, title II, 45 Stat. 354; Feb. 28, 1929, ch. 366, title II, 45 Stat. 1375.)

§ 289. Conveyance to State or municipality of approach road to national cemetery.

The Secretary of the Army is authorized to convey to any State, county, municipality, or proper agency thereof, in which the same is located, all the right, title, and interest of the United States in and to any Government owned or controlled approach road to any national cemetery: *Provided,* That prior to the delivery of any instrument of conveyance hereunder, the State, county, municipality, or agency to which the conveyance herein authorized is to be made, shall notify the Secretary of the Army in writing of its willingness to accept and maintain the road included in such conveyance: *Provided further,* That upon the execution and delivery of any conveyance herein authorized the jurisdiction of the United States of America over the road conveyed shall cease and determine and shall thereafter vest in the State in which said road is located. (May 23, 1941, ch. 130, § 1, 55 Stat. 191.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

REPEALS

Act Mar. 3, 1925, ch. 418, 43 Stat. 1104, formerly credited to text of this section, was repealed by act Feb. 20, 1931, ch. 235, 46 Stat. 1191.

SIMILAR PROVISIONS

The text of this section was taken from the War Department Civil Appropriation Act, 1942, act May 23, 1941. Similar provisions were contained in the following acts:

1940—June 24, 1940, ch. 415, § 1, 54 Stat. 506.
1939—June 28, 1939, ch. 246, § 1, 53 Stat. 857.
1938—June 11, 1938, ch. 348, § 1, 52 Stat. 668.

§ 290. Encroachment by railroad on rights-of-way.

On and after July 27, 1953, no railroad shall be permitted upon any right-of-way acquired by the United States leading to a national cemetery, or to encroach on any roads or walks thereon maintained by the United States. (July 27, 1953, ch. 245, § 101, 67 Stat. 197.)

SIMILAR PROVISIONS

The text of this section was taken from the Civil Functions Appropriation Act, 1954. Similar provisions were contained in the following prior appropriation acts:

1952—July 11, 1952, ch. 669, § 101, 66 Stat. 579.
1951—Oct. 24, 1951, ch. 556, § 101, 65 Stat. 616.
1950—Sept. 6, 1950, ch. 896, ch. IX, § 101, 64 Stat. 725.
1949—Oct. 13, 1949, ch. 688, § 6, 63 Stat. 846.
1948—June 25, 1948, ch. 655, § 1, 62 Stat. 1019.
1947—July 31, 1947, ch. 411, § 1, 61 Stat. 686.
1946—May 2, 1946, ch. 247, § 1, 60 Stat. 161.
1945—Mar. 31, 1945, ch. 45, § 1, 59 Stat. 39.
1944—June 26, 1944, ch. 275, § 1, 58 Stat. 327.
1943—June 2, 1943, ch. 115, § 1, 57 Stat. 94.
1942—Apr. 28, 1942, ch. 246, § 1, 56 Stat. 220.
1941—May 23, 1941, ch. 130, § 1, 55 Stat. 191.
1940—June 24, 1940, ch. 415, § 1, 54 Stat. 506.
1939—June 28, 1939, ch. 246, § 1, 53 Stat. 857.
1938—June 11, 1938, ch. 348, § 1, 52 Stat. 668.
1937—July 19, 1937, ch. 511, § 1, 50 Stat. 515.
1936—May 15, 1936, ch. 404, § 1, 49 Stat. 1305.
1935—Apr. 9, 1935, ch. 54, title II, 49 Stat. 145.
1934—Apr. 26, 1934, ch. 165, title II, 48 Stat. 639.
1933—Mar. 4, 1933, ch. 281, title II, 47 Stat. 1595.
1932—July 14, 1932, ch. 482, title II, 47 Stat. 689.
1931—Feb. 23, 1931, ch. 279, title II, 46 Stat. 1302.
1930—May 28, 1930, ch. 348, title II, 46 Stat. 458.
1929—Feb. 28, 1929, ch. 366, title II, 45 Stat. 1375.
1928—Mar. 23, 1928, ch. 232, title II, 45 Stat. 354.
1927—Feb. 23, 1927, ch. 167, title II, 44 Stat. 1138.
1926—Apr. 15, 1926, ch. 146, title II, 44 Stat. 287.
1925—Feb. 12, 1925, ch. 54, title II, 49 Stat. 145.

§§ 291 to 295. Repealed. Pub. L. 86–694, § 2, Sept. 2, 1960, 74 Stat. 739.

Sections, act Mar. 4, 1921, ch. 169, §§ 1—5, 41 Stat. 1440, created a Commission to make recommendations for memorials and entombments and to approve the character of memorials, provided for a chairman and disbursing officer, required specific Congressional authorization for erection of memorials and interments, and prescribed certain restrictions, and are now covered by section 295a of this title.

§ 295a. Arlington Memorial Amphitheater.

(a) Recommendations of Secretary of Defense for memorials and entombments.

The Secretary of Defense or his designee may send to Congress in January of each year, his recommendations with respect to the memorials to be erected, and the remains of deceased members of the Armed Forces to be entombed, in the Arlington Memorial Amphitheater, Arlington National Cemetery, Virginia.

(b) Specific authorization from Congress.

No memorial may be erected and no remains may be entombed in such amphitheater unless specifically authorized by Congress.

(c) Character of memorials.

The character, design, or location of any memorial authorized by Congress is subject to the approval of the Secretary of Defense or his designee. (Pub. L. 86–694, § 1, Sept. 2, 1960, 74 Stat. 739.)

§ 296. Preservation of historic graveyards in abandoned military posts; conveyance to grantees.

The Secretary of the Army is authorized in his discretion, and upon such terms and conditions as he may determine with or without monetary consideration, to transfer and convey all right, title, and interest of the United States in or to any historic military cemetery or burial plot located on military posts or reservations which have heretofore, or may hereafter, become abandoned or useless for military purposes, including the graves and monuments contained in such cemeteries or burial plots and approach roads and appurtenances thereto, together with the responsibility for the perpetual care and maintenance thereof, to any State, county, municipality, or proper agency thereof, in which or in the vicinity of which such cemetery or burial plot is located: *Provided,* That in the event the grantee shall cease or fail to care for and maintain the historic military cemetery or burial plot or the graves and monuments contained therein in a manner satisfactory to the Secretary of the Army, all such right, title, and interest transferred or conveyed by the United States, shall revert to the United States. (July 1, 1947, ch. 187, 61 Stat. 234.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCES

Sale of real estate, see sections 483 and 484 of Title 40, Public Buildings, Property, and Works.

Chapter 7A.—PRIVATE AND COMMERCIAL CEMETERIES

§ 298. Repealed. Oct. 31, 1951, ch. 654, § 1 (47), 65 Stat. 703.

Section, act June 20, 1939, ch. 220, 53 Stat. 843, which related to disposal, by Secretary of War, of government lots in commercial cemeteries, is now covered by sections 483—485 of Title 40, Public Buildings, Property, and Works.

Chapter 8.—GORGAS HOSPITAL

Sec.
301. Ancon Hospital to be known as Gorgas Hospital.
302. Change of name as affecting various rights; records, maps, and public documents.

CROSS REFERENCES

Gorgas Memorial Laboratory, see section 278 et seq. of Title 22, Foreign Relations and Intercourse.

§ 301. Ancon Hospital to be known as Gorgas Hospital.

In recognition of his distinguished services to humanity and as a fitting perpetuation of the name and memory of Major General William Crawford Gorgas, the Government hospital within the Canal Zone, near the City of Panama, known prior to March 24, 1928, as the Ancon Hospital, shall after such date be known and designated on the public records as

the Gorgas Hospital. (Mar. 24, 1928, ch. 240, § 1, 45 Stat. 365.)

§ 302. Change of name as affecting various rights; records, maps, and public documents.

The change in the name of said hospital shall in no wise affect the rights of the Federal Government, or any municipality, corporation, association, or person; and all records, maps, and public documents of the United States in which said hospital is mentioned or referred to under the name of the Ancon Hospital or otherwise shall be held to refer to the said hospital under and by the name of the Gorgas Hospital. (Mar. 24, 1928, ch. 240, § 2, 45 Stat. 366.)

Chapter 9.—HOSPITALIZATION OF MENTALLY ILL NATIONALS RETURNED FROM FOREIGN COUNTRIES

Sec.
321. Definitions.
322. Reception of eligible persons at ports of entry or debarkation; temporary care; arrangements with State or other public or nonprofit agencies; payment or reimbursement for care and treatment.
323. Transfer and release to State of residence or legal domicile, or to relative.
324. Care and treatment at Saint Elizabeths or other Federal hospital, or at State public or private hospitals; limitation.
325. Examination of persons admitted; discharge or conditional release; notification of admission.
326. Request for release of patient; detention for care and treatment; transfer to another hospital.
327. Notification to committing court of discharge or conditional release.
328. Payment for care and treatment; compromise or waiver; investigations; judicial proceedings.
329. Availability of appropriations for transportation.

§ 321. Definitions.

For the purposes of this chapter except as the context may otherwise require—

(a) The term "Department" means the Department of Health, Education, and Welfare.

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(c) The term "State" means a State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(d) The term "eligible person" means an individual with respect to whom the following certificates are furnished to the Secretary:

(1) A certificate of the Secretary of State that such individual is a national of the United States; and

(2) Either (A) a certificate obtained or transmitted by the Secretary of State that such individual has been legally adjudged insane in a named foreign country, or (B) a certificate of an appropriate authority or person (as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare) stating that at the time of such certification such individual was in a named foreign country and was in need of care and treatment in a mental hospital.

(e) The term "residence" means residence as determined under the applicable law or regulations of a State or political subdivision for the purpose of determining the eligibility of an individual for hospitalization in a public mental hospital. (Pub. L. 86-571, § 1, July 5, 1960, 74 Stat. 308.)

EFFECTIVE DATE

Section 11 of Pub. L. 86-571 provided that: "This Act [adding this chapter and repealing sections 191a and 196a of this title] shall, except as otherwise specified, take effect on the date of its enactment [July 5, 1960]."

§ 322. Reception of eligible persons at ports of entry or debarkation; temporary care; arrangements with State or other public or nonprofit agencies; payment or reimbursement for care and treatment.

(a) Upon request of the Secretary of State, the Secretary of Health, Education, and Welfare is authorized (directly or through arrangements under this subsection) to receive any eligible person at any port of entry or debarkation upon arrival from a foreign country and, to the extent he finds it necessary, to temporarily care for and treat at suitable facilities (including a hospital), and otherwise render assistance to, such person pending his transfer or hospitalization pursuant to other sections of this chapter. For the purpose of providing such care and treatment and assistance, the Secretary is authorized to enter into suitable arrangements with appropriate State or other public or nonprofit agencies. Such arrangements shall be made without regard to section 5 of Title 41, and may provide for payment by the Secretary either in advance or by way of reimbursement.

(b) The Secretary may, to the extent deemed appropriate, equitable, and practicable by him, (1) require any person receiving care and treatment or assistance pursuant to subsection (a) of this section to pay, in advance or by way of reimbursement, for the cost thereof or (2) obtain reimbursement for such cost from any State or political subdivision responsible for the cost of his subsequent hospitalization. (Pub. L. 86-571, § 2, July 5, 1960, 74 Stat. 308.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86-571, set out as a note under section 321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 323, 324, 325, 326 of this title.

§ 323. Transfer and release to State of residence or legal domicile, or to relative.

If, at the time of arrival in the United States, the residence or the legal domicile of an eligible person appearing to be in need of care and treatment in a mental hospital is known to be in a State, or whenever thereafter such a person's residence or legal domicile in a State is ascertained, the Secretary shall, if the person is then under his care (whether directly or pursuant to a contract or other arrangement under section 322 or 324 of this title), endeavor to arrange with the proper authorities of such State, or of a political subdivision thereof, for the assumption of responsibility for the care and treatment of such person by such authorities and shall, upon the making of such arrangement in writing, transfer and release such person to such authorities. In the event the State of the residence or legal domicile of an eligible person cannot be ascertained, or the Secretary is unable to arrange with the proper au-

thorities of such State, or of a political subdivision thereof, for the assumption of responsibility for his care and treatment, the Secretary may, if he determines that the best interests of such person will be served thereby, transfer and release the eligible person to a relative who agrees in writing to assume responsibility for such person after having been fully informed as to his condition. (Pub. L. 86-571, § 3, July 5, 1960, 74 Stat. 308.)

EFFECTIVE DATE

Section effective July 5. 1960, see section 11 of Pub. L. 86-571, set out as a note under section 321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 327, 329 of this title.

§ 324. Care and treatment at Saint Elizabeths or other Federal hospital, or at State public or private hospitals; limitation.

(a) Until the transfer and release of an eligible person pursuant to section 323 of this title, the Secretary is authorized to provide care and treatment for such person at Saint Elizabeths Hospital, at any other Federal hospital within or (pursuant to agreement) outside of the Department, or (under contract or other arrangements made without regard to section 5 of Title 41) at any other public or private hospital in any State and, for such purposes, to transfer such person to any such hospital from a place of temporary care provided pursuant to section 322 of this title. In determining the place of such hospitalization, the Secretary shall give due weight to the best interests of the patient.

(b) The authority of the Secretary to provide hospitalization for any person under this section shall not apply to any person for whose medical care and treatment any agency of the United States is responsible. (Pub. L. 86-571, § 4, July 5, 1960, 74 Stat. 309.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86-571, set out as a note under section 321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 323, 325, 326, 327, 328 of this title.

§ 325. Examination of persons admitted; discharge or conditional release; notification of admission.

(a) Any person admitted to any hospital pursuant to section 322 or section 324 of this title shall, as soon as practicable, but in no event more than five days after the day of such admission, be examined by qualified members of the medical staff of the hospital and, unless found to be in need of hospitalization by reason of mental illness, shall be discharged. Any person found upon such examination to be in need of such hospitalization shall thereafter, as frequently as practicable but not less often than every six months, be reexamined and shall, whenever it is determined that the conditions justifying such hospitalization no longer obtain, be discharged or, if found to be in the best interests of the patient, be conditionally released.

(b) Whenever any person is admitted to a hospital pursuant to this chapter, his legal guardian, spouse, or next of kin shall, if known, be immediately notified. (Pub. L. 86-571, § 5, July 5, 1960, 74 Stat. 309.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86-571, set out as a note under section 321 of this title.

§ 326. Request for release of patient; detention for care and treatment; transfer to another hospital.

(a) If a person who is a patient hospitalized under section 322 or 324 of this title, or his legal guardian, spouse, or adult next of kin, requests the release of such patient, the right of the Secretary, or the head of the hospital, to detain him for care and treatment shall be determined in accordance with such laws governing the detention, for care and treatment, of persons alleged to be mentally ill as may be in force and applicable generally in the State in which such hospital is located, but in no event shall the patient be detained more than forty-eight hours (excluding any period of time falling on a Sunday or legal holiday) after the receipt of such request unless within such time (1) judicial proceedings for such hospitalization are commenced or (2) a judicial extension of such time is obtained, for a period of not more than five days, for the commencement of such proceedings.

(b) The Secretary is authorized at any time, when he deems it to be in the interest of the person or of the institution affected, to transfer any person hospitalized under section 324 of this title from one hospital to another, and to that end any judicial commitment of any person so hospitalized may be to the Secretary. (Pub. L. 86-571, § 6, July 5, 1960, 74 Stat. 309.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86-571, set out as a note under section 321 of this title.

§ 327. Notification to committing court of discharge or conditional release.

In the case of any person hospitalized under section 324 of this title who has been judicially committed to the Secretary's custody, the Secretary shall, upon the discharge or conditional release of such person, or upon such person's transfer and release under section 323 of this title, notify the committing court of such discharge or conditional release or such transfer and release. (Pub. L. 86-571, § 7 July 5, 1960, 74 Stat. 310.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86-571, set out as a note under section 321 of this title.

§ 328. Payment for care and treatment; compromise or waiver; investigations; judicial proceedings.

(a) Any person hospitalized under section 324 of this title or his estate, shall be liable to pay or contribute toward the payment of the costs or charges for his care and treatment to the same extent as such person would, if resident in the District of Columbia, be liable to pay, under the laws of the District of Columbia, for his care and maintenance in a hospital for the mentally ill in that jurisdiction. The Secretary may, in his discretion, where in his judgment substantial justice will be best served thereby or the probable recovery will not warrant the expense of collection, compromise or waive the whole or any portion of any claim under this section. In carrying out this section, the Secre-

tary may make or cause to be made such investigations as may be necessary to determine the ability of any person hospitalized under section 324 of this title to pay or contribute toward the cost of his hospitalization. All collections or reimbursement on account of the costs and charges for the care of the eligible person shall be deposited in the Treasury as miscellaneous receipts. Any judicial proceedings to recover such costs or charges shall be brought in the name of the United States in any court of competent jurisdiction.

(b) As used in this section, the term "costs or charges" means, in the case of hospitalization at a hospital under the jurisdiction of the Department of Health, Education, and Welfare, a per diem rate prescribed by the Secretary on a basis comparable to that charged for any other paying patients and, in the case of persons hospitalized elsewhere, the contract rate or a per diem rate fixed by the Secretary on the basis of the contract rate. (Pub. L. 86–571, § 8, July 5, 1960, 74 Stat. 310.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86–571, set out as a note under section 321 of this title.

§ 329. Availability of appropriations for transportation.

Appropriations for carrying out this chapter shall also be available for the transportation of any eligible person and necessary attendants to or from a hospital (including any hospital of a State or political subdivision to which an eligible person is released under section 323 of this title), to the place where a relative to whom any person is released under section 323 resides, or to a person's home upon his discharge from hospitalization under this chapter. (Pub. L. 86–571, § 9, July 5, 1960, 74 Stat. 310.)

EFFECTIVE DATE

Section effective July 5, 1960, see section 11 of Pub. L. 86–571, set out as a note under section 321 of this title

TITLE 25.—INDIANS

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Chapter 1.—BUREAU OF INDIAN AFFAIRS

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NATIONAL COUNCIL ON INDIAN OPPORTUNITY; APPROPRIATIONS AUTHORIZATION; TERMINATION DATE

Pub. L. 91–125, Nov. 26, 1969, 83 Stat. 220, provided: "That there is hereby authorized to be appropriated not to exceed $300,000 annually for the expenses of the National Council on Indian Opportunity, established by Executive Order Numbered 11399 of March 6, 1968 [set out hereunder].

"SEC. 2. The National Council on Indian Opportunity shall terminate five years from the date of this Act [Nov. 26, 1969] unless it is extended by an Act of Congress."

EX. ORD. NO. 11399. NATIONAL COUNCIL ON INDIAN OPPORTUNITY

Ex Ord. No. 11399, Mar. 6, 1968, 33 F.R. 4245, as amended by Ex. Ord. No. 11551, Aug. 11, 1970, 35 F.R. 12885, provided:

WHEREAS the United States has initiated a number of programs in various Departments that should be made available for the development and benefit of the Indian population; and

WHEREAS these programs should be adopted and coordinated in such manner that Indians will participate in and be benefited by them:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of Council.* There is hereby established The National Council on Indian Opportunity (hereinafter referred to as the "Council"). The Council shall have membership as follows: The Vice President of the United States who shall be the chairman of the Council, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Director of the Office of Economic Opportunity, and eight Indian leaders appointed by the President of the United States for terms of two years.

SEC. 2. *Functions of the Council.* The Council shall:

(a) Encourage full use of Federal programs to benefit the Indian population, adapting them where necessary to be available to Indians on reservations in a meaningful way.

(b) Encourage interagency coordination and cooperation in carrying out Federal programs as they relate to Indians.

(c) Appraise the impact and progress of Federal programs for Indians.

(d) Suggest ways to improve such programs.

SEC. 3. *Compensation and per diem.* Members of the Council who are officers of the Federal government shall receive no additional compensation by reason of this order. Other members of the Council shall be entitled to receive compensation and travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the government service employed intermittently (5 U.S.C. §§ 3109, 5703).

SEC. 4. *Assistance to the Council.* (a) Each Federal department and agency represented on the Council shall furnish such necessary assistance to the Council as may be authorized by section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691), or other law. The Department of the Interior shall furnish necessary administrative services for the Council.

(b) The staff of the Council shall include an Executive Director, who shall be appointed by the chairman of the Council, and such other employees as may be necessary, who shall be assigned by the departments and agencies represented on the Council.

SEC. 5. *Meetings.* The Council shall meet on call of the chairman.

LYNDON B. JOHNSON

§ 1. Commissioner of Indian Affairs.

There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and

consent of the Senate. (R. S. § 462; Jan. 24, 1923, ch. 42, 42 Stat. 1180.)

DERIVATION

Act July 9, 1832, ch. 174, § 1, 4 Stat. 564.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

APPROPRIATIONS

For appropriation for the Bureau of Indian Affairs in accordance with the Classification Act of 1928, see act Mar. 3, 1925, ch. 462, 43 Stat. 1146.

By the Act of Jan. 24, 1923, making appropriations for the Department of the Interior, the salary of the Commissioner was fixed at $5,000.

For particular appropriation acts enumerating officers and employees in the office of the Commissioner of Indian Affairs, with their rates of compensation, see act May 24, 1922, ch. 199, 42 Stat. 559 and act Mar. 1, 1919, ch. 86, § 1, 40 Stat. 1213.

Five thousand dollars was appropriated for by the Legislative, Executive, and Judicial Appropriation Act of Mar. 4, 1915, ch. 141, 38 Stat. 1031.

An assistant commissioner was authorized by a provision of act of July 16, 1914, ch. 141, § 1, 38 Stat. 490.

A provision in act July 9, 1832, ch. 174, § 1, 4 Stat. 564, fixed the salary of the Commissioner at $3,000 a year; but by act July 16, 1914, ch. 141, § 6, 38 Stat. 509, all laws or parts of laws inconsistent with rates of salaries or compensation appropriated by the legislative, executive, and judicial appropriation acts were repealed, and the rates of salaries or compensation of officers or employees appropriated for in such acts were to constitute the rate of salary or compensation of such officers or employees, respectively, until otherwise fixed by an annual rate of appropriation or other law.

§ 1a. Delegation of powers and duties by Secretary of Interior and Commissioner of Indian Affairs.

For the purpose of facilitating and simplifying the administration of the laws governing Indian affairs, the Secretary of the Interior is authorized to delegate, from time to time, and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior pursuant to law. Subject to the supervision and direction of the Secretary, the Commissioner is authorized to delegate, in like manner, any powers and duties so delegated to him by the Secretary, or vested in him by law, to the assistant commissioners, or the officer in charge of any branch, division, office, or agency of the Bureau of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior or the Commissioner of Indian Affairs pursuant to law. Such delegated powers shall be exercised subject to appeal to the Secretary, under regulations to be prescribed by him, or, as from time to time determined by him, to the Under Secretary or to an Assistant Secretary of the Department of the Interior, or to the Commissioner of Indian Affairs. The Secretary or the Commissioner, as the case may be, may at any time revoke the whole or any part of a delegation made pursuant to this section, but no such revocation shall be given retroactive effect. Nothing in this section shall be deemed to abrogate or curtail any authority to make delegations conferred by any other provision of law, nor shall anything in this section be deemed to convey authority to delegate any power to issue regulations. (Aug. 8, 1946, ch. 907, 60 Stat. 939.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

ASSISTANT COMMISSIONERS

An assistant commissioner was authorized by a provision of act July 16, 1914, ch. 141, § 1, 38 Stat. 490.

§ 2. Duties of Commissioner.

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations. (R. S. § 463.)

DERIVATION

Acts July 9, 1832, ch. 174, § 1, 4 Stat. 564; July 27, 1868, ch. 259, § 1, 15 Stat. 228.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

All supervisory and appellate powers and duties in regard to Indian affairs theretofore vested in the Secretary of the Treasury were thereafter to be exercised and performed by the Secretary of the Interior under the provisions of section 1 of act July 27, 1868, ch. 259, 15 Stat. 228.

Appointment by the President of a Commissioner of Indian Affairs to act under the direction of the Secretary of War was provided for by section 1 of act July 9, 1832, ch. 174, 4 Stat. 564.

§ 2a. Assistant or deputy commissioners; appointment; powers and duties.

Assistant or deputy commissioners of the Bureau of Indian Affairs, in the Department of the Interior, shall be appointed by the Secretary of the Interior, subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5. Appointments to these positions shall be considered as made under the authority of section 43 of Title 5. Assistant and deputy commissioners so appointed shall be authorized to sign such letters, papers, and documents and to perform such other duties as may be directed by the commissioner of the Bureau of Indian Affairs. The Secretary may designate the Bureau of Indian Affairs an assistant or deputy commissioner, who shall be authorized to perform the duties of the commissioner in case of the death,

resignation, absence, or sickness of the commissioner. (June 5, 1942, ch. 336, § 1, 56 Stat. 312; Oct. 28, 1949, ch. 782, title XI, § 1106 (a), 63 Stat. 972.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees.

Section 43 of Title 5, referred to in text, is now covered by section 3101 of Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923", which, for purposes of codification, was translated as "chapter 51 and subchapter III of chapter 53 of Title 5".

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

REPEAL OF INCONSISTENT LAWS

Section 2 of act June 5, 1942, provided as follows: "All provisions of law inconsistent with this Act [this section] are hereby repealed to the extent of such inconsistency."

ASSISTANT COMMISSIONERS

An assistant commissioner was authorized by a provision of act July 16, 1914, ch. 141, § 1, 38 Stat. 490.

§ 3. Compilation of statutes regulating duties of Indian agents and inspectors.

It shall be the duty of the Commissioner of Indian Affairs to cause to be compiled and printed for the use of Indian agents and inspectors the provisions of the statutes regulating the performance of their respective duties, and also to furnish said officers from time to time information of new enactments upon the same subject. (May 17, 1882, ch. 163, § 7, 22 Stat. 88.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

There have been no Indian agents since 1908. See note under section 64 of this title.

§ 4. Defective record of deeds and papers legalized.

The recording of all deeds and papers prior to July 26, 1892, in the office of the Commissioner of Indian Affairs is confirmed, approved, and legalized; and said record theretofore made shall be deemed, taken, and held to be good and valid and shall have all the force and effect and be entitled to the same credit as if it had been made in pursuance of and in conformity to law. But shall have no effect whatever upon the validity or invalidity of the deed or paper so recorded, and shall be no evidence of constructive notice to any persons not actually knowing the contents. (July 26, 1892, ch. 256, § 1, 27 Stat. 272.)

§ 5. Record of deeds by Indians requiring approval.

The Commissioner of Indian Affairs is empowered and directed to continue to make and keep a record of every deed executed by any Indian, his heirs, representatives, or assigns, which may require the approval of the President of the United States or of the Secretary of the Interior, whenever such approval shall have been given, and the deed so approved returned to said office. (July 26, 1892, ch. 256, § 2, 27 Stat. 273.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 6. Seal; authenticated and certified documents; evidence.

The Commissioner of Indian Affairs shall cause a seal to be made and provided for the said office, with such device as the President of the United States shall approve, and copies of any public documents, records, books, maps, or papers belonging to or on the files of said office, authenticated by the seal and certified by the commissioner thereof, or by such officer as may, for the time being, be acting as or for such commissioner, shall be evidence equally with the originals thereof. (July 26, 1892, ch. 256, § 3, 27 Stat. 273.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 44 on this section, see note by Advisory Committee under rule 44.

§ 7. Fees for furnishing certified copies of records.

The Commissioner of Indian Affairs shall have the custody of said seal, and shall furnish certified copies of any such records, books, maps, or papers belonging to or on the files of said office, to any person applying therefor who shall comply with the requirements of said office, upon the payment by such parties at the rate of 10 cents per hundred words, and $1 for copies of maps or plats, and the additional sum of 25 cents for the commissioner's certificate of verification, with the seal of said office; and one of the employees of said office shall be designated by the commissioner as the receiving clerk, who shall give bond in the sum of $1,000, and the amounts so received shall, under the direction of the commissioner, be paid into the Treasury of the United States; but fees shall not be demanded for such authenticated copies as may be required by the officers of any branch of the Government or by any

Indian who shall satisfy the commissioner by satisfactory legal evidence that he or she is not able, by reason of poverty, to pay such fees, nor for such unverified copies as the commissioner in his discretion may deem proper to furnish. (July 26, 1892, ch. 256, § 4, 27 Stat. 273.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Heads of departments; copies of official papers in their custody; fees, see section 1460 of Title 43, Public Lands.

§ 8. Accounts for claims and disbursements.

All accounts and vouchers for claims and disbursements connected with Indian affairs shall be transmitted to the commissioner for administrative examination, and by him passed to the General Accounting Office for settlement. (R. S. § 464; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

DERIVATION

Act July 9, 1832, ch. 174, § 3, 4 Stat. 564.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9. Regulations by President.

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs. (R. S. § 465.)

DERIVATION

Act June 30, 1834, ch. 162, § 17, 4 Stat. 738.

§ 10. Employee to sign letters.

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may designate an employee of the Indian Office to sign letters of that office requiring the signature of the commissioner or assistant commissioner, and all signatures of such employee while acting under such designation shall have the same force and effect as if made by said commissioner or assistant commissioner. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department or the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 11. Employee or employees to sign approval of tribal deeds.

The Secretary of the Interior is authorized to designate an employee or employees of the Department of the Interior to sign, under the direction of the Secretary, in his name and for him, his approval of tribal deeds to allottees, to purchasers of town lots, to purchasers of unallotted lands, to persons, corporations, or organizations for lands reserved to them under the law for their use and benefit, and to any tribal deeds made and executed according to law for any of the Five Civilized Tribes of Indians in Oklahoma. (Mar. 3, 1911, ch. 210, § 17, 36 Stat. 1069.)

§ 12. Agent to negotiate commutation of annuities.

The Commissioner of Indian Affairs is authorized to send a special Indian agent, or other representative of his office, to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for the commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper. (Apr. 30, 1908 ch. 153, 35 Stat. 73.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 13. Expenditure of appropriations by Bureau of Indian Affairs.

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs. (Nov. 2, 1921, ch. 115, 42 Stat. 208.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 14. Money accruing to Indians from Veterans' Administration or other governmental agencies.

Any money accruing from the Veterans' Administration or other governmental agency to incompetent adult Indians, or minor Indians, who are recognized wards of the Federal Government, for whom no legal guardians or other fiduciaries have been appointed may be paid, in the discretion of the Administrator of Veterans' Affairs, or other head of a governmental bureau or agency, having such funds for payment, to such superintendent or other bonded officer of the Indian Service as the Secretary of the Interior shall designate, for the use of such beneficiaries, or to be paid to or used for, the heirs of such deceased beneficiaries, to be handled and accounted for by him with other moneys under his control, in accordance with existing law and the regulations of the Department of the Interior. (Feb. 25, 1933, ch. 124, 47 Stat. 907.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 783.

§ 15. Utility facilities used in administration of Bureau of Indian Affairs; contracts for sale, operation, maintenance, repair or relocation of facilities; terms and conditions; exception; Congressional approval.

Except for electric utility systems constructed and operated as a part of an irrigation system, the Secretary of the Interior is authorized to contract under such terms and conditions as he considers to be in the best interest of the Federal Government for the sale, operation, maintenance, repairs, or relocation of Government-owned utilities and utility systems and appurtenances used in the administration of the Bureau of Indian Affairs. The Secretary shall not execute a contract pursuant to this section until he has submitted to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives a copy of the contract and a statement of his reasons for proposing the contract, and until such materials have lain before the Committees for sixty days (excluding the time during which either House is in recess for more than three days) unless prior thereto the Secretary is notified that neither committee has any objection to the proposed contract. (Pub. L. 87–279, Sept. 22, 1961, 75 Stat. 577.)

Chapter 2.—OFFICERS OF INDIAN AFFAIRS

Sec.
21, 22. Repealed.
23, 24. Omitted.
25. Superintendent for Five Civilized Tribes.
25a. Same; application of civil service laws.
26. Repealed.
27. Detail of Army officers.
28 to 31. Repealed.
32. Accounting for funds.
33. Superintendents in charge of reservations; administration of oath of office.
34, 35. Repealed.
36. Special agents and other officers to administer oaths.
37 to 39. Repealed.
40. Limits of superintendencies, agencies, and subagencies.
41. Special agents and commissioners.
41a. Indian inspectors.
42. Repealed.
43. Persons paid for other services not paid for interpreting.
44. Employment of Indians.
45. Preference to Indians qualified for duties.
46. Preference to Indians in employment of clerical, mechanical, and other help.
47. Employment of Indian labor and purchase of products of Indian industry.
48. Right of tribes to direct employment of persons engaged for them.
49, 50. Repealed.
51. Additional security from persons charged with disbursement of money or goods.
52. New bond for disbursing officer.
52a. Special bond for large per capita payments; expenses.
53. Disbursing officers; acting clerks.
54, 55. Repealed.
56. Quarters, fuel, and light for employees.
57. Heat and light for employees' quarters.
58. Limitation on number and kind of employment.
59. Transfer of funds for payment of employees; details for other service.
60. Compensation prescribed to be in full.
61. Estimates for personal services in Indian Office.
62. Discontinuance and transfer of agencies.
63. Consolidation of agencies.
64 Services of agents dispensed with.
65. Discontinuance of agents, subagents, and interpreters.
66. Duties of agency devolved on superintendent of Indian school.
67. Repealed.
68. Employees not to trade with Indians.
68a. Same; purchases from Indians by employees.

§§ 21, 22. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

Section 21, R.S. § 2039, related to the Board of Indian Commissioners.

Section 22, act Aug. 24, 1912, ch. 388, § 1, 37 Stat. 521, authorized the Board of Indian Commissioners to employ and pay a secretary.

§§ 23, 24. Omitted.

CODIFICATION

Sections, relating to the Board of Indian Commissioners, were based upon the following statutes:

Section 23—Act May 17, 1882, ch. 163, § 1, 22 Stat. 70.

Section 24—R. S. § 2042.

Ex. Ord. No. 6145, May 25, 1933, provided that the Board of Indian Commissioners be abolished, that its affairs be wound up by the Secretary of the Interior, and that its records, property, and personnel be transferred and/or remain under the supervision of the Secretary of the Interior.

§ 25. Superintendent for Five Civilized Tribes.

The offices of the Commissioner of the Five Civilized Tribes and superintendent of Union Agency, in Oklahoma, are abolished as of September 1, 1914, and in lieu thereof there shall be appointed by the President, by and with the advice and consent of the Senate, a Superintendent for the Five Civilized Tribes, with his office located in the State of Oklahoma, at a salary of $5,000 per annum, and said superintendent shall exercise the authority and perform the duties exercised prior to September 1, 1914, by the Commissioner to the Five Civilized Tribes and the superintendent of the Union Agency, with authority to reorganize the department and to eliminate all unnecessary clerks, subject to the approval of the Secretary of the Interior. (Aug. 1, 1914, ch. 222, § 17, 38 Stat. 598.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Compensation of employees, see section 5301 et seq. of Title 5, Government Organization and Employees.

Superintendent of the Five Civilized Tribes included in competitive classified civil service, see section 25a of this title.

§ 25a. Same; application of civil service laws.

The position of Superintendent of the Five Civilized Tribes is included within the competitive classified civil service and shall be subject to civil service laws and rules. (Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1583.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department or the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 26. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

Section R.S. § 2052, provided for appointment by the President of Indian Agents.

§ 27. Detail of Army officers.

CODIFICATION

Section, R.S. 2062; July 13, 1892, ch. 164, § 1, 27 Stat. 120; July 1, 1898, ch. 545, § 1, 30 Stat. 573, authorized the President to require that military officers perform the duties of Indian agents. The services of Indian agents have been dispensed with since 1908. See section 64 of this title and notes thereunder.

§§ 28 to 31. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 634.

Section 28, R.S. § 2056, act May 17, 1882, ch. 163, § 1, 22 Stat. 87, fixed term of office for Indian Agents.

Section 29, R.S. § 2057, provided for a bond by Indian Agents.

Section 30, R.S. § 2060, prescribed limits of residence of Indian Agents.

Section 31, R.S. § 2058, related to duties of Indian Agents.

§ 32. Accounting for funds.

CODIFICATION

Section, act July 1, 1898, ch. 545, § 1, 30 Stat. 595, related to the appointment of Indian agents. The services of Indian agents have been dispensed with since 1908. See section 64 of this title and note set out thereunder.

§ 33. Superintendents in charge of reservations; administration of oath of office.

Superintendents and acting superintendents in charge of Indian reservations, schools, irrigation and allotment projects are authorized and empowered to administer the oath of office required of employees placed under their jurisdiction. (June 30, 1913, ch. 4, § 1, 38 Stat. 80.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 34, 35. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 642, 650.

Section 34, acts Aug. 24, 1912, ch. 355, § 8, 37 Stat. 487; June 6, 1939, ch. 185, 53 Stat. 810, authorized the superintendent, acting superintendent, and principal clerks of the different Indian superintendencies or Indian agencies to administer oaths to expense accounts.

Section 35, R.S. § 2064, authorized Indian Agents to take acknowledgements of deeds and to administer oaths.

§ 36. Special agents and other officers to administer oaths.

Each special agent, supervisor of schools, or other official charged with the investigation of Indian agencies and schools, in the pursuit of his official duties shall have power to administer oaths and to examine on oath all officers and persons employed in the Indian Service, and all such other persons as may be deemed necessary and proper. (Mar. 1, 1899, ch. 324, § 1, 30 Stat. 927.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 37. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 633, 641.

Section, acts Mar. 3, 1875, ch. 132, § 10, 18 Stat. 450; Mar. 3, 1909, ch. 263, 35 Stat. 784, related to the keeping of books by Indian agents and penalties for the falsification thereof.

§ 38. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section, R. S. § 2061, related to visits to Washington, D. C., by agents in California.

§ 39. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

Section, R.S. § 263, related to compensation for extra services rendered by Indian Agents.

§ 40. Limits of superintendencies, agencies, and subagencies.

The limits of each superintendency, agency, and subagency shall be established by the Secretary of the Interior, either by tribes or geographical boundaries. (R. S. § 2066.)

DERIVATION

Act Mar. 3, 1847, ch. 66, § 1, 9 Stat. 203; act June 30, 1834, ch. 162, § 7, 4 Stat. 736.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 41. Special agents and commissioners.

All special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior. (R. S. § 2067.)

DERIVATION

Act Mar. 3, 1863, ch. 99, § 1, 12 Stat. 792.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 41a. Indian inspectors.

Indian inspectors shall on and after March 4, 1909 be termed inspectors, and shall be included in the classified service. (Mar. 4, 1909, ch. 297, § 1, 35 Stat. 888.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 42. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

Section, R.S. § 2068, provided for interpreters for Indian agencies under Department of Interior.

§ 43. Persons paid for other services not paid for interpreting.

No person employed by the United States and paid for any other service shall be paid for interpreting. (Apr. 4, 1910, ch. 140, § 2, 36 Stat. 272.)

§ 44. Employment of Indians.

In the Indian Service Indians shall be employed as herders, teamsters, and laborers, and where practicable in all other employments in connection with the agencies and the Indian Service. And it shall be the duty of the Secretary of the Interior and the Commissioner of Indian Affairs to enforce this provision. (Aug. 15, 1894, ch. 290, § 10, 28 Stat. 313.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Standards for Indians appointed to office, see section 472 of this title.

§ 45. Preference to Indians qualified for duties.

In all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties. (R. S. § 2069.)

DERIVATION

Act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Standards for Indians appointed to office, see section 472 of this title.

§ 46. Preference to Indians in employment of clerical, mechanical, and other help.

Preference shall at all times, as far as practicable, be given to Indians in the employment of clerical, mechanical, and other help on reservations and about agencies. (May 17, 1882, ch. 163, § 6, 22 Stat. 88; July 4, 1884, ch. 180, § 6, 23 Stat. 97.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Indian schools, employment of Indians where practicable, see section 274 of this title.

Purchases from Indian manual and training schools when advantageous, see section 104 of this title.

Standards for Indians appointed to office, see section 472 of this title.

§ 47. Employment of Indian labor and purchase of products of Indian industry.

So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior. (Apr. 30, 1908, ch. 153, 35 Stat. 71; June 25, 1910, ch. 431, § 23, 36 Stat. 861.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Standards for Indians appointed to Indian Office, see section 472 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564h, 697, 747, 797, 843 of this title.

§ 48. Right of tribes to direct employment of persons engaged for them.

Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe. (R. S. § 2072.)

DERIVATION

Act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

§ 49. Repealed. June 30, 1932, ch. 317, 47 Stat. 421.

Section, act May 25, 1918, ch. 86, § 1, 40 Stat. 565, related to the qualifications of farmers.

§ 50. Repealed. Pub. L. 88–448, title IV, § 402(a)(2), Aug. 19, 1964, 78 Stat. 492.

Section, R.S. § 2074, related to the holding to two offices. See section 5533 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL.

Section repealed effective on the first day of the first month which begins later than the 90th day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

§ 51. Additional security from persons charged with disbursement of money or goods.

The President may, from time to time, require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects of any kind, on account of Indian affairs. (R. S. § 2075.)

DERIVATION

Act June 30, 1834, ch. 162, § 8, 4 Stat. 737.

CROSS RERERENCES

Bonds, general provisions, see Title 6, Official and Penal Bonds.

§ 52. New bond for disbursing officer.

When the Secretary of the Interior deems a new bond necessary he may, in his discretion, require any disbursing officer under the jurisdiction of the Commissioner of Indian Affairs to execute a new bond, with approved sureties, in such amount as he may deem necessary, and when accepted and approved by the Secretary of the Interior the new bond shall be valid and the surety or sureties of the prior bond shall be released from liability for all acts or defaults of the principal which may be done or committed from and after the day on which the new bond was approved. (Apr. 30, 1908, ch. 153, 35 Stat. 71.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 52a. Special bond for large per capita payments; expenses.

When it becomes necessary to make large per capita payments to Indians, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, is authorized to require any disbursing officer of the Bureau of Indian Affairs to file a special bond in such amount as may be necessary to make such payment in one installment. (Apr. 21, 1904, ch. 1402, 33 Stat. 191; Aug. 5, 1909, ch. 7, 36 Stat. 125; Nov. 2, 1921, ch. 115, 42 Stat. 208.)

CHANGE OF NAME

"Bureau of Indian Affairs" was substituted for "Indian Department" on authority of act Nov. 2, 1921, which authorized the Bureau to direct, supervise, and expend moneys for the benefit, care, and assistance of the Indians. See section 13 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Premiums on bonds, see section 14 of Title 6, Official and Penal Bonds.

§ 53. Disbursing officers; acting clerks.

Any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place and discharge all the duties devolved upon him by law or regulations during such time as he may be unable to perform the duties of his position because of absence, physical disability, or other disqualifying circumstances: *Provided,* That the official bond given by the disbursing agent to the United States shall be held to cover and apply to the acts of the employee authorized to act in his place, who shall give bond to the disbursing agent in such sums as the latter may require, and with respect to any and all acts performed by him while acting for his principal, shall be subject to all the liabilities and

penalties prescribed by law for official misconduct of disbursing agents. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 414.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The functions of disbursement of money of all agencies, except as to the Department of the Army, Navy Department, and Panama Canal, were transferred to the Division of Disbursements in the Treasury Department by Ex. Ord. No. 6166, § 4, June 10, 1933, and Ex. Or. No. 6728, May 29, 1934, set out in note to section 901 of Title 5, Government Organization and Employees. The Division of Disbursements was consolidated in the Fiscal Service by 1940 Reorg. Plan No. III, § 1(a)(3) June 30, 1940, 5 F. R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5.

§§ 54, 55. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 634.

Section 54, R.S. § 2077, related to traveling expenses.

Section 55, act May 17, 1882, ch. 163, § 1, 22 Stat. 86 related to expenses of clerks detailed on special duty.

§ 56. Quarters, fuel, and light for employees.

The Secretary of the Interior, in his discretion, may allow quarters, fuel, and light to employees of the Indian Service whose compensation is not prescribed by law, the salaries of such employees to be fixed on this basis and the cost of providing quarters, fuel, and light to be paid from any funds which are applicable and available therefor: *Provided,* That this authorization shall be retroactive to the extent of approving any expenditures for such purposes authorized by the Secretary of the Interior prior to June 7, 1924. (June 7, 1924, ch. 328, 43 Stat. 634.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 57. Heat and light for employees' quarters.

The Secretary of the Interior is authorized to allow employees in the Indian Service who are furnished quarters necessary heat and light for such quarters without charge, such heat and light to be paid for out of the fund chargeable with the cost of heating and lighting other buildings at the same place: *And provided further,* That the amount so expended for agency purposes shall not be included in the maximum amounts for compensation of employees prescribed by section 58 of this title. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 584; May 25, 1918, ch. 86, § 1, 40 Stat. 564; Mar. 3, 1925, ch. 462, 43 Stat. 1147.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 58. Limitation on number and kind of employment.

The number and kind of employees at each agency shall be prescribed by the Secretary of the Interior and none other shall be employed. (June 7, 1897, ch. 3, § 1, 30 Stat. 90; Apr. 18, 1912, ch. 83, § 10, 37 Stat. 88; Aug. 24, 1912, ch. 388, § 1, 37 Stat. 521; May 25, 1918, ch. 86, § 17, 40 Stat. 578.)

REPEALS

Act Feb. 26, 1929, ch. 323, 45 Stat. 1307, formerly set out in the credit of this section, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 647.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57 of this title.

§ 59. Transfer of funds for payment of employees; details for other service.

When not required for the purpose for which appropriated, the funds provided for the pay of specified employees at any Indian agency may be used by the Secretary of the Interior for the pay of other employees at such agency, but no deficiency shall be thereby created; and, when necessary, specified employees may be detailed for other service when not required for the duty for which they were engaged. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 60. Compensation prescribed to be in full.

The several compensations prescribed by this title shall be in full of all emoluments or allowances whatsoever. But where necessary, a reasonable allowance or provision may be made for offices and office contingencies. (R. S. § 2076.)

DERIVATION

Act June 30, 1834, ch. 162, § 10, 4 Stat. 737.

REFERENCES IN TEXT

The words "this title", referred to in text, refer to title XXVIII, Indians, of the Revised Statutes (R.S. 2039—2157). For distribution of that title of the Revised Statutes in this Code, see Distribution Tables.

§ 61. Estimates for personal services in Indian Office.

Annual estimates in detail shall be submitted for all personal services required in the Indian Office,

and it shall not be lawful to employ in said office any personal services other than those specifically appropriated for in the legislative, executive, and judicial appropriation Acts, except temporary details of field employees for service connected solely with their respective employments. (Aug. 23, 1912, ch. 350, § 1, 37 Stat. 396.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 62. Discontinuance and transfer of agencies.

The President shall, whenever he may judge it expedient, discontinue any Indian agency, or transfer the same, from the place or tribe designated by law, to such other place or tribe as the public service may require. (R. S. § 2059.)

DERIVATION

Act June 30, 1834, ch. 162, § 4, 4 Stat. 735.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F. R. 5385, set out as a note under section 301 of Title 3, The President.

§ 63. Consolidation of agencies.

The President may, in his discretion, consolidate two or more agencies into one, and where Indians are located on reservations created by Executive order he may, with the consent of the tribes to be affected thereby, expressed in the usual manner, consolidate one or more tribes, and abolish such agencies as are thereby rendered unnecessary. (May 17, 1882, ch. 163, § 6, 22 Stat. 88; July 4, 1884, ch. 180, § 6, 23 Stat. 97.)

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F. R. 5385, set out as a note under section 301 of Title 3, The President.

§ 64. Services of agents dispensed with.

It shall be the duty of the President to dispense with the services of such Indian agents and superintendents as may be practicable; and where it is practicable he shall require the same person to perform the duties of two agencies or superintendencies for one salary. (R. S. § 2053; June 22, 1874, ch. 389, § 1, 18 Stat. 147; Mar. 3, 1875, ch. 132, § 1, 18 Stat. 421.)

DERIVATION

Act Feb. 14, 1873, ch. 138, § 1, 17 Stat. 437.

INDIAN AGENTS

In a communication, dated November 29, 1940, from the Office of Indian Affairs of the Department of the Interior, it was stated that there have been no Indian agents since 1908, all of the agencies and schools having been placed under the supervision of superintendents.

§ 65. Discontinuance of agents, subagents, and interpreters.

The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such agents, subagents, interpreters, and mechanics as may from time to time become unnecessary, in consequence of the emigration of the Indians, or other causes. (R. S. § 2073; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244.)

DERIVATION

Act July 9, 1832, ch. 174, § 5, 4 Stat. 564.

INDIAN AGENTS

There have been no Indian agents since 1908. See note under section 64 of this title.

§ 66. Duties of agency devolved on superintendent of Indian school.

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of Indian agency or part thereof upon the superintendent of the Indian school located at such agency or part thereof whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents.

The pay of any superintendent who performs agency duties in addition to those of his superintendency may be increased by the Commissioner of Indian Affairs, in his discretion, to an extent not exceeding $300 per annum. (Mar. 1, 1907, ch. 2285, 34 Stat. 1020.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 67. Repealed. Pub. L. 89-544, § 8(a), Sept. 6, 1966, 80 Stat. 636.

Section, act Mar. 3, 1893, ch. 209, § 1, 27 Stat. 614, provided that the superintendent of the training school at Cherokee Agency was to act as an agent.

§ 68. Employees not to trade with Indians.

No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of $5,000, and shall be removed from his office. (R. S. § 2078.)

DERIVATION

Act June 30, 1834, ch. 162, § 14, 4 Stat. 738

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Employees forbidden to have interest in Indian contracts, see section 437 of Title 18, Crimes and Criminal Procedure.

This section as limitation upon right of Indian employees of Government to Indian benefits, see section 441 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 68a, 87a, 441 of this title.

§ 68a. Same; purchases from Indians by employees.

Anything contained in sections 68 and 87 of this title to the contrary notwithstanding, employees of the United States Government, including those in the Indian Service, may, under such rules and regulations as the Secretary of the Interior shall prescribe, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity, produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: *Provided, however,* That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee. (June 19, 1939, ch. 210, 53 Stat. 840.)

REFERENCES IN TEXT

Section 87 of this title, referred to in text, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is now covered by section 437 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section, a portion of act June 19, 1939, is duplicated as section 87a of this title. The final proviso of the act constitutes section 441 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174; 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Chapter 2A.—INDIAN CLAIMS COMMISSION

Sec.
70. Creation of Commission.
70a. Jurisdiction; claims considered; offsets and counterclaims.
70b. Members of Commission.
(a) Appointment; qualifications; oath.
(b) Term of office; vacancies; removal.
(c) Restriction on engagement in other vocations or representation of tribes; penalty.
(d) Quorum.
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70k. Limitation of time for presenting claims.
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70p. Hearings.
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70s. Review by Court of Claims and Supreme Court.
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70v. Dissolution of Commission.
70v–1. Trial calendar.
(a) Preparation.
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70w. Repealed.

CLAIMS ACCRUING AFTER AUGUST 13, 1946

This chapter relates oinly to claims accruing before Aug. 13, 1946. For jurisdiction of Indian claims against the United States accruing after that date, see section 1505 of Title 28, Judiciary and Judicial Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 564t, 750 of this title.

§ 70. Creation of Commission.

There is created and established an Indian Claims Commission, referred to in this chapter as the Commission. (Aug. 13, 1946, ch. 959, § 1, 60 Stat. 1049.)

REPEAL OF INCONSISTENT PROVISIONS

Section 25 of act Aug. 13, 1946, provided: "All provisions of law inconsistent with this Act [this chapter] are hereby repealed to the extent of such inconsistency, except that existing provisions of law authorizing suits in the Court of Claims by particular tribes, bands, or groups of Indians and governing the conduct or determination of such suits shall continue to apply to any case heretofore or hereafter instituted thereunder save as provided by section 11 hereof [section 70j of this title] as to the deduction of payments, offsets, counterclaims, and demands."

SEPARABILITY OF PROVISIONS

Section 26 of act Aug. 13, 1946, provided: "If any provision of this Act [this chapter], or the application thereof, is held invalid, the remainder of the Act [this chapter], or other applications of such provisions, shall not be affected."

§ 70a. Jurisdiction; claims considered; offsets and counterclaims.

The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law

or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after August 13, 1946, shall be considered by the Commission.

All claims under this chapter may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 250 of Title 28; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478 and 479 of this title, save expenditures made under section 465 of this title, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award. (Aug. 13, 1946, ch. 959, § 2, 60 Stat. 1050.)

REFERENCES IN TEXT

Section 250 of Title 28, referred to in text, was repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, and is now covered by sections 1491, 1496, 1501, 1503, and 2501 of Title 28, Judiciary and Judicial Procedure.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Jurisdiction of Indian claims against the United States accruing after August 13, 1946, see section 1505 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70j of this title.

§ 70b. Members of Commission.

(a) Appointment; qualifications; oath.

The Commission shall consist of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one Commissioner as Chairman. At all times at least three Commissioners shall be members of the bar of the Supreme Court of the United States in good standing. No more than three Commissioners shall be of the same political party. Each Commissioner shall take an oath to support the Constitution of the United States and to discharge faithfully the duties of his office.

(b) Term of office; vacancies; removal.

The Commissioners shall hold office during their good behavior until the dissolution of the Commission as provided in this chapter. Vacancies shall be filled in the same manner as the original appointments. Members of the Commission may be removed by the President for cause after notice and opportunity to be heard.

(c) Restriction on engagement in other vocations or representation of tribes; penalty.

No Commissioner shall engage in any other business, vocation, or employment during his term of office nor shall he, during his term of office or for a period of two years thereafter, represent any Indian tribe, band, or group in any matter whatsoever, or have any financial interest in the outcome of any tribal claim. Any person violating the provisions of this subdivision shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(d) Quorum.

Three Commissioners shall constitute a quorum, and the agreement of three Commissioners shall be necessary to any and all determinations for the transaction of the business of the Commission, and, if there be a quorum, no vacancy shall impair or affect the business of the Commission, or its determinations. (Aug. 13, 1946, ch. 959, § 3, 60 Stat. 1050; Apr. 10, 1967, Pub. L. 90-9, §§ 2, 3, 81 Stat. 11.)

CODIFICATION

A second undersignated par. in subsec. (a), as added by Pub. L. 90-9, § 2 Apr. 10, 1967, 81 Stat. 11, providing for the holding over, until June 28, 1968, of Commissioners holding office on Apr. 9, 1967, unless sooner appointed pursuant to this section, has been omitted as executed.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-9, § 2, increased Commission membership from three (consisting of Chief Commissioner and two Associates) to five (consisting of a Chairman and four other Commissioners), increased from two to three requirement of membership in the bar of the Supreme Court and political party membership limitation, and struck out provisions prescribing the basic compensation of Commissioners.

Subsec. (d). Pub. L. 90-9, § 3, substituted "Three Commissioners" and "three Commissioners" for "Two members" and "two members", respectively.

REPEALS

Act Oct. 15, 1949, ch. 695, § 6(a), 63 Stat. 881, formerly set out in the credit of this section, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 655.

§ 70c. Staff of Commission; oath.

The Commission shall appoint a clerk and such other employees as shall be requisite to conduct the

business of the Commission. All such employees shall take oath for the faithful discharge of their duties and shall be under the direction of the Commission in the performance thereof. (Aug. 13, 1946, ch. 959, § 4, 60 Stat. 1051.)

§ 70d. Principal office.

The principal office of the Commission shall be in the District of Columbia. (Aug. 13, 1946, ch. 959, § 5, 60 Stat. 1051.)

§ 70e. Expenses of Commission.

All necessary expenses of the Commission shall be paid on the presentation of itemized vouchers therefor approved by the Chairman or other member or officer designated by the Commission. (Aug. 13, 1946, ch. 959, § 6, 60 Stat. 1051; Apr. 10, 1967, Pub. L. 90–9, § 4, 81 Stat. 11.)

AMENDMENTS

1967—Pub. L. 90–9 substituted "Chairman" for "Chief Commissioner".

§ 70f. Time of meetings.

The time of the meetings of the Commission shall be prescribed by the Commission. (Aug. 13, 1946, ch. 959, § 7, 60 Stat. 1051.)

§ 70g. Record of proceedings; public inspection.

A full written record shall be kept of all hearings and proceedings of the Commission and shall be open to public inspection. (Aug. 13, 1946, ch. 959, § 8, 60 Stat. 1051.)

§ 70h. Control of procedure.

The Commission shall have power to establish its own rules of procedure. (Aug. 13, 1946, ch. 959, § 9, 60 Stat. 1051.)

§ 70i. Presentation of claims.

Any claim within the provisions of this chapter may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission. (Aug. 13, 1946, ch. 959, § 10, 60 Stat. 1052.)

§ 70j. Suits in Court of Claims under prior acts; transfer forbidden; offsets and counterclaims.

Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: *Provided,* That the provisions of section 70a of this title, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court of Claims has been or will be authorized: *Provided further,* That the Court of Claims in any suit pending before it on August 13, 1946, shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit. (Aug. 13, 1946, ch. 959, § 11, 60 Stat. 1052.)

§ 70k. Limitation of time for presenting claims.

The Commission shall receive claims for a period of five years after August 13, 1946, and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress. (Aug. 13, 1946, ch. 959, § 12, 60 Stat. 1052.)

§ 70*l*. Notice to tribes; investigation of claims; availability of data.

(a) As soon as practicable the Commission shall send a written explanation of the provisions of this chapter to the recognized head of each Indian tribe and band, and to any other identifiable groups of American Indians existing as distinct entities, residing within the territorial limits of the United States and Alaska, and to the superintendents of all Indian agencies, who shall promulgate the same, and shall request that a detailed statement of all claims be sent to the Commission, together with the names of aged or invalid Indians from whom depositions should be taken immediately and a summary of their proposed testimonies.

(b) The Commission shall establish an Investigation Division to investigate all claims referred to it by the Commission for the purpose of discovering the facts relating thereto. The Division shall make a complete and thorough search for all evidence affecting each claim, utilizing all documents and records in the possession of the Court of Claims and the several Government departments, and shall submit such evidence to the Commission. The Division shall make available to the Indians concerned and to any interested Federal agency any data in its possession relating to the rights and claims of any Indian. (Aug. 13, 1946, ch. 959, § 13, 60 Stat. 1052.)

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Jurisdiction of Indian claims against the United States accruing after August 13, 1946, see section 1505 of Title 28, Judiciary and Judicial Procedure.

§ 70m. Information from governmental departments; official records as evidence.

The Commission shall have the power to call upon any of the departments of the Government for any information it may deem necessary, and shall have the use of all records, hearings, and reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business.

At any hearing held under this chapter, any official letter, paper, document, map, or record in the possession of any officer or department, or court of the United States or committee of Congress (or a certified copy thereof), may be used in evidence insofar as relevant and material, including any deposition

or other testimony of record in any suit or proceeding in any court of the United States to which an Indian or Indian tribe or group was a party, and the appropriate department of the Government of the United States shall give to the attorneys for all tribes or groups full and free access to such letters, papers, documents, maps, or records as may be useful to said attorneys in the preparation of any claim instituted under this chapter, and shall afford facilities for the examination of the same and, upon written request by said attorneys, shall furnish certified copies thereof. (Aug. 13, 1946, ch. 959, § 14, 60 Stat. 1052.)

§ 70n. Attorneys of claimants; selection, practice and fees; Attorney General to represent United States; compromise of claims.

Each such tribe, band, or other identifiable group of Indians may retain to represent its interests in the presentation of claims before the Commission an attorney or attorneys at law, of its own selection, whose practice before the Commission shall be regulated by its adopted procedure. The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecution of the claim; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case. The attorney or attorneys for any such tribe, band, or group as shall have been organized pursuant to section 476 of this title, shall be selected pursuant to the constitution and bylaws of such tribe, band, or group. The employment of attorneys for all other claimants shall be subject to the provisions of sections 81, 82, 83, and 84 of this title.

The Attorney General or his assistants shall represent the United States in all claims presented to the Commission, and shall have authority, with the approval of the Commission, to compromise any claim presented to the Commission. Any such compromise shall be submitted by the Commission to the Congress as a part of its report as provided in section 70t of this title in the same manner as final determinations of the Commission, and shall be subject to the provisions of section 70u of this title. (Aug. 13, 1946, ch. 959, § 15, 60 Stat. 1053.)

REFERENCES IN TEXT

Section 83 of this title, referred to in text, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is now covered by section 438 of Title 18, Crimes and Criminal Procedure.

§ 70n-1. Expert assistance for preparation and trial of claims; revolving fund established for loans.

There is hereby authorized to be appropriated the sum of $1,800,000 for the establishment of a revolving fund from which the Secretary of the Interior may make loans to Indian tribes and bands and to other identifiable groups of American Indians residing within the territorial limits of the United States for use by them in obtaining expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission. (Pub. L. 88-168, § 1, Nov. 4, 1963, 77 Stat. 301; Pub. L. 89-592, Sept. 19, 1966, 80 Stat. 814.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946, which enacted this chapter.

AMENDMENTS

1966—Pub. L. 89-592 increased the sum authorized to be appropriated from $900,000 to $1,800,000.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-3, 70n-4, 70n-5 of this title.

§ 70n-2. Inability of applicants to pay for assistance required; denial of loans in cases of unreasonable fees.

No loan shall be made under sections 70n-1 to 70n-7 of this title to a tribe, band, or group if it has funds available on deposit in the Federal Treasury or elsewhere in an amount adequate to obtain the expert assistance it needs or if, in the opinion of the Secretary, the fees to be paid the experts are unreasonable in light of the services to be performed by them. (Pub. L. 88-168, § 2, Nov. 4, 1963, 77 Stat. 301.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-3, 70n-4, 70n-5 of this title.

§ 70n-3. Reports to congressional committees.

Every loan made under sections 70n-1 to 70n-7 of this title shall be reported to the Committees on Interior and Insular Affairs of the Senate and House of Representatives within fifteen days of the time it is made. (Pub. L. 88-168, § 3, Nov. 4, 1963, 77 Stat. 301.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946, which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-4, 70n-5 of this title.

§ 70n-4. Interest; repayment from judgments.

Any loan made under sections 70n-1 to 70n-7 of this title shall bear interest and shall, together with such interest, be repayable out of the proceeds of any judgment recovered by the tribe, band, or group on its claim against the United States. If no judgment is recovered or if the amount of the judgment recovered is inadequate to repay the loan and interest thereon, the unpaid amount may be declared nonrepayable by the Secretary. (Pub. L. 88-168, § 4, Nov. 4, 1963, 77 Stat. 301.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946, which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n-2, 70n-3, 70n-5 of this title.

§ 70n–5. Crediting to revolving fund of repayments and interest.

Repayments of loans made under sections 70n–1 to 70n–7 of this title and of interest thereon shall be credited to the revolving fund established under section 70n–1 of this title. (Pub. L. 88–168, § 5, Nov. 4, 1963, 77 Stat. 301.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n–2, 70n–3, 70n–4 of this title.

§ 70n–6. Liability of United States.

No liability shall attach to the United States because of a failure to make a loan in the amount requested. (Pub. L. 88–168, § 6, Nov. 4, 1963, 77 Stat. 301.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946, which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n–2, 70n–3, 70n–4, 70n–5 of this title.

§ 70n–7. Approval of contingent fee contracts prohibited.

After November 4, 1963, the Secretary of the Interior shall approve no contract which makes the compensation payable to a witness before the Indian Claims Commission contingent upon the recovery of a judgment against the United States. (Pub. L. 88–168, § 7, Nov. 4, 1963, 77 Stat. 301.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946, which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n–2, 70n–3, 70n–4, 70n–5 of this title.

§ 70o. Member of Congress forbidden to practice before Commission.

No Senator or Member of or Delegate to Congress shall, during his continuance in office, practice before the Commission. (Aug. 13, 1946, ch. 959, § 16, 60 Stat. 1053.)

§ 70p. Hearings.

The Commission shall give reasonable notice to the interested parties and an opportunity for them to be heard and to present evidence before making any final determination upon any claim. Hearings may be held in any part of the United States or in the Territory of Alaska. (Aug. 13, 1946, ch. 959, § 17, 60 Stat. 1053.)

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 70q. Testimony of witnesses; depositions; fees.

Any member of the Commission or any employee of the Commission, designated in writing for the purpose by the Chairman may administer oaths and examine witnesses. Any member of the Commission may require by subpena (1) the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, correspondence, and other evidence, from any place in the United States or Alaska at any designated place of hearing; or (2) the taking of depositions before any designated individual competent to administer oaths under the laws of the United States or of any State or Territory. In the case of a deposition, the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall be subscribed by the deponent. In taking testimony, opportunity shall be given for cross-examination, under such regulations as the Commission may prescribe. Witnesses subpenaed to testify or whose depositions are taken pursuant to this chapter, and the officers or persons taking the same, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States. (Aug. 13, 1946, ch. 959, § 18, 60 Stat. 1054; Apr. 10, 1967, Pub. L. 90–9, § 4, 81 Stat. 11.)

AMENDMENTS

1967—Pub. L. 90–9 substituted "Chairman" for "Chief Commissioner".

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 70r. Final determinations of Commission.

The final determination of the Commission shall be in writing, shall be filed with its clerk, and shall include (1) its findings of the facts upon which its conclusions are based; (2) a statement (a) whether there are any just grounds for relief of the claimant and, if so, the amount thereof; (b) whether there are any allowable offsets, counterclaims, or other deductions, and, if so, the amount thereof; and (3) a statement of its reasons for its findings and conclusions. (Aug. 13, 1946, ch. 959, § 19, 60 Stat. 1054.)

§ 70s. Review by Court of Claims and Supreme Court.

(a) In considering any claim the Commission at any time may certify to the Court of Claims any definite and distinct questions of law concerning which instructions are desired for the proper disposition of the claim; and thereupon the Court of Claims may give appropriate instructions on the questions certified and transmit the same to the Commission for its guidance in the further consideration of the claim.

(b) When the final determination of the Commission has been filed with the clerk of said Commission the clerk shall give notice of the filing of such determination to the parties to the proceeding in manner and form as directed by the Commission. At any time within three months from the date of the filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims, which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. In similar manner and with like effect either party may appeal to the Court of Claims from

any interlocutory determination by the Commission establishing the liability of the United States notwithstanding such determination is not for any reason whatever final as to the amount of recovery; and any such interlocutory appeal shall be taken on or before January 1, 1961, or three months from such interlocutory determination, whichever is later: *Provided,* That the failure of either party to appeal from any such interlocutory determination shall not constitute a waiver of its right to challenge such interlocutory determination in any appeal from any final determination subsequently made in the case. On said appeal the Court shall determine whether the findings of fact of the Commission are supported by substantial evidence, in which event they shall be conclusive, and also whether the conclusions of law, including any conclusions respecting "fair and honorable dealings", where applicable, stated by the Commission as a basis for its final determination, are valid and supported by the Commission's findings of fact. In making the foregoing determinations, the Court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error. The Court may at any time remand the cause to the Commission for such further proceedings as it may direct, not inconsistent with the foregoing provisions of this section. The Court shall promulgate such rules of practice as it may find necessary to carry out the foregoing provisions of this section.

(c) Determinations of questions of law by the Court of Claims under this section shall be subject to review by the Supreme Court of the United States in the manner prescribed by section 288 of Title 28. (Aug. 13, 1946, ch. 959, § 20, 60 Stat. 1054; Sept. 8, 1960, Pub. L. 86–722, 74 Stat. 829.)

REFERENCES IN TEXT

Section 288 of Title 28, referred to in subsec. (c), was repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, and is now covered by section 1255 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–722 authorized either party to appeal to the Court of Claims from any interlocutory determination by the Commission establishing the liability of the United States notwithstanding such determination is not for any reason whatever final as to the amount of recovery, required such interlocutory appeal to be taken on or before Jan. 1, 1961, or three months from such determination, whichever is later, and provided that failure to appeal from the interlocutory determination shall not constitute a waiver of the right to challenge the interlocutory determination in any appeal from any final determination.

§ 70t. Report of determination of claim to Congress.

In each claim, after the proceedings have been finally concluded, the Commission shall promptly submit its report to Congress.

The report to Congress shall contain (1) the final determination of the Commission; (2) a transcript of the proceedings or judgment upon review, if any, with the instructions of the Court of Claims; and (3) a statement of how each Commissioner voted upon the final determination of the claim. (Aug. 13, 1946, ch. 959, § 21, 60 Stat. 1055.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70n of this title.

§ 70u. Payment of claim after final determination; adverse determination as bar to further claims.

(a) When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is authorized to be appropriated such sums as are necessary to pay the final determination of the Commission.

The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.

(b) A final determination against a claimant made and reported in accordance with this chapter shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy. (Aug. 13, 1946, ch. 959, § 22, 60 Stat. 1055.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70n of this title.

§ 70v. Dissolution of Commission.

The existence of the Commission shall terminate at the end of ten years from and after April 10, 1962, or at such earlier time as the Commission shall have made its final report to the Congress on all claims filed with it. Upon its dissolution the records of the Commission shall be delivered to the Archivist of the United States. (Aug. 13, 1946, ch. 959, § 23, 60 Stat. 1055; July 24, 1956, ch. 679, 70 Stat. 624; June 16, 1961, Pub. L. 87–48, 75 Stat. 92; Apr. 10, 1967, Pub. L. 90–9, § 1, 81 Stat. 11.)

AMENDMENTS

1967—Pub. L. 90–9 extended termination date from five to ten years from and after Apr. 10, 1962.

1961—Pub. L. 87–48 substituted "April 10, 1962" for "April 10, 1957."

1956—Act July 24, 1956, substituted the words "five years from and after April 10, 1957, or at such earlier time" for "ten years after the first meeting of the Commission or at such earlier time after the expiration of the five-year period of limitation set forth in section 70k of this title".

§ 70v–1. Trial calendar.

(a) Preparation.

The Commission shall, not later than one year after April 10, 1967, prepare a trial calendar which will set a date, not later than December 31, 1970, for the trial of each claim pending before the Commission.

(b) Dismissal of claims; continuances; stay of dismissal; negotiation of compromise.

If a claimant fails to proceed with the trial of its claim on the date set for that purpose, the Commission shall enter an order dismissing the claim with prejudice unless for good cause the Commission grants a continuance, which continuance shall be for a period of not more than six months. No further continuances shall be granted upon motion of the same party except upon a showing that unforeseeable events beyond the control of the party have occurred which make it imperative that such further continuances be granted, and in no event shall

such further continuances exceed an aggregate of six months. If, upon the expiration of the final period of continuance granted, the claimant fails to proceed with the trial of its claims, the Commission shall enter an order dismissing the claim with prejudice. The Commission may, however, stay the entry of any such order if it finds that a final compromise of the claim is being negotiated in good faith by the parties. (Aug. 13, 1946, ch. 959, § 27, as added Apr. 10, 1967, Pub. L. 90-9, § 5, 81 Stat. 11.)

CODIFICATION

Section was not enacted as part of the Indian Claims Commission Act of 1946, which enacted this chapter.

§ 70w. Repealed. May 24, 1949, ch. 139, § 142, 62 Stat. 109

Section, act Aug. 13, 1946, ch. 959, § 24, 60 Stat. 1055, related to Indian claims accruing after Aug. 13, 1946, and is now covered by section 1505 of Title 28, Judiciary and Judicial Procedure.

Chapter 3.—AGREEMENTS WITH INDIANS

TREATIES

Sec.
71. Future treaties with Indian tribes.
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CONTRACTS WITH INDIANS

81. Contracts with Indian tribes or Indians.
81a. Counsel for prosecution of claims against the United States; cancellation; revival.
81b. Continuation of contracts with attorneys containing limitation of time where suits have been filed.
82 Payments under contracts; aiding in making prohibited contracts.
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83. Repealed.
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87. Repealed.
87a. Purchases from Indians by employees.
88. False vouchers, accounts, or claims.

TREATIES

§ 71. Future treaties with Indian tribes.

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be invalidated or impaired. (R. S. § 2079.)

DERIVATION

Act Mar. 3, 1871, ch. 120, § 1, 16 Stat. 566.

CROSS REFERENCES

Organization and incorporation of Indian tribes, see sections 476 and 477 of this title.

§ 72. Abrogation of treaties.

Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe if in his opinion the same can be done consistently with good faith and legal and national obligations. (R. S. § 2080.)

DERIVATION

Act July 5, 1862, ch. 135, § 1, 12 Stat. 528.

CONTRACTS WITH INDIANS

§ 81. Contracts with Indian tribes or Indians.

No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

Second. It shall bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupations; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically.

Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or any one else, for or on his or their behalf, on account of such services, in excess of the amount approved by the Commissioner and Secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid. (R. S. § 2103; Aug. 27, 1958, Pub. L. 85-770, 72 Stat. 927.)

DERIVATION

Acts Mar. 3, 1871, ch. 120, § 3, 16 Stat. 570; May 21, 1872, ch. 177, §§ 1, 2, 17 Stat. 136.

AMENDMENTS

1958—Par. Second. Pub. L. 85-770 deleted requirement that contracts with Indian tribes be executed before a judge of a court of record.

Par. Sixth. Pub. L. 85-770 deleted par. Sixth enumerating contractual elements to be certified to by the judge.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power

vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Forfeiture of money received contrary to this section and punishment by fine or imprisonment, see section 438 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70n, 81a, 84 of this title; title 18 section 438.

§ 81a. Counsel for prosecution of claims against the United States; cancellation; revival.

Any contracts or agreements approved prior to June 26, 1936, by the Secretary of the Interior between the authorities of any tribe, band, or group of Indians and their attorneys for the prosecution of claims against the United States, which provide that such contracts or agreements shall run for a period of years therein specified, and as long thereafter as may be required to complete the business therein provided for, or words of like import, or which provide that compensation for services rendered shall be on a quantum-meruit basis not to exceed a specified percentage, shall be deemed a sufficient compliance with section 81 of this title: *Provided, however,* That nothing herein contained shall limit the power of the Secretary of the Interior, after due notice and hearing and for proper cause shown, to cancel any such contract or agreement: *Provided further,* That the provisions of this section and section 81b of this title shall not be construed to revive any contract which has been terminated by lapse of time, operation of law, or by acts of the parties thereto. (June 26, 1936, ch. 851, § 1, 49 Stat. 1984.)

§ 81b. Continuation of contracts with attorneys containing limitation of time where suits have been filed.

Any existing valid contract made and approved prior to June 26, 1936, pursuant to any Act of Congress by any tribe, band, or group of Indians with an attorney or attorneys for the rendition of services in the prosecution of claims against the United States under authority of which suit or suits have been filed, and which contains a limitation of time for the completion of the services to be performed may be continued in full force unless a subsequent contract dealing with the same subject matter has been made and approved. (June 26, 1936, ch. 851, § 2, 49 Stat. 1984.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 81a of this title.

§ 82. Payments under contracts; aiding in making prohibited contracts.

No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement, other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement, until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and, if not, it shall be paid in proportion to the services rendered under the contract. (R. S. § 2104.)

DERIVATION

Act May 21, 1872, ch. 177, § 3, 17 Stat. 136.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Forfeiture of money received contrary to this section and punishment by fine or imprisonment, see section 438 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70n of this title; title 18 section 438.

§ 82a. Contracts for payment of money permitted certain tribes; payment for legal services.

Contracts involving the payment or expenditure of any money or affecting any property belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes of Indians, including contracts for professional legal services, may be made by said tribes, with the approval of the Secretary of the Interior, or his authorized representative, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That the provisions of this section shall not apply to contracts for professional legal services involving the prosecution of claims against the United States. (July 3, 1952, ch. 549, § 1, 66 Stat. 323.)

REPEALS

Section 2 of act July 3, 1952, provided: "That the second proviso in section 28 of the Act of April 26, 1906, ch. 1876 (34 Stat. 148) [not classified to the Code], and the provisions contained in the fifth paragraph of section 17 of the Act of March 3, 1911, ch. 210 (36 Stat. 1070) [not classified to the code], dealing with contracts made by the Choctaw and Chickasaw Tribes of Indians for professional legal services of attorneys, are hereby repealed."

§ 83. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, R. S. § 2105, related to payments under prohibited contracts, and is now covered by section 438 of Title 18, Crimes and Criminal Procedure.

§ 84. Assignments of contracts restricted.

No assignment of any contracts embraced by section 81 of this title or of any part of one shall be valid, unless the names of the assignees and their residences and occupations be entered in writing upon the contract, and the consent of the Secretary

of the Interior and the Commissioner of Indian Affairs to such assignment be also indorsed thereon. (R. S. § 2106.)

DERIVATION

Act May 21, 1872, ch. 177, § 2, 17 Stat. 136.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70n of this title.

§ 85. Contracts relating to tribal funds or property.

No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given. (June 30, 1913, ch. 4, § 18, 38 Stat. 97.)

§ 86. Encumbrances on lands allotted to applicants for enrollment in Five Civilized Tribes; use of interest on tribal funds.

Land allotted to any applicant for enrollment as a citizen in the Five Civilized Tribes whether an Indian or freedman, shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under the laws of the United States: *Provided further,* That the interest accruing from tribal funds and deposited in banks in the State of Oklahoma may be used as authorized by the Act of March third, nineteen hundred and eleven, under the direction of the Secretary of the Interior, to defray the expense of per capita payments authorized by Congress. (Aug. 1, 1914, ch. 222, § 17, 38 Stat. 601; June 25, 1948, ch. 645, § 3, 62 Stat. 859.)

REFERENCES IN TEXT

The act of March third, nineteen hundred and eleven, referred to in text, is act Mar. 3, 1911, ch. 210, 36 Stat. 1060 and has been partially classified to sections 11, 118, and 156 of this title.

AMENDMENTS

1948—Act June 25, 1948, omitted provisions relating to prohibiting contracts for compensation for services in relation to enrollment in the Five Civilized Tribes which is now covered by section 439 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 20 of act June 25, 1948, provided that the amendment of this section shall be effective Sept. 1, 1948.

§ 87. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, act June 22, 1874, ch. 389, § 10, 18 Stat. 177, related to interest of agents and employees in Indian contracts, and is now covered by section 437 of Title 18, Crimes and Criminal Procedure.

§ 87a. Purchases from Indians by employees.

Anything contained in sections 68 and 87 of this title to the contrary notwithstanding, employees of the United States Government, including those in the Indian Service, may, under such rules and regulations as the Secretary of the Interior shall prescribe, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity, produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: *Provided, however,* That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee. (June 19, 1939, ch. 210, 53 Stat. 840.)

REFERENCES IN TEXT

Section 87 of this title, referred to in text, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is now covered by section 437 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section, a portion of act June 13, 1939, is duplicated as section 68a of this title. The final proviso of that act constitutes section 441 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 88. False vouchers, accounts, or claims.

Any disbursing or other officer of the United States, or other person, who shall knowingly present, or cause to be presented, any voucher, account, or claim to any officer of the United States, for approval or payment, or for the purpose of securing a credit in any account with the United States, relating to any matter pertaining to the Indian Service, which shall contain any material misrepresentation of fact in regard to the amount due or paid, the name or character of the article furnished or received; or of the service rendered, or to the date of purchase, delivery, or performance of service, or in any other particular, shall not be entitled to payment or credit for any part of said voucher, account, or claim; and if any such credit shall be given or received, or payment made, the United States may recharge the same to the officer or person receiving the credit or payment, and recover the amount from either or from both, in the same manner as other debts due the United States are collected: *Provided,* That where an account contains more than one voucher the foregoing shall apply only to such vouchers as contain the misrepresentation: *And provided further,* That the officers and persons by and between whom the business is transacted shall, in all civil actions in settlement of accounts, be presumed to know the facts in relation to the matter set forth in the voucher, account, or claim: *And provided further,* That the foregoing shall be in addition to the penalties prescribed by law, and in no way affect proceedings under existing law for like offenses. Where practicable this section shall be printed on the blank forms of vouchers provided for general use. (July 4, 1884, ch. 180, § 8, 23 Stat. 97.)

Chapter 4.—PERFORMANCE BY UNITED STATES OF OBLIGATIONS TO INDIANS

PURCHASE OF SUPPLIES

Sec.
91, 92. Omitted.
93 to 95. Repealed.
96. Copies of contracts furnished to General Accounting Office before payment.
97. Proposals or bids for contracts to be preserved.
98. Purchase of supplies without authority.
99. Contracts for supplies in advance of appropriations.
100. Repealed.
101. Payment for wagon transportation.
102. Payment of costs for furnishing coal for Indian Service.
103. Repealed.
104. Purchase of articles manufactured at schools.

DISBURSEMENT OF MONEYS AND SUPPLIES

111. Payment of moneys and distribution of goods.
112. Persons present at delivery of goods and money
113. Mode of disbursements.
114. Payment of annuities in coin.
115. Payment of annuities in goods.
116. Indians 18 years of age to have right to receipt for annuity.
117. Payments per capita to individual Indians.
118. Payments in satisfaction of judgments.
119. Allotment of tribal funds to individual Indians.
120. Per capita payments to enrolled members of Choctaw and Chickasaw Tribes.
121. Payment of share of tribal funds to helpless Indians.
122. Limitation on application of tribal funds.
123. Expenditure from tribal funds without specific appropriations.
123a. Tribal funds; use to purchase insurance for protection of tribal property.
123b. Tribal funds for traveling and other expenses.
124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations.
125. Expenditure of moneys of tribes of Quapaw Agency.
126. Payment of claims for Indian depredations.
127. Moneys or annuities of hostile Indians.
128. Appropriations not paid to Indians at war with United States.
129. Moneys due Indians holding captives other than Indians withheld.
130. Withholding of moneys or goods on account of intoxicating liquors.
131. Advances to disbursing officers.
132. Mode of distribution of goods.
133. Rolls of Indians entitled to supplies.
134. Appropriations for supplies available immediately; time for distribution.
135. Supplies distributed so as to prevent deficiencies.
136. Commutation of rations and other supplies; payment per capita.
137. Supplies distributed to able-bodied males on condition.
138. Goods withheld from chiefs violating treaty stipulations.
139. Appropriations for subsistence.
140. Diversion of appropriations for employees and supplies.
141. Rations.
142 to 144. Repealed.
145. Accounts between United States and tribes under reimbursable appropriations.
146. Report of Indians present and receiving food.
147. Appropriations for specified buildings; use for transportation of materials.
148. Appropriations for supplies; transfer to Indian Service supply fund; expenditure.

DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

151. Deposits in bank by disbursing agents.
152. Proceeds of sales of Indian lands.
153. Appropriation to carry out treaties.
154. Proceeds of sales of lands not subject to certain deductions.
155. Disposal of miscellaneous revenues from Indian reservations, etc.
155a. Disposal of miscellaneous revenues from Indian reservations.
156. Deposit of funds from sales of lands and property of Five Civilized Tribes.
157. Investments of stock required by treaties.
158. Investment of proceeds of lands.
159. Moneys due incompetents or orphans.
160. Custody of stocks or bonds held in trust for tribes.
161. Deposit in Treasury of trust funds.
161a. Tribal funds in trust in Treasury Department; rate of interest.
161b. Same; "Indian Money, Proceeds of Labor" fund; separate accounts for respective tribes; rate of interest.
161c. Same; surplus above requirements of fund; transfer to surplus fund of Treasury; retransfer.
161d. Same; disposition of accrued interest.
162. Repealed.
162a. Deposit of tribal funds in banks; bond or collateral security; investments.
163. Roll of membership of Indian tribes.
164. Restoration to tribal ownership of unclaimed per capita and other individual payments of tribal trust funds; deposit in general fund of the Treasury.
165. Same; notice to Congressional committees.

PURCHASE OF SUPPLIES

§§ 91, 92. Omitted.

CODIFICATION

Sections, R. S. 2083 and R. S. 2084, which related to the purchase of goods for Indians, are now covered by section 5 of Title 41, Public Contracts.

PROCUREMENT FUNCTIONS

Effective Jan. 1, 1947, the name of the Procurement Division of the Treasury Department was changed to the Bureau of Federal Supply by regulation § 5.7 of subpart A of Part 5 of Title 41, Public Contracts, 11 F. R. 13638, issued by the Secretary of the Treasury under the authority of section 301 of Title 5, Government Organization and Employees. The functions of Bureau of Federal Supply were transferred to the Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380. See section 752 of Title 40, Public Buildings, Property, and Works.

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 901 of Title 5, Government Organization and Employees.

§ 93. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

Section, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, related to the purchase of Indian supplies and services. The same subject matter is now covered by sections 5, 6a and 6b of Title 41, Public Contracts.

Construction of repeal, see note under section 6a of Title 41, Public Contracts.

§ 94. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 71, related to the purchase of supplies, advertisement therefor, and supplies for irrigation works. Subject matter of section is now covered by section 5 of Title 41, Public Contracts.

§ 95. Repealed. Mar. 27, 1939, ch. 18, 53 Stat. 551.

Section, acts June 22, 1874, ch. 389, § 6, 18 Stat. 176; Mar. 3, 1875, ch. 132, § 9, 18 Stat. 450; May 18, 1916, ch. 125, § 1, 39 Stat. 129, referred to bids under advertisements for goods or supplies.

§ 96. Copies of contracts furnished to General Accounting Office before payment.

Copies of all contracts made by the Commissioner of Indian Affairs, or any other officer of the Government for the Indian Service, shall be furnished to the General Accounting Office before any payment shall be made thereon. (Mar. 3, 1875, ch. 132, § 7, 18 Stat. 450; July 31, 1894, ch. 174, §§ 3, 7, 28 Stat. 205, 206; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Deposit of contracts in General Accounting Office, see section 20 of Title 41, Public Contracts.

§ 97. Proposals or bids for contracts to be preserved.

In all lettings of contracts in connection with the Indian Service, the proposals or bids received shall be filed and preserved; and an abstract of all bids or proposals received for the supplies or services embraced in any contract shall be attached to, and filed with, the said contract when the same is filed in the General Accounting Office. (Aug. 15, 1876, ch. 289, § 3, 19 Stat. 199; July 31, 1894, ch. 174, § 4, 28 Stat. 205; June 21, 1906, ch. 3504, 34 Stat. 328; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 901 of Title 5, Government Organization and Employees.

Effective Jan. 1, 1947, the name of the Procurement Division of the Treasury Department was changed to the Bureau of Federal Supply by regulation § 5.7 of subpart A of Part 5 of Title 41, Public Contracts, 11 F. R. 13638, issued by the Secretary of the Treasury under the authority of section 301 of Title 5, Government Organization and Employees. The functions of Bureau of Federal Supply were transferred to the Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380. See section 752 of Title 40, Public Buildings, Property, and Works.

§ 98. Purchase of supplies without authority.

No claims for supplies for Indians, purchased without authority of law, shall be paid out of any appropriation for expenses of the Office of Indian Affairs, or for Indians. (R. S. § 2085.)

DERIVATION

Act July 15, 1870, ch. 296, § 2, 16 Stat. 360.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 99. Contracts for supplies in advance of appropriations.

The Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and enter into contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service required for the ensuing fiscal year, notwithstanding the fact that the appropriations for such fiscal year have not been made, and the contracts so made shall be on the basis of the appropriations for the preceding fiscal year, and shall contain a clause that no deliveries shall be made under the same and no liability attach to the United States in consequence of such execution if Congress fails to make an appropriation for such contract for the fiscal year for which those supplies are required. (Aug. 15, 1894, ch. 290, § 4, 28 Stat. 312.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 901 of Title 5, Government Organization and Employees.

Effective Jan. 1, 1947, the name of the Procurement Division of the Treasury Department was changed to the Bureau of Federal Supply by regulation § 5.7 of subpart A of Part 5 of Title 41, Public Contracts, 11 F. R. 13638, issued by the Secretary of the Treasury under the authority of section 301 of Title 5, Government Organization and Employees. The functions of Bureau of Federal Supply were transferred to the Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380. See section 752 of Title 40, Public Buildings, Property, and Works.

§ 100. Repealed. Oct. 31, 1951, ch. 654, § 1 (48), 65 Stat. 703.

Section, acts Mar. 3, 1877, ch. 101, § 1, 19 Stat. 291; July 7, 1898, ch. 571, § 1, 30 Stat. 676, related to transportation of Indian goods and supplies under contract or in open market.

§ 101. Payment for wagon transportation.

All wagon transportation from the point where delivery is made by the last common carrier to the agency, school, or elsewhere, and between points on the reservation or elsewhere, shall be paid from the funds appropriated or otherwise available for the

support of the school, agency, or other project for which the supplies to be transported are purchased. (June 30, 1913, ch. 4, § 1, 38 Stat. 79.)

TRANSFER OF FUNCTIONS

Effective Jan. 1, 1947, the name of the Procurement Division of the Treasury Department was changed to the Bureau of Federal Supply by regulation § 5.7 of subpart A of Part 5 of Title 41, Public Contracts, 11 F. R. 13638, issued by the Secretary of the Treasury under the authority of section 301 of Title 5, Government Organization and Employees. The functions of Bureau of Federal Supply were transferred to the Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380. See section 752 of Title 40, Public Buildings, Property, and Works.

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 901 of Title 5, Government Organization and Employees.

§ 102. Payment of costs for furnishing coal for Indian Service.

The cost of inspection, storage, transportation, and so forth, of coal for the Indian Service shall be paid from the support fund of the school or agency for which the coal is purchased. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 412.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The functions of the Archivist were transferred to the Administrator of General Services by section 104 (a) of act June 30, 1949, ch. 288, title I, 63 Stat. 381. Section 104 (a) is now covered by section 2102 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

§ 103. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028.

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 73, related to the maintenance of warehouses for goods of the Indian Service.

§ 104. Purchase of articles manufactured at schools.

The Secretary of the Interior is authorized, whenever it can be done advantageously, to purchase for use in the Indian Service, from Indian manual and training schools, in the manner customary among individuals such articles as may be manufactured at such schools, and which are used in the Indian Service. Accounts of such transactions shall be kept in the Indian Bureau and in the training schools, and reports thereof made from time to time. (May 11, 1880, ch. 85, § 1, 21 Stat. 131.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Effective Jan. 1, 1947, the name of the Procurement Division of the Treasury Department was changed to the Bureau of Federal Supply by regulation § 5.7 of subpart A of Part 5 of Title 41, Public Contracts, 11 F. R. 13638, issued by the Secretary of the Treasury under the authority of section 301 of Title 5, Government Organization and Employees. The functions of Bureau of Federal Supply were transferred to the Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380. See sction 752 of Title 40, Public Buildings, Property, and Works.

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency was transferred to a Procurement Division in the Treasury Department by Ex. Ord. No. 6166, June 10, 1933, set out in note to section 901 of Title 5, Government Organization and Employees.

DISBURSEMENT OF MONEYS AND SUPPLIES

§ 111. Payment of moneys and distribution of goods.

The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.

Second. In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, then to such person as the tribe shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

Third. To the heads of the families and to the individuals entitled to participate in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe, and will encourage able-bodied Indians in the habits of industry and peace. (R. S. § 2086.)

DERIVATION

Acts June 30, 1834, ch. 162, § 11, 4 Stat. 737; Mar. 3, 1847, ch. 66, § 3, 9 Stat. 203; Aug. 30, 1852, ch. 103, § 3, 10 Stat. 56; July 15, 1870, ch. 296, §§ 2, 3, 16 Stat. 360.

CROSS REFERENCES

Allowances to Sioux Indians, see section 474 of this title.

Mission schools to receive rations for enrolled children, see section 279 of this title.

§ 112. Persons present at delivery of goods and money.

The superintendent, agent, or subagent, together with such military officer as the President may direct, shall be present, and certify to the delivery of all goods and money required to be paid or delivered to the Indians. (R. S. § 2088.)

DERIVATION

Act June 30, 1834, ch. 162, § 13, 4 Stat. 737.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

There have been no Indian agents since 1908. See note under section 64 of this title.

CROSS REFERENCES

Mode of distribution of goods, see section 132 of this title.

§ 113. Mode of disbursements.

At the discretion of the President all disbursements of moneys, whether for annuities or otherwise, to fulfill treaty stipulations with individual Indians or Indian tribes, shall be made in person by the superintendents of Indian affairs, where superintendencies exist, to all Indians or tribes within the limits of their respective superintendencies, in the presence of the local agents and interpreters, who shall witness the same, under such regulations as the Secretary of the Interior may direct. (R. S. § 2089.)

DERIVATION

Act Mar. 3, 1857, ch. 90, § 1, 11 Stat. 169.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The function of disbursement of moneys of the United States by any agency, except as to the Department of the Army, Navy Department, and Panama Canal, was transferred to the Treasury Department, and, together with the Office of Disbursing Clerk of that Department, was consolidated in a Division of Disbursement, by section 4 of Ex. Ord. No. 6166, June 10, 1933, and Ex. Ord. No. 6728, May 29, 1934, set out in note to section 901 of Title 5, Government Organization and Employees. The Division of Disbursements was consolidated in the fiscal service by 1940 Reorg. Plan No. III, § 1(a)(3), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5.

§ 114. Payment of annuities in coin.

The Secretary of the Treasury is authorized to pay in coin such of the annuities as by the terms of any treaty of the United States with any Indian tribe are required to be paid in coin. (R. S. § 2081.)

DERIVATION

Act Mar. 3, 1865, ch. 127, § 3, 13 Stat. 561.

CROSS REFERENCES

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

§ 115. Payment of annuities in goods.

The President may, at the request of any Indian tribe, to which an annuity is payable in money, cause the same to be paid in goods, purchased as provided in section 91 of this title. (R. S. § 2082.)

DERIVATION

Act June 30, 1834, ch. 162, § 12, 4 Stat. 737.

REFERENCES IN TEXT

Section 91 of this title, referred to in text, was omitted from the Code as covered by section 5 of Title 41, Public Contracts.

§ 116. Indians 18 years of age to have right to receipt for annuity.

All Indians, when they shall arrive at the age of eighteen years, shall have the right to receive and receipt for all annuity money that may be due or become due to them, if not otherwise incapacitated under the regulations of the Indian Office. (Mar. 1, 1899, ch. 324, § 8, 30 Stat. 947.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 117. Payments per capita to individual Indians.

Any sums of money to be paid per capita to individual Indians shall be paid to said Indians by an officer of the Government designated by the Secretary of the Interior. (June 10, 1896, ch. 398, § 1, 29 Stat. 336.)

TRANSFER OF FUNCTIONS

Disbursement of moneys, see note under section 113 of this title.

§ 118. Payments in satisfaction of judgments.

Payments to Indians made from moneys appropriated by Congress in satisfaction of the judgment of any court shall be made under the direction of the officers of the Interior Department charged by law with the supervision of Indian affairs, and all such payments shall be accounted for to the Treasury in conformity with law. (Mar. 3, 1911, ch. 210, § 28, 36 Stat. 1077.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Disbursement of moneys, see note under section 113 of this title.

CROSS REFERENCES

Public accounts to be settled in General Accounting Office, see sections 71 and 72 of Title 31, Money and Finance.

§ 119. Allotment of tribal funds to individual Indians.

The Secretary of the Interior is authorized, in his discretion, from time to time, to designate any individual Indian belonging to any tribe or tribes whom he may deem to be capable of managing his or her affairs, and he may cause to be apportioned and allotted to any such Indian his or her pro rata share

of any tribal or trust funds on deposit in the Treasury of the United States to the credit of the tribe or tribes of which said Indian is a member, and the amount so apportioned and allotted shall be placed to the credit of such Indian upon the books of the Treasury, and the same shall thereupon be subject to the order of such Indian: *Provided,* That no apportionment or allotment shall be made to any Indian until such Indian has first made an application therefor: *Provided further,* That the Secretaries of the Interior and of the Treasury are directed to withhold from such apportionment and allotment a sufficient sum of the said Indian funds as may be necessary or required to pay any existing claims against said Indians that may be pending for settlement by judicial determination in the Court of Claims or in the Executive Departments of the Government, at time of such apportionment and allotment. (Mar. 2, 1907, ch. 2523, § 1, 34 Stat. 1221.)

CROSS REFERENCES

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

§ 120. Per capita payments to enrolled members of Choctaw and Chickasaw Tribes.

The Secretary of the Interior, under rules and regulations to be prescribed by him, is authorized to make per capita payments of not to exceed $200 annually to the enrolled members of the Choctaw and Chickasaw Tribes of Indians of Oklahoma, entitled under existing law to share in the funds of said tribes, or to their lawful heirs, of all the available money held by the Government of the United States for the benefit of said tribes in excess of that required for expenditures authorized by annual appropriations made therefrom or by existing law. (Feb. 14, 1920, ch. 75, § 18, 41 Stat. 427.)

§ 121. Payment of share of tribal funds to helpless Indians.

The pro rata share of any Indian who is mentally or physically incapable of managing his or her own affairs may be withdrawn from the Treasury in the discretion of the Secretary of the Interior and expended for the benefit of such Indian under such rules, regulations, and conditions as the said Secretary may prescribe: *Provided,* That said funds of any Indian shall not be withdrawn from the Treasury until needed by the Indian and upon his application and when approved by the Secretary of the Interior. (Mar. 2, 1907, ch. 2523, § 2, 34 Stat. 1221; May 18, 1916, ch. 125, § 1, 39 Stat. 128.)

CROSS REFERENCES

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

§ 122. Limitation on application of tribal funds.

No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law. (R. S. § 2097.)

DERIVATION

Act July 26, 1866, ch. 266, § 2, 14 Stat. 280.

§ 123. Expenditure from tribal funds without specific appropriations.

No money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are continued in full force and effect: *Provided,* That this shall not change existing law with reference to the Five Civilized Tribes. (May 18, 1916, ch. 125, § 27, 39 Stat. 158.)

CROSS REFERENCES

Insurance for protection of tribal property authorized to be paid for out of tribal funds, see section 123a of this title.

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 155 of this title.

§ 123a. Tribal funds; use to purchase insurance for protection of tribal property.

The funds of any tribe of Indians under the control of the United States may be used for payments of insurance premiums for protection of the property of the tribe against fire, theft, tornado, hail, earthquake, or other elements and forces of nature, and for protection against liability on account of injuries or damages to persons or property and other like claims. (Apr. 13, 1926, ch. 118, 44 Stat. 242; Aug. 2, 1946, ch. 754, 60 Stat. 852.)

AMENDMENTS

1946—Act Aug. 2, 1946, provided for the use of funds to pay premium on personal and property damage insurance.

§ 123b. Tribal funds for traveling and other expenses.

Tribal funds shall be available for appropriation by Congress for traveling and other expenses, including supplies and equipment, of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes. (May 9, 1938, ch. 187, § 1, 52 Stat. 315.)

§ 124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations.

No money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress. (May 24, 1922, ch. 199, 42 Stat. 575.)

§ 125. Expenditure of moneys of tribes of Quapaw Agency.

No moneys shall be expended from tribal or individual funds belonging to the Quapaw or other tribes of Indians of the Quapaw Agency in the State of Oklahoma without specific authority of law. (June 30, 1919, ch. 4, § 17, 41 Stat. 20.)

CROSS REFERENCES

Insurance for protection of tribal property authorized to be paid for out of tribal funds, see section 123a of this title.

§ 126. Payment of claims for Indian depredations.

CODIFICATION

Section, R.S. § 2098, is omitted. The Secretary of the Interior recommends that this section be repealed as present day conditions make it unnecessary.

§ 127. Moneys or annuities of hostile Indians.

No moneys or annuities stipulated by any treaty with an Indian tribe for which appropriations are made shall be expended for, or paid, or delivered to any tribe which, since the next preceding payment under such treaty, has engaged in hostilities against the United States, or against its citizens peacefully or lawfully sojourning or traveling within its jurisdiction at the time of such hostilities; nor in such case shall such stipulated payments or deliveries be resumed until new appropriations shall have been made therefor by Congress. (R. S. § 2100; May 29, 1928, ch. 901, § 1, 45 Stat. 992.)

DERIVATION

Act Mar. 2, 1867, ch. 173, § 2, 14 Stat. 515.

§ 128. Appropriations not paid to Indians at war with United States.

None of the appropriations made for the Indian Service shall be paid to any band of Indians or any portion of any band while at war with the United States or with the white citizens of any of the States or Territories. (Mar. 3, 1875, ch. 132, § 2, 18 Stat. 449.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 129. Moneys due Indians holding captives other than Indians withheld.

The Secretary of the Interior is authorized to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States. (Mar. 3, 1875, ch. 132, § 1, 18 Stat. 424.)

§ 130. Withholding of moneys or goods on account of intoxicating liquors.

No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country. (R. S. § 2087.)

DERIVATION

Act Mar. 3, 1847, ch. 66, § 3, 9 Stat. 203.

§ 131. Advances to disbursing officers.

No superintendent of Indian affairs, or Indian agent, or other disbursing officer in such service, shall have advanced to him, on Indian or public account, any money to be disbursed in future, until such superintendent, agent, or officer in such service has settled his accounts of the preceding year, and has satisfactorily shown that all balances in favor of the Government, which may appear to be in his hands, are ready to be paid over on the order of the Secretary of the Interior. (R. S. § 2092.)

DERIVATION

Act June 27, 1846, ch. 34, § 1, 9 Stat. 20.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Disbursement of money, see note to section 113 of this title.

INDIAN AGENTS

There have been no Indian agents since 1908. See note under section 64 of this title.

SUPERINTENDENT OF INDIAN AFFAIRS

No appropriation for any superintendent of Indian affairs has been made since act Mar. 3, 1877, ch. 101, § 1, 19 Stat. 271.

§ 132. Mode of distribution of goods.

Whenever goods and merchandise are delivered to the chiefs of a tribe, for the tribe, such goods and merchandise shall be turned over by the agent or superintendent of such tribe to the chiefs in bulk, and in the original package, as nearly as practicable, and in the presence of the headmen of the tribe, if practicable, to be distributed to the tribe by the chiefs in such manner as the chiefs may deem best, in the presence of the agent or superintendent. (R. S. § 2090.)

DERIVATION

Act Apr. 10, 1869, ch. 16, § 2, 16 Stat. 39.

INDIAN AGENTS

There have been no Indian agents since 1908. See note under section 64 of this title.

CROSS REFERENCES

Persons present at delivery of goods, see section 112 of this title.

§ 133. Rolls of Indians entitled to supplies.

For the purpose of properly distributing the supplies appropriated for the Indian Service, it is made the duty of each agent in charge of Indians and having supplies to distribute, to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance. (Mar. 3, 1875, ch. 132, § 4, 18 Stat. 449.)

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

§ 134. Appropriations for supplies available immediately; time for distribution.

So much of the appropriations of any annual Indian Appropriation Act as may be required to pay for goods and supplies, for expenses incident to their

purchase, and for transportation of the same, for the fiscal year for which such appropriations are made, shall be immediately available, upon the approval of such Act, but no such goods or supplies shall be distributed or delivered to any of said Indians prior to the beginning of such fiscal year. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

§ 135. Supplies distributed so as to prevent deficiencies.

It shall be the duty of the Secretary of the Interior, and the officers charged by law with the distribution of supplies to the Indians, under appropriations made by law, to distribute them and pay them out to the Indians entitled to them, in such proper proportions as that the amount of appropriation made for the current year shall not be expended before the end of such current year, so as to prevent deficiencies; and no expenditure shall be made or liability incurred on the part of the Government on account of the Indian Service for any fiscal year (unless in compliance with existing law) beyond the amount of money previously appropriated for said service during such year. (Mar. 3, 1875, ch. 132, § 6, 18 Stat. 450.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 136. Commutation of rations and other supplies; payment per capita.

When, in the judgment of the Secretary of the Interior, any Indian tribe, or part thereof, who are receiving rations and clothing and other supplies under the Act of July 1, 1898, chapter 545, are sufficiently advanced in civilization to purchase such rations and clothing and other supplies judiciously, they may commute the same and pay the value thereof in money per capita to such tribe or part thereof, the manner of such payment to be prescribed by the Secretary of the Interior. (July 1, 1898, ch. 545, § 7, 30 Stat. 596.)

REFERENCES IN TEXT

The Act of July 1, 1898, chapter 545, referred to in text, is set out in 30 Stat. 571–597. Such act was an appropriation act for fiscal 1899 appropriating moneys for the Indian Department and for the fulfilling of certain Indian treaty obligations. The only portion of the act still extant is set out as this section.

§ 137. Supplies distributed to able-bodied males on condition.

For the purpose of inducing Indians to labor and become self-supporting, it is provided that, in distributing the supplies and annuities to the Indians for whom the same are appropriated, the agent distributing the same shall require all able-bodied male Indians between the ages of eighteen and forty-five to perform service upon the reservation, for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered; and the allowances provided for such Indians shall be distributed to them only upon condition of the performance of such labor, under such rules and regulations as the agent may prescribe: *Provided,* That the Secretary of the Interior may, by written order, except any particular tribe, or portion of tribe, from the operation of this provision where he deems it proper and expedient. (Mar. 3, 1875, ch. 132, § 3, 18 Stat. 449.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

§ 138. Goods withheld from chiefs violating treaty stipulations.

No delivery of goods or merchandise shall be made to the chiefs of any tribe, by authority of any treaty, if such chiefs have violated the stipulations contained in such treaty upon their part. (R.S. § 2101.)

DERIVATION

Act Apr. 10, 1869, ch. 16, § 2, 16 Stat. 39.

§ 139. Appropriations for subsistence.

The Secretary of the Interior, under the direction of the President, may use any surplus that may remain in any of the appropriations for the purchase of subsistence for the several Indian tribes, to an amount not exceeding $25,000 in the aggregate, to supply any subsistence deficiency that may occur: *Provided,* That any diversions which shall be made under authority of this section shall be reported in detail, and the reason therefor, to Congress, at the session of Congress next succeeding such diversion. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

§ 140. Diversion of appropriations for employees and supplies.

The several appropriations made for millers, blacksmiths, engineers, carpenters, physicians, and other persons, and for various articles provided for by treaty stipulation for the several Indian tribes, may be diverted to other uses for the benefit of said tribes, respectively, within the discretion of the President, and with the consent of said tribes, expressed in the usual manner; and he shall cause report to be made to Congress, at its next session thereafter of his action under this provision. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F. R. 5385, set out as a note under section 301 of Title 3, The President.

§ 141. Rations.

CODIFICATION

Section, R.S., § 2110, is omitted. The Interior Department, commenting on this section, says: "The practice of issuing army rations to Indians is no longer in use, and this section should therefore be repealed."

§ 142. Repealed. May 29, 1928, ch. 901, § 1 (87), 45 Stat. 992.

Section, act May 18, 1916, ch. 125, § 27, 39 Stat. 158, related to annual reports to Congress of tribal financial matters.

§ 143. Repealed. Aug. 30, 1954, ch. 1076, § 1 (24), 68 Stat. 968.

Section, act Mar. 3, 1911, ch. 210, § 27, 36 Stat. 1077, required the Secretary of the Interior to submit an annual report to the Speaker of the House of Representatives of the fiscal affairs of all Indian tribes for whose benefit expenditures from either public or tribal funds were made by any officer, clerk, or employee in the Interior Department.

§ 144. Repealed. May 29, 1928, ch. 901, § 1 (66), 45 Stat. 991.

Section, act Aug. 1, 1914, ch. 222, § 1, 38 Stat. 587, related to an annual report of moneys appropriated for encouragement of industry.

§ 145. Accounts between United States and tribes under reimbursable appropriations.

The Secretary of the Interior shall cause to be stated annual accounts between the United States and each tribe of Indians arising under appropriations made, which by law are required to be reimbursed to the United States, crediting in said accounts the sums so reimbursed, if any; and the Secretary of the Interior shall pay, out of any fund or funds belonging to such tribe or tribes of Indians applicable thereto and held by the United States in trust or otherwise, all balances of accounts due to the United States and not already reimbursed to the Treasury, and deposit such sums in the Treasury as miscellaneous receipts; and such accounts shall be received and examined by the General Accounting Office and the balances arising thereon certified to the Secretary of the Treasury. (Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

§ 146. Report of Indians present and receiving food.

Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both of food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same. (R. S. § 2109.)

DERIVATION

Act Feb. 14, 1873, ch. 138, § 7, 17 Stat. 463, 464.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 147. Appropriations for specified buildings; use for transportation of materials.

Appropriations for specified buildings in the Indian Service shall be used for the transportation of materials purchased therefrom. (Jan. 12, 1927, ch. 27, § 1, 44 Stat. 939.)

§ 148. Appropriations for supplies; transfer to Indian Service supply fund; expenditure.

From time to time there is authorized to be transferred from each or any appropriation or fund available for the purchase of supplies for the Indian Service, to a fund to be set up and carried on the books of the Treasury as an Indian Service supply fund, such amounts as the Secretary of the Interior may estimate to be required to pay for supplies purchased through Indian warehouses for the Indian field service; and the expenditure of the said Indian Service supply fund for the purpose stated is authorized, necessary adjustments to be made thereafter to the end that each appropriation and fund ultimately will be charged only with the cost of the supplies legally chargeable thereto. (Jan. 12, 1927, ch. 27, § 1, 44 Stat. 939.)

DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

§ 151. Deposits in bank by disbursing agents.

Any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such national bank or banks as he may select: *Provided,* That the bank or banks so selected by him shall first execute to said disbursing agent a bond, with approved surety, in such an amount as will properly safeguard the funds to be deposited. Such bond shall be subject to the approval of the Secretary of the Interior. (Apr. 30, 1908, ch. 153, 35 Stat. 73; June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 648.)

CODIFICATION

This section is also set out in the last two provisos of section 372 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Disbursement of money, see note to section 113 of this title.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564h, 697, 747, 797, 843 of this title.

§ 152. Proceeds of sales of Indian lands.

All moneys received from the sales of lands that have been, or may be, ceded to the United States by Indian tribes, by treaties providing for the investment or payment to the Indians, parties thereto, of the proceeds of the lands ceded by them, respectively, after deducting the expenses of survey and sale, any sums stipulated to be advanced, and the expenses of fulfilling any engagements contained therein, shall be paid into the Treasury in the same

manner that moneys received from the sales of public lands are paid into the Treasury. (R. S. § 2093.)

DERIVATION

Act Jan. 9, 1837, ch. 1, § 1, 5 Stat. 135.

CROSS REFERENCES

Proceeds of sales of Indian lands not subject to deductions for expenses of public land service, see section 154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 153 of this title.

§ 153. Appropriation to carry out treaties.

All sums that are or may be required to be paid, and all moneys that are or may be required to be invested by the treaties mentioned in section 152 of this title are appropriated in conformity to them, and shall be drawn from the Treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President. (R. S. § 2094.)

DERIVATION

Act Jan. 9, 1837, ch. 1, § 2, 5 Stat. 135.

§ 154. Proceeds of sales of lands not subject to certain deductions.

No part of the expenses of the public lands service shall be deducted from the proceeds of Indian lands sold through the Bureau of Land Management, except as authorized by the treaty or agreement providing for the disposition of the lands. (July 4, 1884, ch. 180, § 10, 23 Stat. 98; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and ployees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of Title 43, Public Lands.

§ 155. Disposal of miscellaneous revenues from Indian reservations, etc.

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor", and are made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by sections 123 and 142 of this title. (Mar. 3, 1883, ch. 141, § 1, 22 Stat. 590; Mar. 2, 1887, ch. 320, 24 Stat. 463; May 17, 1926, ch. 309, § 1, 44 Stat. 560; May 29, 1928, ch. 901, § 1, 45 Stat. 991.)

REFERENCES IN TEXT

Section 142 of this title, referred to in text, was repealed by act May 29, 1928, ch. 901, § 1, 45 Stat. 986, 992.

REPEALS

Act May 29, 1928 repealed the provisions of acts Mar. 3, 1883 and Mar. 2, 1887, which related to Indian moneys, proceeds of labor.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Acquisition of Indian lands, payment for, see section 835e of Title 16, Conservation.

Indian moneys, proceeds of labor to be classified on books of Treasury as trust fund, see section 725s of Title 31, Money and Finance.

Tribal funds included in fund "Indian Money, Proceeds of Labor" to be carried in Treasury Department in separate accounts for the respective tribes, see section 161b of this title.

Ute Indians, division of trust funds, shares to be credited to existing accounts established pursuant to this section, see section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 597a, 672 of this title.

§ 155a. Disposal of miscellaneous revenues from Indian reservations.

CODIFICATION

Section, act May 17, 1926, ch. 309, § 1, 44 Stat. 560, was omitted from the Code as covered by section 155 of this title.

§ 156. Deposit of funds from sales of lands and property of Five Civilized Tribes.

The net receipts from the sales of surplus and unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, after deducting the necessary expense of advertising and sale, may be deposited in national or State banks in the State of Oklahoma in the discretion of the Secretary of the Interior, such depositories to be designated by him under such rules and regulations governing the rate of interest thereon, the time of deposit and withdrawal thereof, and the security therefor, as he may prescribe. The interest accruing on such funds may be used to defray the expense of the per capita payments of such funds. (Mar. 3, 1911, ch. 210, § 17, 36 Stat. 1070.)

§ 157. Investments of stock required by treaties.

All investments of stock, that are or may be required by treaties with the Indians, shall be made under the direction of the President; and special accounts of the funds under such treaties shall be kept at the Treasury, and statements thereof be annually laid before Congress. (R. S. § 2095.)

DERIVATION

Act Jan. 9, 1837, ch. 1, § 3, 5 Stat. 135.

§ 158. Investment of proceeds of lands.

The Secretary of the Interior shall invest in a manner which shall be in his judgment most safe, and beneficial for the fund, all moneys that may be received under treaties containing stipulations

for the payment to the Indians, annually, of interest upon the proceeds of the lands ceded by them; and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than 5 per centum per annum. (R. S. § 2096.)

DERIVATION

Act Jan. 9, 1837, ch. 1, § 4, 5 Stat. 135.

CROSS REFERENCES

Custody of stocks or bonds held in trust for tribes to be in Secretary of Treasury, see section 160 of this title.

Deposit of Indian trust funds in Treasury, see section 161 of this title.

§ 159. Moneys due incompetents or orphans.

The Secretary of the Interior is directed to cause settlements to be made with all persons appointed by the Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found to be due to such incompetent or orphan Indians to be returned to the Treasury; and all moneys so returned shall bear interest at the rate of 6 per centum per annum, until paid by order of the Secretary of the Interior to those entitled to the same. No money shall be paid to any person appointed by any Indian council to receive moneys due to incompetent or orphan Indians, but the same shall remain in the Treasury of the United States until ordered to be paid by the Secretary to those entitled to receive the same, and shall bear 6 per centum interest until so paid. (R. S. § 2108.)

DERIVATION

Act July 5, 1862, ch. 135, § 6, 12 Stat. 529.

CROSS REFERENCES

Payment of money accruing to Indian incompetents or minors from Veterans' Administration or other governmental agencies, see section 14 of this title.

§ 160. Custody of stocks or bonds held in trust for tribes.

All stocks, bonds, or other securities or evidences of indebtedness held by the Secretary of the Interior on June 10, 1876, in trust for the benefit of certain Indian tribes shall, within thirty days from that date, be transferred to the Treasurer of the United States, who shall become the custodian thereof; and it shall be the duty of said Treasurer to collect all interest falling due on said bonds, stocks, and so forth, and deposit the same in the Treasury of the United States, and to issue certificates of deposit therefor, in favor of the Secretary of the Interior, as trustee for various Indian tribes. And the Treasurer of the United States shall also become the custodian of all bonds and stocks which may be purchased for the benefit of any Indian tribe or tribes after the transfer of funds herein authorized, and shall make all purchases and sales of bonds and stocks authorized by treaty stipulations or by acts of Congress when requested so to do by the Secretary of the Interior: *Provided,* That nothing in this section shall in any manner impair or affect the supervisory and appellate powers and duties in regard to Indian affairs which may be vested in the Secretary of the Interior as trustee for various Indian tribes, except as to the custody of said bonds and the collection of interest thereon as hereinbefore mentioned. (June 10, 1876, ch. 122, 19 Stat. 58.)

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury and all functions of all agencies and employees of the Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 161. Deposit in Treasury of trust funds.

The Secretary of the Interior is authorized to deposit, in the Treasury of the United States, any and all sums held by him on April 1, 1880, or which may be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits, in lieu of investments; and the United States shall pay interest semiannually, from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress. (Apr. 1, 1880, ch. 41, 21 Stat. 70.)

APPROPRIATIONS

Effective July 1, 1935, the permanent appropriation provided for in the last clause of this section was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury. See section 725a(a) of Title 31, Money and Finance.

§ 161a. Tribal funds in trust in Treasury Department; rate of interest.

All funds with account balances exceeding $500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum. (Feb. 12, 1929, ch. 178, § 1, 45 Stat. 1164; June 13, 1930, ch. 483, 46 Stat. 584.)

AMENDMENTS

1930—Act June 13, 1930, amended section generally.

CROSS REFERENCES

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

Ute Indians, division of trust funds, shares to be credited to existing accounts established pursuant to sections 161a—161d of this title, see section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 161d, 672 of this title.

§ 161b. Same; "Indian Money, Proceeds of Labor" fund; separate accounts for respective tribes; rate of interest.

All tribal funds arising under section 155 of this title on June 13, 1930, included in the fund "Indian Money, Proceeds of Labor", shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding $500 shall bear simple interest at the rate of 4 per centum per annum from July 1, 1930. (Feb. 12, 1929, ch. 178, § 2, as added June 13, 1930, ch. 483, 46 Stat. 584.)

CROSS REFERENCES

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 161d, 672 of this title.

§ 161c. Same; surplus above requirements of fund; transfer to surplus fund of Treasury; retransfer.

The amount held in any tribal fund account which, in the judgment of the Secretary of the Interior, is not required for the purpose for which the fund was created, shall be covered into the surplus fund of the Treasury; and so much thereof as is found to be necessary for such purpose may at any time thereafter be restored to the account on books of the Treasury without appropriation by Congress. (Feb. 12, 1929, ch. 178, § 3, as added June 13, 1930, ch. 483, 46 Stat. 584.)

CROSS REFERENCES

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 161d, 672 of this title.

§ 161d. Same; disposition of accrued interest.

The interest accruing on Indian tribal funds under sections 161a to 161c of this title shall be subject to the same disposition as prescribed by existing law for the respective principal funds. (Feb. 12, 1929, ch. 178, § 4, as added June 13, 1930, ch. 483, 46 Stat. 584.)

CROSS REFERENCES

Trust funds on deposit in Treasury, see section 725s of Title 31, Money and Finance, and note thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 672 of this title.

§ 162. Repealed. June 24, 1938, ch. 648, § 2, 52 Stat. 1037.

Section, act May 25, 1918, ch. 86, § 28, 40 Stat. 591, related to the segregation, deposit, and investment of tribal funds, and is now covered by section 162a of this title.

§ 162a. Deposit of tribal funds in banks; bond or collateral security; investments.

The Secretary of the Interior is authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: *Provided,* That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: *Provided further,* That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, except that no such bond or collateral shall be required to be furnished by any such bank which is entitled to the benefits of section 264 of Title 12 with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section: *Provided, however,* That nothing contained in this section, or in section 264 of Title 12, shall operate to deprive any Indian having unrestricted funds on deposit in any such bank of the full protection afforded by section 264 of Title 12, irrespective of any interest such Indian may have in any restricted Indian funds on deposit in the same bank to the credit of a disbursing agent of the United States. For the purpose of this section and section 264 of Title 12, said unrestricted funds shall constitute a separate and distinct basis for an insurance claim: *Provided further,* That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States: *And provided further,* That the foregoing shall apply to the funds of the Osage Tribe of Indians, and the individual members thereof, only with respect to the deposit of such funds in banks. (June 24, 1938, ch. 648, § 1, 52 Stat. 1037.)

REFERENCES IN TEXT

Section 264 of Title 12, referred to in text, relating to the Federal Deposit Insurance Corporation, was withdrawn from the Federal Reserve Act and made a separate Act to be known as the Federal Deposit Insurance Act by section 1 of act Sept. 21, 1950, ch. 967, 64 Stat. 873. The Federal Deposit Insurance Act is now classified to chapter 16 of Title 12, Banks and Banking.

REPEAL OF INCONSISTENT PROVISIONS AND CONSTRUCTION WITH OTHER LAWS

Section 2 of act June 24, 1938, repealed act May 25, 1918, ch. 86, § 28, 40 Stat. 591, which was contained in former section 162 of this title, and all other inconsistent acts.

Section 3 of act June 24, 1938, provided: "Nothing contained in this act shall be construed as affecting the provisions of the Federal Reserve Act or regulations issued thereunder relating to the payment of interest on deposits."

§ 163. Roll of membership of Indian tribes.

The Secretary of the Interior is authorized, wherever in his discretion such action would be for the best interest of the Indians, to cause a final roll to be made of the membership of any Indian tribe; such rolls shall contain the ages and quantum of Indian blood, and when approved by the said Secretary are declared to constitute the legal membership of the respective tribes for the purpose of segregating the tribal funds as provided in section 162 of this title, and shall be conclusive both as to ages and quantum of Indian blood: *Provided,* That the foregoing shall not apply to the Five Civilized Tribes or to the Osage Tribe of Indians, or to the Chippewa Indians of Minnesota, or the Menominee Indians of Wisconsin. (June 30, 1919, ch. 4, § 1, 41 Stat. 9.)

REFERENCES IN TEXT

Section 162 of this title, referred to in text, was repealed by act June 24, 1938, ch. 648, § 2, 52 Stat. 1037, and is now covered by section 162a of this title.

CROSS REFERENCES

Membership roll for Yakima Tribes, see section 601 et seq. of this title.

§ 164. Restoration to tribal ownership of unclaimed per capita and other individual payments of tribal trust funds; deposit in general fund of the Treasury.

Unless otherwise specifically provided by law, the share of an individual member of an Indian tribe or group in a per capita or other distribution, individualization, segregation, or proration of Indian tribal or group funds held in trust by the United States, or in an annuity payment under a treaty, heretofore or hereafter authorized by law, and any interest earned on such share that is properly creditable to the individual shall be restored to tribal ownership if for any reason such share cannot be paid to the individual entitled thereto and remains unclaimed for a period of six years from the date of the administrative directive to make the payment, or one year from September 22, 1961, whichever occurs later: *Provided,* That if such individual is a member of an Indian tribe or group that has no governing body recognized by the Secretary of the Interior as authorized to act on behalf of the tribe or group, such unpaid share and interest shall be regarded as not capable of restoration to a tribal or group entity and shall be deposited in the general fund of the Treasury of the United States. (Pub. L. 87–283, § 1, Sept. 22, 1961, 75 Stat. 584.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 165 of this title.

§ 165. Same; notice to Congressional committees.

The Secretary shall not restore to tribal ownership or deposit in the general fund of the Treasury any funds pursuant to section 164 of this title and this section until sixty calendar days (exclusive of days on which either the Senate or the House of Representatives is not in session because of an adjournment of more than three days to a day certain) after he has submitted notice of his proposed action to the Committees on Interior and Insular Affairs of the Senate and House of Representatives unless each of said committees has theretofore notified him that it has no objection to the proposed action. (Pub. L. 87–283, § 2, Sept. 22, 1961, 75 Stat. 584.)

Chapter 5.—PROTECTION OF INDIANS

Sec.
171 to 173. Repealed.
174. Superintendence by President over tribes west of Mississippi.
175. United States attorneys to represent Indians.
176. Survey of reservations.
177. Purchases or grants of lands from Indians.
178. Fees on behalf of Indian parties in contests under public land laws.
179. Driving stock to feed on lands.
180. Settling on or surveying lands belonging to Indians by treaty.
181. Rights of white men marrying Indian women; tribal property.
182. Rights of Indian women marrying white men; tribal property.
183. Marriage of white men to Indian women; evidence.
184. Rights of children born of marriages between white men and Indian women.
185. Protection of Indians desiring civilized life.
186. Repealed.
187. Suspension of chief for trespass.
188, 189. Repealed.
190. Sale of plants or tracts not needed for administrative or allotment purposes.
191. Repealed.
192. Sale by agents of cattle or horses not required.
193. Proceedings against goods seized for certain violations.
194. Trial of right of property; burden of proof.
195. Repealed.
196. Sale or other disposition of dead timber.
197. Repealed.
198. Contagious and infectious diseases; quarantine.
199. Access to records of Five Civilized Tribes.
199a. Custody of records; Oklahoma Historical Society.
200. Report of offense or case of Indian incarcerated in agency jail.
201. Penalties; how recovered.
202. Inducing conveyances by Indians of trust interests in lands.

§§ 171 to 173. Repealed. May 21, 1934, ch. 321, 48 Stat. 787.

Sections, R.S. §§ 2111 to 2113, related to the sending or carrying of seditious messages to Indian tribes and to carrying on correspondence with foreign nations with intent to induce such nation to excite Indian tribes to war with the United States and prescribed penalties of $2,000, $1,000 and $1,000, respectively.

§ 174. Superintendence by President over tribes west of Mississippi.

The President is authorized to exercise general superintendence and care over any tribe or nation which was removed upon an exchange of territory under authority of the act of May 28, 1830, "to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi"; and to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever. (R. S. § 2114.)

DERIVATION

Act May 28, 1830, ch. 148, §§ 7, 8, 4 Stat. 412.

§ 175. United States attorneys to represent Indians.

In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "United States district attorney". See section 541 of Title 28, Judiciary and Judicial Procedure.

§ 176. Survey of reservations.

Whenever it becomes necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the Bureau of Land Management, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed. (R. S. § 2115; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

DERIVATION

Act Apr. 8, 1864, ch. 48, § 6, 13 Stat. 41.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of Title 43, Public Lands.

CROSS REFERENCES

General provisions relating to surveys of land are contained in Title 43, Public Lands.

§ 177. Purchases or grants of lands from Indians.

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of $1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty. (R. S. § 2116.)

DERIVATION

Act June 30, 1834, ch. 161, § 12, 4 Stat. 730.

CROSS REFERENCES

Patents to be held in trust, descent and partition, see section 348 of this title.

§ 178. Fees on behalf of Indian parties in contests under public land laws.

In contests initiated by or against Indians, to an entry, filing or other claims, under the laws of Congress relating to public lands for any sufficient cause affecting the legality or validity of the entry, filing or claim, the fees to be paid by and on behalf of the Indian party in any case shall be one-half of the fees provided by law in such cases, and said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Secretary of the Interior or such officer as he may designate. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of the Interior or such officer as he may designate" was substituted for "Commissioner of the General Land Office" on authority of 1946 Reorg. Plan No. 3. See note under section 1 of Title 43, Public Lands.

§ 179. Driving stock to feed on lands.

Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of $1 for each animal of such stock. This section shall not apply to Creek lands. (R. S. § 2117; Mar. 1, 1901, ch. 676, § 37, 31 Stat. 871; June 30, 1902, ch. 1323, § 17, 32 Stat. 504.)

DERIVATION

Act June 30, 1834, ch. 161, § 9, 4 Stat. 730.

CROSS REFERENCES

Penalties, recovery of, see section 201 of this title.

§ 180. Settling on or surveying lands belonging to Indians by treaty.

Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or otherwise, is liable to a penalty of $1,000. The President may, moreover, take such measures and employ such military force as he may judge necessary to remove any such person from the lands. (R. S. § 2118.)

DERIVATION

Act June 30, 1834, ch. 161, § 11, 4 Stat. 730.

§ 181. Rights of white men marrying Indian women; tribal property.

No white man, not otherwise a member of any tribe of Indians, who may after August 9, 1888, marry an Indian woman, member of any Indian tribe in the United States, or any of its Territories except the Five Civilized Tribes in the Indian Territory, shall by such marriage acquire any right

to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled. (Aug. 9, 1888, ch. 818, § 1, 25 Stat. 392.)

§ 182. Rights of Indian women marrying white men; tribal property.

Every Indian woman, member of any such tribe of Indians, who may be married after August 9, 1888, to any citizen of the United States, is declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman: *Provided,* That nothing in this section contained shall impair or in any way affect the right or title of such married woman to any tribal property or any interest therein. (Aug. 9, 1888, ch. 818, § 2, 25 Stat. 392.)

CROSS REFERENCES

Indians born within territorial limits of United States declared citizens but grant of citizenship does not affect right to tribal property, see section 1401 of Title 8, Aliens and Nationality.

§ 183. Marriage of white men to Indian women; evidence.

Whenever the marriage of any white man with any Indian woman, a member of any such tribe of Indians, is required or offered to be proved in any judicial proceeding, evidence of the admission of such fact by the party against whom the proceeding is had, or evidence of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent. (Aug. 9, 1888, ch. 818, § 3, 25 Stat. 392.)

§ 184. Rights of children born of marriages between white men and Indian women.

All children born of a marriage solemnized prior to June 7, 1897, between a white man and an Indian woman by blood and not by adoption, where said Indian woman was on that date, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior Act of Congress shall be construed as to debar such child of such right. (June 7, 1897, ch. 3, § 1, 30 Stat. 90.)

§ 185. Protection of Indians desiring civilized life.

Whenever any Indian, being a member of any band or tribe with whom the Government has or shall have entered into treaty stipulations, being desirous to adopt the habits of civilized life, has had a portion of the lands belonging to his tribe allotted to him in severalty, in pursuance of such treaty stipulations, the agent and superintendent of such tribe shall take such measures, not inconsistent with law, as may be necessary to protect such Indian in the quiet enjoyment of the lands so allotted to him. (R. S. § 2119.)

DERIVATION

Act June 14. 1862, ch. 101, § 1, 12 Stat. 427.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 186. Repealed. May 21, 1934, ch. 321, 48 Stat. 787.

Section, R. S. § 2120, related to trespassing on lands of civilized Indians.

§ 187. Suspension of chief for trespass.

Whenever such trespasser as is mentioned in section 186 of this title is the chief or headman of a band or tribe, the superintendent of Indian affairs in his district shall also suspend the trespasser from his office for three months, and shall during that time deprive him of all the benefits and emoluments connected therewith; but the chief or headman may be sooner restored to his former standing if the superintendent shall so direct. (R. S. § 2121.)

DERIVATION

Act June 14, 1862, ch. 101, § 3, 12 Stat. 427.

REFERENCES IN TEXT

Section 186 of this title, referred to in text, was repealed by act May 21, 1934, ch. 321, 48 Stat. 787.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 188, 189. Repealed. Oct. 31, 1951, ch. 654, § 1 (49), (50), 65 Stat. 703.

Sections, R. S. §§ 2122, 2123, related to sale of buildings belonging to the United States, and to sale of lands with buildings, and are now covered by sections 483 and 484 of Title 40, Public Buildings, Property, and Works.

§ 190. Sale of plants or tracts not needed for administrative or allotment purposes.

Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, the Secretary of the Interior is authorized in his discretion to sell and convey by deed or patent, under such terms and conditions as he may prescribe, at not less than their appraised value, nonreservation Government tracts or plants or tribal administrative plants or reserves, or parts thereof, not exceeding forty acres in area and not exceeding $2,000 in value, not longer needed for Indian administrative or allotment purposes, and small unallotted tracts not exceeding forty acres, where a sale will serve the tribal interests. All sales made under this section shall be at public auction, to the highest and best bidder.

And the Secretary of the Interior is further authorized, where a tract to be disposed of under this section or any other Act authorizing the disposition of tribal lands requires survey as basis for a deed or patent, to accept from the grantee, in addition to the purchase price, an amount sufficient to cover the survey costs.

The net proceeds of sale of any tribal site, plant, or tract shall be deposited in the Treasury of the United States to the credit of the Indians owning the same, to be disposed of for their benefit in accordance with existing law. (Apr. 12, 1924, ch. 93, 43 Stat. 93; Oct. 31, 1951, ch. 654, § 2 (16), 65 Stat. 707.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377. Titles I–IV and VI–VIII thereof are classified to chapters 10 and 16 of Title 40, Public Buildings, Property, and Works, and chapter 4 of Title 41, Public Contracts. Title V thereof was classified to former chapter 11 of Title 44, Public Printing and Documents, but was repealed in the revision of Title 44 by Pub. L. 90–620, § 3, Oct. 22, 1968, 82 Stat. 1309. The subject matter of such former title V is now covered by chapters 21, 25, 27, 29, and 31 of Title 44.

AMENDMENTS

1951—Act Oct. 31, 1951, inserted the reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended, at beginning of first paragraph, and, in third paragraph, struck out the requirement that net proceeds of sales of Government-owned nontribal plants or lands be deposited in the Treasury of the United States.

CROSS REFERENCES

Proceeds from transfer, sale, etc., of property, see section 485 of Title 40, Public Buildings, Property, and Works.

§ 191. Repealed. Oct. 31, 1951, ch. 654, § 1 (51), 65 Stat. 703.

Section, acts July 1, 1898, ch. 545, § 6, 30 Stat. 596; June 25, 1910, ch. 431, § 22, 36 Stat. 861, related to transfer or sale of Government property at reservations, and is now covered by sections 483—485 of Title 40, Public Buildings, Property, and Works.

§ 192. Sale by agents of cattle or horses not required.

The agent of each tribe of Indians, lawfully residing in the Indian country, is authorized to sell for the benefit of such Indians any cattle, horses, or other livestock belonging to the Indians, and not required for their use and subsistence, under such regulations as shall be established by the Secretary of the Interior. But no such sale shall be made so as to interfere with the execution of any order lawfully issued by the Secretary of the Army, connected with the movement or subsistence of troops. (R. S. § 2127.)

DERIVATION

Act Mar. 3, 1865, ch. 127, § 9, 13 Stat. 563.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with certain exceptions, transferred to the Secretary of the Interior, with powers vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

§ 193. Proceedings against goods seized for certain violations.

When goods or other property shall be seized for any violation of this title it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws. (R. S. § 2125.)

DERIVATION

Act June 30, 1834, ch. 161, § 28, 4 Stat. 734.

REFERENCES IN TEXT

The words "this title", referred to in the text, refers to title XXVIII, Indians, of the Revised Statutes (R. S. §§ 2039—2157). For distribution of that title of the Revised Statutes in this Code, see Distribution Tables.

§ 194. Trial of right of property; burden of proof.

In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership. (R. S. § 2126.)

DERIVATION

Act June 30, 1834, ch. 161, § 22, 4 Stat. 733.

§ 195. Repealed. Aug. 15, 1953, ch. 506, § 2 (b), 67 Stat. 590.

Section, act July 4, 1884, ch. 180, § 1, 23 Stat. 94, related to sale of cattle purchased by Government to nontribal members.

§ 196. Sale or other disposition of dead timber.

The President of the United States may from year to year in his discretion under such regulations as he may prescribe authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell or otherwise dispose of the dead timber standing, or fallen, on such reservation or allotment for the sole benefit of such Indian or Indians. But whenever there is reasonable cause to believe that such timber has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this section then in that case such authority shall not be granted. (Feb. 16, 1889, ch. 172, 25 Stat. 673.)

CROSS REFERENCES

Mature living and dead and down timber on unallotted Indian lands to be sold under regulations prescribed by Secretary of Interior, see section 407 of this title.

§ 197. Repealed. June 27, 1902, ch. 1157, § 4, 32 Stat. 404.

Section, act June 7, 1897, ch. 3, § 1, 30 Stat. 90, relating to disposition of dead timber on reservations in Minnesota, was repealed by act June 27, 1902, except as to then existing contracts.

§ 198. Contagious and infectious diseases; quarantine.

Whenever the Secretary of the Interior shall find any Indian afflicted with tuberculosis, trachoma, or

other contagious or infectious diseases, he may, if in his judgment the health of the afflicted Indian or that of other persons require it, isolate or quarantine such afflicted Indian in a hospital or other place for treatment. The Secretary of the Interior may employ such means as may be necessary in the isolation, or quarantine, of such Indian, and it shall be the duty of such Indian so afflicted to obey any order or regulation made by the Secretary of the Interior in carrying out this provision. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 584.)

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

§ 199. Access to records of Five Civilized Tribes.

The Secretary of the Interior, or his accredited representative, shall at all times have access to any books and records of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, whether in possession of any of the officers of either of said tribes or any officer or custodian thereof, of the State of Oklahoma. (Mar. 1, 1907, ch. 2285, 34 Stat. 1027.)

§ 199a. Custody of records; Oklahoma Historical Society.

Title to records of Indian tribes heretofore placed with the Oklahoma Historical Society of the State of Oklahoma by the Secretary of the Interior shall remain vested in the United States and such records shall be held by the said society under rules and regulations prescribed by the Administrator of General Services: *Provided,* That copies of any such records, documents, books, or papers held by the said society when certified by the secretary or chief clerk thereof under its seal, or by the officer or person acting as secretary or chief clerk, shall be evidence equally with the original, and in making such certified copies the said secretary or acting secretary and the said chief clerk or acting chief clerk shall be acting as a Federal agent, and such certified copies shall have the same force and effect as if made by the Administrator of General Services as provided in section 399 (b) of Title 44: *Provided further,* That whenever such certified copies are desired for official use by the Federal Government they shall be furnished without cost: *Provided further,* That any such records held by the said society shall be promptly returned to the Government official designated by the Administrator of General Services upon his request therefor. (Mar. 27, 1934, ch. 93, 48 Stat. 501; Oct. 25, 1951, ch. 562, § 4 (5), 65 Stat. 640.)

REFERENCES IN TEXT

Section 399(b) of Title 44, referred to in the text, was repealed in the general revision of Title 44 and is now covered by section 2112(b) of Title 44, Public Printing and Documents.

AMENDMENTS

1951—Act Oct. 25, 1951, transferred control of the Indian tribal records, heretofore placed hereunder with the Oklahoma Historical Society, from the Secretary of the Interior to the Administrator of General Services.

CROSS REFERENCES

Management and disposition of records, see chapters 31 and 33 of Title 44, Public Printing and Documents.

§ 200. Report of offense or case of Indian incarcerated in agency jail.

Whenever an Indian shall be incarcerated in an agency jail, or any other place of confinement, on an Indian reservation or at an Indian school, a report or record of the offense or case shall be immediately submitted to the superintendent of the reservation or such official or officials as he may designate, and such report shall be made a part of the records of the agency office. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with certain exceptions, transferred to the Secretary of the Interior, with powers vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 201. Penalties; how recovered.

All penalties which shall accrue under this title shall be sued for and recovered in an action in the nature of an action of debt, in the name of the United States, before any court having jurisdiction of the same, in any State or Territory in which the defendant shall be arrested or found, the one half to the use of the informer and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use. (R. S. § 2124.)

DERIVATION

Act June 30, 1834, ch. 161, § 27, 4 Stat. 733.

REFERENCES IN TEXT

The words "this title," as used in text, referred to title XXVIII, Indians, of the Revised Statutes (R. S. §§ 2039—2157). For distribution of that title of the Revised Statutes in this Code, see Distribution Tables.

FEDERAL RULES OF CIVIL PROCEDURE

Parties, see rule 17, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 202. Inducing conveyances by Indians of trust interests in lands.

It shall be unlawful for any person to induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian, or to offer any such contract, deed, mortgage, or other instrument for record in the office of any recorder of deeds. Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $500 for the first offense, and if convicted for a second offense may be punished by a fine not exceeding $500 or imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. This section shall not apply to any lease or other contract authorized by law to be made. (June 25, 1910, ch. 431, § 5, 36 Stat. 857.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564h, 697, 747, 797, 843 of this title.

Chapter 6.—GOVERNMENT OF INDIAN COUNTRY AND RESERVATIONS

GENERALLY

Sec.
211. Creation of Indian reservations.
212 to 228. Repealed.
229. Injuries to property by Indians.
230. Depositions by agents touching depredations.
231. Enforcement of State laws affecting health and education; entry of State employees on Indian lands.
232. Jurisdiction of New York State over offenses committed on reservations within State.
233. Jurisdiction of New York State courts in civil actions.

TRAFFIC IN INTOXICATING LIQUORS

241 to 250. Repealed.
251. Setting up distillery.
252. Repealed.
253. Wines for sacramental purposes.
254. Repealed.

TRADERS WITH INDIANS

261. Power to appoint traders with Indians.
262. Persons permitted to trade with Indians.
263. Prohibition of trade by President.
264. Trading without license; white persons as clerks.
265, 266. Repealed.

GENERALLY

§ 211. Creation of Indian reservations.

No Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress. (May 25, 1918, ch. 86, § 2, 40 Stat. 570.)

CROSS REFERENCES

New Indian reservations, see section 467 of this title.

§§ 212 to 215. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 212, R. S. § 2143, related to arson, and is now covered by section 1153 of Title 18, Crimes and Criminal Procedure.

Section 213, R. S. § 2142, related to assault, and is now covered by section 1153 of Title 18, Crimes and Criminal Procedure.

Section 214, R. S. § 2138; act June 30, 1919, ch. 4, § 1, 41 Stat. 9, related to removing cattle from Indian country.

Section 215, R. S. § 2144, related to forgery and depredations on the mails, and is now covered by sections 1151 and 1152 of Title 18, Crimes and Criminal Procedure.

§ 216. Repealed. Pub. L. 86-634, § 4, July 12, 1960, 74 Stat. 469.

Section, R.S. § 2137, prohibited hunting by non-Indians on Indian lands except for subsistence, and is now covered by section 1165 of Title 18, Crimes and Criminal Procedure.

§§ 217 to 218. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 217, R. S. § 2145, related to general laws as to punishment extended to Indian country, and is now covered by sections 1151 and 1152 of Title 18, Crimes and Criminal Procedure.

Section 217a, act June 8, 1940, ch. 276, 54 Stat. 249, related to jurisdiction of Kansas over offenses committed by or against Indians or reservations, and is now covered by section 3243 of Title 18, Crimes and Criminal Procedure.

Section 218, R. S. § 2146; act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318, related to exceptions as to extension of general laws, and is now covered by sections 1151 and 1152 of Title 18, Crimes and Criminal Procedure.

§§ 219 to 226. Repealed. May 21, 1934, ch. 321, 48 Stat. 787.

Section 219, R. S. § 2134, related to foreigners entering Indian country without passports, penalty for such entry and contents of passports.

Section 220, R. S. § 2147, related to authority to remove person from Indian country and to use of military force.

Section 221, R. S. § 2148, related to person returning after removal from Indian country.

Section 222, R. S. § 2149, related to authority to remove person from Indian reservation and use of necessary force.

Section 223, R. S. § 2150, related to employment of military.

Section 224, R. S. § 2151, related to detention and treatment of persons apprehended by military.

Section 225, R. S. § 2152, related to arrest of absconding Indians, use of military force to apprehend such Indians and to prevent tribal hostilities.

Section 226, R. S. § 2153, related to posse comitatus in executing process.

§§ 227, 228. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 227, R. S. § 2154, related to reparation for injuries to Indian property, and is now covered by section 1160 of Title 18, Crimes and Criminal Procedure.

Section 228, R. S. § 2155, related to payment of reparation where offender is unable to, and is now covered by section 1160 of Title 18, Crimes and Criminal Procedure.

§ 229. Injuries to property by Indians.

If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time not exceeding twelve months, such superintendent, agent, or subagent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury. (R. S. § 2156.)

DERIVATION

Act June 30, 1834, ch. 161, § 17, 4 Stat. 731; act Feb. 28, 1859, ch. 66, § 8, 11 Stat. 401.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 230 of this title.

§ 230. Depositions by agents touching depredations.

The superintendents, agents, and subagents within their respective districts are authorized and empowered to take depositions of witnesses touching any depredations, within the purview of sections 227, 228 and 229 of this title, and to administer oaths to the deponents. (R. S. 2157.)

DERIVATION

Act June 30, 1834, ch. 161, § 18, 4 Stat. 732.

REFERENCES IN TEXT

Sections 227 and 228 of this title, referred to in text, were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and are now covered by section 1160 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

§ 231. Enforcement of State laws affecting health and education; entry of State employees on Indian lands.

The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application. (Feb. 15, 1929, ch. 216, 45 Stat. 1185; Aug. 9, 1946, ch. 930, 60 Stat. 962.)

AMENDMENTS

1946—Act Aug. 9, 1946, permitted the proper State officers to invoke the penalties of State compulsory school attendance against Indian children, their parents, or other persons in loco parentis.

§ 232. Jurisdiction of New York State over offenses committed on reservations within State.

The State of New York shall have jurisdiction over offenses committed by or against Indians on Indian reservations within the State of New York to the same extent as the courts of the State have jurisdiction over offenses committed elsewhere within the State as defined by the laws of the State: *Provided,* That nothing contained in this section shall be construed to deprive any Indian tribe, band, or community, or members thereof, hunting and fishing rights as guaranteed them by agreement, treaty, or custom, nor require them to obtain State fish and game licenses for the exercise of such rights. (July 2, 1948, ch. 809, 62 Stat. 1224.)

§ 233. Jurisdiction of New York State courts in civil actions.

The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: *Provided,* That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue, but nothing herein contained shall be construed to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts: *Provided further,* That nothing in this section shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided for such Indians under any agreement, treaty, or custom: *Provided further,* That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land: *And provided further,* That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York: *Provided further,* That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952. (Sept. 13, 1950, ch. 947, § 1, 64 Stat. 845.)

EFFECTIVE DATE

Section 2 of act Sept. 13, 1950, provided: "This Act [this section] shall take effect two years after the date of its passage [September 13, 1950]".

TRAFFIC IN INTOXICATING LIQUORS

§§ 241 to 250. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 241, R. S. § 2139; acts Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 23, 1892, ch. 234, 27 Stat. 260; June 15, 1938, ch. 435, § 1, 52 Stat. 696, related to the sale of intoxicating liquor, and is now covered by sections 1154 and 1156 of Title 18, Crimes and Criminal Procedure.

Section 241a, act Mar. 1, 1895, ch. 145, § 8, 28 Stat. 697, related to the punishment for sale of intoxicating liquors, and is now covered by section 1155 of Title 18, Crimes and Criminal Procedure.

Section 242, acts Mar. 2, 1917, ch. 146, § 17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302, related to the manufacture and sale of alcohol in Osage County, Oklahoma, and is now covered by section 1154 of Title 18, Crimes and Criminal Procedure.

Section 243, act July 23, 1892, ch. 234, 27 Stat. 261, related to complaints, arrests, and convictions. See section 3041 of Title 18, Crimes and Criminal Procedure, and rule 5 of Title 18, Appendix.

Section 244, acts May 25, 1918, ch. 86, § 1, 40 Stat. 563; June 30, 1919, ch. 4, § 1, 41 Stat. 4, related to possession of intoxicating liquor in Indian country, and is now covered by section 1156 of Title 18, Crimes and Criminal Procedure.

Section 244a, act Mar. 5, 1934, ch. 43, 48 Stat. 396, related to repeal of certain liquor laws affecting former Indian Territory now a part of Oklahoma, and is now covered by sections 1154—1156 of Title 18, Crimes and Criminal Procedure.

Section 245, act May 18, 1916, ch. 125, § 1, 39 Stat. 124, related to possession of intoxicating liquor as prima facie evidence of unlawful production, and is now covered by sections 3113 and 3488 of Title 18, Crimes and Criminal Procedure.

Section 246, R. S. § 2140, related to searches and seizures, and is now covered by section 3113 of Title 18, Crimes and Criminal Procedure.

Section 247, act Mar. 2, 1917, ch. 146, § 1, 39 Stat. 970, related to seizure of vehicles, and is now covered by section 3618 of Title 18, Crimes and Criminal Procedure.

Section 248, act Mar. 1, 1907, ch. 2285, 34 Stat. 1017, related to powers of special agents and deputies to suppress liquor traffic, and is now covered by section 3113 of Title 18, Crimes and Criminal Procedure.

Section 249, act July 4, 1884, ch. 180, § 1, 23 Stat. 94, related to officers and soldiers of the Army furnishing liquor to Indians, and is now covered by section 1154 of Title 18, Crimes and Criminal Procedure.

Section 250, act Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519, related to powers of chief special officer and deputies to suppress liquor traffic, and is now covered by section 3055 of Title 18, Crimes and Criminal Procedure.

§ 251. Setting up distillery.

Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of $1,000; and the superintendent of Indian affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same. (R. S. § 2141.)

DERIVATION

Act June 30, 1834, ch. 161, § 21, 4 Stat. 732.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SUPERINTENDENT OF INDIAN AFFAIRS

No appropriation for any superintendent of Indian affairs has been made since act Mar. 3, 1877, ch. 101, § 1, 19 Stat. 271.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

§ 252. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, act May 18, 1916, ch. 125, § 1, 39 Stat. 124, related to application of former section 246 and section 251 of this title to search and seizure and setting up a distillery, and is now covered by section 3113 of Title 18, Crimes and Criminal Procedure.

§ 253. Wines for sacramental purposes.

It shall not be unlawful to introduce and use wines solely for sacramental purposes, under church authority, at any place within the Indian country or any Indian reservation, including the Pueblo Reservations in New Mexico. (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519.)

§ 254. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, act June 27, 1934, ch. 846, 48 Stat. 1245, related to inapplicability of liquor laws to lands outside reservations free from restrictions against alienation, and is now covered by sections 1154 and 1156 of Title 18, Crimes and Criminal Procedure.

TRADERS WITH INDIANS

§ 261. Power to appoint traders with Indians.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. (Aug. 15, 1876, ch. 289, § 5, 19 Stat. 200.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 262. Persons permitted to trade with Indians.

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians. (Mar. 3, 1901, ch. 832, § 1, 31 Stat. 1066; Mar. 3, 1903, ch. 994, § 10, 32 Stat. 1009.)

CODIFICATION

Act Mar. 3, 1901 restricted provisions to the Osages and the Osage Indian Reservation. Act Mar. 3, 1903 extended the provisions to all Indian reservations.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 263. Prohibition of trade by President.

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued. (R. S. § 2132.)

DERIVATION

Act June 30, 1834, ch. 161, § 3, 4 Stat. 729.

CROSS REFERENCES

Persons permitted to trade with Indians, see section 262 of this title.

Regulations by President, see section 9 of this title.

§ 264. Trading without license; white persons as clerks.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided,* That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further,* That no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. (R. S. § 2133; July 31, 1882, ch. 360, 22 Stat. 179.)

DERIVATION

Act June 30, 1834, ch. 161, § 4, 4 Stat. 729.

CODIFICATION

Act July 31, 1882 inserted the words "of the full blood" and "or on any Indian reservation" and added the two provisos.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Persons permitted to trade with Indians, see section 262 of this title.

§§ 265, 266. Repealed. Aug. 15, 1953, ch. 506, § 1, 67 Stat. 590.

Section 265, R. S. § 2135, prohibited certain purchases and sales within Indian country by persons other than Indians.

Section 266, R. S. §§ 467, 2136, prohibited sale of arms in district occupied by uncivilized or hostile Indians.

Chapter 7.—EDUCATION OF INDIANS

Sec.
271. Employment of instructors for Indians.
272. Superintendent of Indian schools.
272a. Same; other duties.
273. Detail of Army officer.
274. Employment of Indian girls and boys as assistants.
275. Leaves of absence to employees.
276. Vacant military posts or barracks for schools; detail of Army officers.
277. Former Apache military post established as Theodore Roosevelt Indian School.
278. Repealed.
278a. Use of appropriated funds for education in sectarian schools prohibited; exceptions.
279. Rations to mission schools.
280. Patents of lands to missionary boards of religious organizations.
280a. Land in Alaska for schools or missions; general land laws.
281. Children taking lands in severalty not excluded.
282. Regulations by Secretary of Interior to secure attendance at school.
283. Regulations for withholding rations for nonattendance at schools.
284. Regulations by Commissioner of Indian Affairs for attendance at schools.
285. Withholding annuities from Osage Indians for nonattendance at schools.
286. Sending child to school out of State without consent.
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292. Suspension or discontinuance of schools.
292a. Discontinuance of boarding and day schools having small attendance.
293. Sale of lands purchased for day school or other Indian administrative uses.
293a. Conveyance of school properties to local school districts or public agencies.
294. Sale of certain abandoned buildings on lands belonging to Indian tribes.
295. Supervision of expenditure of appropriations for school purposes.
296. Repealed.
297 Expenditure for children with less than one-fourth Indian blood.
298. Census of Indians and report of numbers of school children.
299 to 301. Repealed.
302. Indian Reform School; rules and regulations; consent of parents to placing youth in reform school.
303. Educational loans to worthy youths.
304. South Dakota Indians; State course of study.
304a. Study and investigation of Indian education in United States and Alaska; contracts; report to Congress; appropriations.
304b. Deposits of funds of students and student activity associations in Indian schools.

§ 271. Employment of instructors for Indians.

The President may, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined according to such instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties. A report of

the proceedings adopted in the execution of this provision shall be annually laid before Congress. (R. S. § 2071.)

DERIVATION

Act Mar. 3, 1819, ch. 85, 3 Stat. 516.

CROSS REFERENCES

Education of Indians, provisions for, see sections 452—454 and 471 of this title.

§ 272. Superintendent of Indian schools.

There shall be appointed by the President, by and with the advice and consent of the Senate, a person of knowledge and experience in the management, training, and practical education of children, to be Superintendent of Indian Schools, whose duty it shall be to visit and inspect the schools in which Indians are taught in whole or in part from appropriations from the United States Treasury, and report to the Commissioner of Indian Affairs, what, in his judgment, are the defects, if any, in any of them in system, in administration, or in means for the most effective advancement of the pupils therein toward civilization and self-support, and what changes are needed to remedy such defects as may exist, and to perform such other duties in connection with Indian schools as may be prescribed by the Secretary of the Interior. (Mar. 2, 1889, ch. 412, § 10, 25 Stat. 1003.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 272a. Same; other duties.

The Superintendent of Indian schools shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior. (Mar. 3, 1905, ch. 1479, § 1, 33 Stat. 1049.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 273. Detail of Army officer.

The Secretary of the Army shall be authorized to detail an officer of the Army, not above the rank of captain, for special duty with reference to Indian education. (June 23, 1879, ch. 35, § 7, 21 Stat. 35.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCES

Vacant military posts or barracks to be used as schools; Army officer to be detailed for duty at each school so established, see section 276 of this title.

§ 274. Employment of Indian girls and boys as assistants.

The Commissioner of Indian Affairs shall employ Indian girls as assistant matrons and Indian boys as farmers and industrial teachers in all Indian schools when it is practicable to do so. (June 7, 1897, ch. 3, § 1, 30 Stat. 83.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Preference to Indians qualified for duties, see section 45 of this title.

Standards for Indian employees, see section 472 of this title.

§ 275. Leaves of absence to employees.

Teachers in schools operated by the Bureau of Indian Affairs may be allowed, in addition to annual leave, educational leave not to exceed thirty workdays per calendar year, or sixty workdays in every alternate year, for attendance at educational gatherings, conventions, institutions, or training schools, if the interest of the Government requires, under such regulations as the Secretary of the Interior may prescribe; and no additional salary or expense on account of such leave of absence shall be incurred. (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519; Aug. 24, 1922, ch. 286, 42 Stat. 829; May 8, 1928, ch. 510, 45 Stat. 493; July 10, 1957, Pub. L. 85-89, 71 Stat. 282.)

CODIFICATION

Act Aug. 24, 1922 increased the educational leave allowance from 15 to 30 days.

AMENDMENTS

1957—Pub. L. 85-89 substituted "Teachers in schools operated by the Bureau of Indian Affairs" for "Teachers of the Indian schools and physicians of the Indian Service".

1928—Act May 8, 1928, made the section applicable to physicians of the Indian Service.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Reduction in leaves of absence of Government employees, see chapter 63 of Title 5, Government Organization and Employees.

§ 276. Vacant military posts or barracks for schools; detail of Army officers.

The Secretary of the Army is authorized to set aside, for use in the establishment of normal and industrial training schools for Indian youth from the nomadic tribes having educational treaty claims upon the United States, any vacant posts or barracks, so long as they may not be required for military occupation, and to detail one or more officers of the Army for duty in connection with Indian education, under the direction of the Secretary of the Interior, at each such school so established: *Provided,* That moneys appropriated or to be appropriated for general purposes of education among the Indians may be expended, under the direction of the Secretary of the Interior, for the education of Indian youth at such posts, institutions, and schools as he may consider advantageous, or as Congress from time to time may authorize and provide. (July 31, 1882, ch. 363, 22 Stat. 181.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205 (a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205 (a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions relating to real property under the jurisdiction of the Department of the Air Force from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 14 [§ 2(29)], eff. July 1, 1948, and 40 [App. A(53)], July 22, 1949.

CROSS REFERENCES

Detail of Army officer, see section 273 of this title.

§ 277. Former Apache military post established as Theodore Roosevelt Indian School.

The Secretary of the Interior is authorized to establish and maintain the former Fort Apache military post as an Indian boarding school for the purpose of carrying out treaty obligations, to be known as the Theodore Roosevelt Indian School: *Provided,* That the Fort Apache military post, and land appurtenant thereto, shall remain in the possession and custody of the Secretary of the Interior so long as they shall be required for Indian school purposes. (Jan. 24, 1923, ch. 42, 42 Stat. 1187.)

LANDS HELD IN TRUST FOR WHITE MOUNTAIN APACHE TRIBE

Pub. L. 86-392, Mar. 18, 1960, 74 Stat. 8, provided: "That all right, title, and interest of the United States in and to the lands, together with the improvements thereon, included in the former Fort Apache Military Reservation, created by Executive order of February 1, 1877, and subsequently set aside by the Act of January 24, 1923 (42 Stat. 1187) [this section], as a site for the Theodore Roosevelt School, located within the boundaries of the Fort Apache Indian Reservation, Arizona, are hereby declared to be held by the United States in trust for the White Mountain Apache Tribe, subject to the right of the Secretary of the Interior to use any part of the land and improvements for administrative or school purposes for as long as they are needed for that purpose."

§ 278. Repealed. Pub. L. 90-280, § 1, Mar. 30, 1968, 82 Stat. 71.

Section, act Mar. 2, 1917, ch. 146, § 21, 39 Stat. 988, declared the settled policy of the Government to be opposed to the making of any appropriations whatever out of the Treasury of the United States for the education of Indian children in any sectarian school. See section 278a of this title.

§ 278a. Use of appropriated funds for education in sectarian schools prohibited; exceptions.

Funds appropriated on or after March 30, 1968, to the Secretary of the Interior for the education of Indian children shall not be used for the education of such children in elementary and secondary education programs in sectarian schools. This prohibition shall not apply to the education of Indians in accredited institutions of higher education and in other accredited schools offering vocational and technical training, but no scholarship aid provided for an Indian student shall require him to attend an institution or school that is not of his own free choice, and such aid shall be, to the extent consistent with sound administration, extended to the student individually rather than to the institution or school. (Pub. L. 90-280, § 2, Mar. 30, 1968, 82 Stat. 71.)

§ 279. Rations to mission schools.

Mission schools on an Indian reservation may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulations if such children were living with their parents. (June 21, 1906, ch. 3504, 34 Stat. 326.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 280. Patents of lands to missionary boards of religious organizations.

The Secretary of the Interior is authorized and directed to issue a patent to the duly authorized missionary board, or other proper authority, of any religious organization engaged in mission or school work on any Indian reservation for such lands thereon as were prior to September 21, 1922, set apart to and were on that date being actually and beneficially used and occupied by such organization solely for mission or school purposes, the area so patented to not exceed one hundred and sixty acres to any one organization at any station: *Provided,* That such patent shall provide that when no longer used for mission or school purposes said lands shall revert to the Indian owners. (Sept. 21, 1922, ch. 367, § 3, 42 Stat. 995.)

§ 280a. Land in Alaska for schools or missions; general land laws.

The Indians or persons conducting schools or missions in the Territory of Alaska shall not be disturbed in the possession of any lands actually in their use or occupation on June 6, 1900, and the land, at any station not exceeding six hundred and forty acres,

occupied on said date as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this Act shall be construed to put in force in the Territory the general land laws of the United States. (June 6, 1900, ch. 786, § 27, 31 Stat. 330.)

REFERENCES IN TEXT

This Act, referred to in the text, means Act June 6, 1900. For distribution of Title I of Act June 6, 1900, in the Code, see Tables Volume. Title II of such Act provided for the Alaska Civil Code.

SIMILAR PROVISIONS

Similar provisions were contained in act May 17, 1884, ch. 53, § 8, 23 Stat. 26, which provided in part that the Indians or other persons in the district should not be disturbed in the possession of any lands actually in their ues or occupation or claimed by them, but reserved for future legislation the terms under which such persons might acquire title. That section contained a further provisions, similar to the provision contained in this section, continuing lands occupied as missionary stations in the occupancy of the several religious societies.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73, Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 281. Children taking lands in severalty not excluded.

In the expenditure of money appropriated for any of the purposes of education of Indian children, those children of Indians who have taken or may take lands in severalty under any existing law shall not, by reason thereof, be excluded from the benefits of such appropriation. (Aug. 15, 1894, ch. 290, § 1, 28 Stat. 311.)

§ 282. Regulations by Secretary of Interior to secure attendance at school.

The Secretary of the Interior is authorized to make and enforce such rules and regulations as may be necessary to secure the enrollment and regular attendance of eligible Indian children who are wards of the Government in schools maintained for their benefit by the United States or in public schools. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 410.)

§ 283. Regulations for withholding rations for nonattendance at schools.

The Secretary of the Interior may in his discretion, establish such regulations as will prevent the issuing of rations or the furnishing of subsistence either in money or in kind to the head of any Indian family for or on account of any Indian child or children between the ages of eight and twenty-one years who shall not have attended school during the preceding year in accordance with such regulations. This provision shall not apply to reservations or part of reservations where sufficient school facilities have not been furnished nor until full notice of such regulations shall have been given to the Indians to be affected thereby.

The amount and value of subsistence so withheld shall be credited to the tribe or tribes from whom the same is withheld, to be issued and paid when in the judgment of the Secretary of the Interior they shall have fully complied with such regulations. The Secretary of the Interior may in his discretion withhold rations, clothing, and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school a reasonable portion of the year. (Mar. 3, 1893, ch. 209, § 1, 27 Stat. 628, 635.)

CROSS REFERENCES

Withholding annuities from Osage Indians for nonattendance at schools, see section 285 of this title.

§ 284. Regulations by Commissioner of Indian Affairs for attendance at schools.

CODIFICATION

Section, act July 13, 1892, ch. 164, § 1, 27 Stat. 143, is now covered by section 282 of this title.

§ 285. Withholding annuities from Osage Indians for nonattendance at schools.

The Commissioner of Indian Affairs is authorized in his discretion to withhold any annuities or other payments due to Osage Indian minors, above six years of age, whose parents fail, neglect, or refuse to place such minors in some established school for a reasonable portion of each year and to keep such children in regular attendance thereof. The Commissioner of Indian Affairs is authorized to make such rules and regulations as may be necessary to put this provision into force and effect. (June 30, 1913, ch. 4, § 18, 38 Stat. 96.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Withholding rations for nonattendance at schools, see section 283 of this title.

§ 286. Sending child to school out of State without consent.

No Indian child shall be sent from any Indian reservation to a school beyond the State or Territory in which said reservation is situated without the voluntary consent of the father or mother of such child if either of them is living, and if neither of them is living without the voluntary consent of the next of kin of such child. Such consent shall be made before the agent of the reservation, and he shall send to the Commissioner of Indian Affairs his certificate that such consent has been voluntarily given before such child shall be removed from such reservation. And it shall be unlawful for any Indian agent or other employee of the Government to induce, or seek to induce, by withholding rations or by other improper means, the parents or next of kin of any Indian to

consent to the removal of any Indian child beyond the limits of any reservation. (Aug. 15, 1894, ch. 290, § 11, 28 Stat. 313; Mar. 2, 1895, ch. 188, § 1, 28 Stat. 906.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Indian agents abolished, see note under section 64 of this title.

§ 287. Taking child to school in another State without written consent.

No Indian child shall be taken from any school in any State or Territory to a school in any other State against its will or without the written consent of its parents. (June 10, 1896, ch. 398, § 1, 29 Stat. 348.)

CROSS REFERENCES

Provision preventing Government from assuming expense of transporting pupils beyond limits of state or territory, see section 290 of this title.

§ 288. White children in Indian day schools.

White children may, under rules and regulations prescribed by the Commissioner of Indian Affairs, be admitted to any Indian day school: *Provided,* That the tuition fees charged for such children shall in no case exceed the tuition fees allowed or charged by the State or county in which such school is situated for the children admitted in the common schools of such State or county: *And provided further,* That all tuition fees paid for white children enrolled in Indian day schools shall be deposited in the United States Treasury to reimburse the funds out of which the schools last mentioned are maintained. (Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 289. White children in Indian boarding schools.

White children may, under rules prescribed by the Commissioner of Indian Affairs, be admitted to Indian boarding schools on the payment of tuition fees at a rate to be fixed in said rules; *Provided further,* That all tuition fees paid for white children so enrolled shall be deposited in the United States Treasury to reimburse the fund out of which the school is supported. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

No appropriations to be made for education of children of less than one-fourth Indian blood, see section 297 of this title.

§ 290. Transportation of pupils under 14 at Government expense.

No Indian pupil under the age of fourteen years shall be transported at Government expense to any Indian school beyond the limits of the State or Territory in which the parents of such child reside or of the adjoining State or Territory. (Mar. 3, 1909, ch. 263, 35 Stat. 783.)

§ 291. Removal of Government property at schools.

Where there is Government property on hand at any of the Indian reservations or schools not required for the use or benefit of the Indians of reservations or said schools, the Secretary of the Interior is authorized to move such property to other Indian reservations or schools where it may be required. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

§ 292. Suspension or discontinuance of schools.

The Commissioner of Indian Affairs may, when in his judgment the good of the service will be promoted thereby, suspend or discontinue any reservation Indian school, and, with the approval of the Secretary of the Interior, may sell any reservation school building or plant that is no longer desirable as an Indian school upon any reservation and invest the proceeds in other school buildings and plants, as the needs of the service may demand, under such rules and regulations as he may, with the approval of the Secretary of the Interior, prescribe. (Apr. 21, 1904, ch. 1402, § 1, 33 Stat. 211.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Appropriations, see section 725c of Title 31, Money and Finance.

§ 292a. Discontinuance of boarding and day schools having small attendance.

CODIFICATION

Section, act Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1576, was from the Interior Department Appropriation Act, 1930, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

1928—Mar. 7, 1928, ch. 137, § 1, 45 Stat. 215.
1927—Jan. 12, 1927, ch. 27, § 1, 44 Stat. 947.
1926—May 10, 1926, ch. 277, § 1, 44 Stat. 468.
1925—Mar. 3, 1925, ch. 462, 43 Stat. 1155.
1924—June 5, 1924, ch. 264, 43 Stat. 404.
1923—Jan. 24, 1923, ch. 42, 42 Stat. 1182.
1922—May 24, 1922, ch. 199, 42 Stat. 562.
1921—Mar. 3, 1921, ch. 119, § 1, 41 Stat. 1227.
1920—Feb. 14, 1920, ch. 75, § 1, 41 Stat. 410.

§ 293. Sale of lands purchased for day school or other Indian administrative uses.

Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, the Secretary of the Interior is authorized to cause to be sold, to the highest bidder, under such rules and regulations as he may prescribe any tract or part of a tract of land purchased by the United States for day school or other Indian administrative uses, not exceeding one hundred and sixty acres in any one tract, when said land or a part thereof is no longer needed for the original purpose; the proceeds therefrom in all cases to be paid into the Treasury of the United States; title to be evidenced by a patent in fee simple for such lands as can be described in terms of the legal survey, or by deed duly executed by the Secretary of the Interior containing such metes-and-bounds description as will identify the land so conveyed as the land which had been purchased: *Provided,* That where the purchase price was paid from tribal funds, the net proceeds shall be placed in the Treasury of the United States to the credit of the respective tribes of Indians. (Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973; Oct. 31, 1951, ch. 654, § 2 (17), 65 Stat. 707.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377. Titles I–IV and VI–VIII thereof are classified to chapters 10 and 16 of Title 40, Public Buildings, Property, and Works, and chapter 4 of Title 41, Public Contracts. Title V thereof was classified to former chapter 11 of Title 44, Public Printing and Documents, but was repealed in the revision of Title 44 by Pub. L. 90–620, § 3, Oct. 22, 1968, 82 Stat. 1309. The subject matter of such former title V is now covered by chapters 21, 25, 27, 29, and 31 of Title 44.

AMENDMENTS

1951—Act Oct. 31, 1951, inserted the reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended, at beginning of section; struck out "net" preceding "proceeds" in clause immediately following first semicolon; and, in the proviso, substituted "the net proceeds" for "such proceeds".

CROSS REFERENCES

Proceeds from transfer, sale, etc., of property, see section 485 of Title 40, Public Buildings, Property, and Works.

§ 293a. Conveyance of school properties to local school districts or public agencies.

The Secretary of the Interior, or his authorized representative, is authorized to convey to State or local governmental agencies or to local school authorities all the right, title, and interest of the United States in any land and improvements thereon and personal property used in connection therewith heretofore or hereafter used for Federal Indian school purposes and no longer needed for such purposes: *Provided,* That the consent of the beneficial owner shall be obtained before the conveyance of title to land held by the United States in trust for an individual Indian or Indian tribe: *Provided further,* That no more than fifty acres of land shall be transferred under the terms of this section in connection with any single school property conveyed to State or local governmental agencies or to local school authorities. Any conveyance under this section shall reserve all mineral deposits in the land and the right to prospect for and remove such deposits under rules and regulations prescribed by the Secretary of the Interior, shall require the property to be used for school or other public purposes, and shall require the property to be available to Indians and non-Indians on the same terms unless otherwise approved by the Secretary of the Interior. If at any time the Secretary of the Interior determines that the grantee of any such lands, improvements, and personal property has failed to observe the provisions of the transfer agreement and that the failure has continued for at least one year, he may declare a forfeiture of the conveyance and the title conveyed shall thereupon revert to the United States. Such determination by the Secretary of the Interior shall be final. If the grantee of such land fails for a period of one year to observe the provisions of the transfer agreement and the Secretary of the Interior fails to declare a forfeiture of the conveyance, the former beneficial owner, if an individual Indian or an Indian tribe, may petition the United States District Court for the district where the land is located to declare a forfeiture of the conveyance and to vest the title in the United States, in the same trust status as previously existed. (June 4, 1953, ch. 98, 67 Stat. 41; May 16, 1957, Pub. L. 85–31, 71 Stat. 29; Mar. 16, 1962, Pub. L. 87–417, 76 Stat. 33.)

AMENDMENTS

1962—Pub. L. 87–417 increased land conveyance limitation from twenty to fifty acres.

1957—Pub. L. 85–31 added last sentence to allow the former beneficial owner, if an Indian or Indian tribe, to petition for declaration of forfeiture of conveyance where grantee has failed for period of one year to observe provisions of transfer agreement and Secretary has not declared forfeiture.

§ 294. Sale of certain abandoned buildings on lands belonging to Indian tribes.

The Secretary of the Interior is authorized to sell and convey at public sale, to the highest bidder, under such regulations and under such terms and conditions as he may prescribe, at not less than the appraised value thereof, any abandoned day or boarding school plant, or any abandoned agency buildings, situated on lands belonging to any Indian tribe and not longer needed for Indian or administrative purposes, and to sell therewith not to exceed one hundred and sixty acres of land on which such plant or buildings may stand. Title to all lands disposed of under the provisions of this section shall pass to the purchaser by deed or by patent in fee, with such reservations or conditions as the said Secretary may deem just and proper, no purchaser to acquire more than one hundred and sixty acres in any one tract: *Provided,* That the proceeds of all such sales shall be deposited in the Treasury of the United States to the credit of the Indians to whom said lands belong, to be disposed of in accordance with existing law. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 415.)

§ 295. Supervision of expenditure of appropriations for school purposes.

All expenditure of money appropriated for school purposes among the Indians shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations

as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him, subject to the supervision of the Secretary of the Interior. (Apr. 30, 1908, ch. 153, 35 Stat. 72.)

CODIFICATION

Act Apr. 30, 1908 embodied restrictions as to the amount which might be expended for the annual support and education of any one pupil and specified the method for determining the number of pupils in any school entitled to the per capita allowance provided for by the act.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with certain exceptions, transferred to the Secretary of the Interior, with powers vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SCHOOL AND EMPLOYMENT TRANSPORTATION

Separate appropriations for collection and transportation of pupils to and from Indian schools, etc., with a proviso that a specified part of the amount so appropriated may be used in placing Indian youths in employment in industrial pursuits were made by the following appropriation acts:

1925—Mar. 3, 1925, ch. 462, 43 Stat. 1155.
1922—May 24, 1922, ch. 199, 42 Stat. 562.

§ 296. Repealed. Mar. 2, 1929, ch. 576, 45 Stat. 1534.

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 72; act June 30, 1919, ch. 4, § 1, 41 Stat. 6; act Feb. 21, 1925, ch. 280, 43 Stat. 958, placed a limitation on per capita expenditure for school purposes.

SIMILAR PROVISIONS

Provisions similar to act June 30, 1919 were contained in the following prior appropriation acts:

1918—May 25, 1918, ch. 86, § 1, 40 Stat. 565.
1916—Sept. 7, 1916, ch. 455, 39 Stat. 741.

§ 297. Expenditure for children with less than one-fourth Indian blood.

No appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided. (May 25, 1918, ch. 86, § 1, 40 Stat. 564.)

EXCEPTION TO RESTRICTION

Interior Department Appropriation Act, 1923, act May 24, 1922, ch. 199, 42 Stat. 576, provided that the appropriation for aid to the common schools in the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations and the Quapaw Agency in Oklahoma, shall not be subject to this section, limiting the expenditure of money to educate children of less than one-fourth Indian blood.

§ 298. Census of Indians and report of numbers of school children.

CODIFICATION

Section, act July 4, 1884, ch. 180, § 9, 23 Stat. 98, required Indian agents in their annual report to submit a census of Indians at the agency. Since 1908, there have been no Indian agents. See note to section 64 of this title.

§§ 299 to 301. Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 990, 991.

Sections, requiring certain annual reports to Congress by the Secretary of the Interior, were enacted as follows:

Section 299, act Mar. 2, 1887, ch. 320, § 1, 24 Stat. 465.
Sections 300—301, act Mar. 3, 1911, ch. 210, § 1, 36 Stat. 1060.

§ 302. Indian Reform School; rules and regulations; consent of parents to placing youth in reform school.

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, is authorized and directed to select and designate some one of the schools or other institution herein specifically provided for as an "Indian Reform School", and to make all needful rules and regulations for its conduct, and the placing of Indian youth therein: *Provided,* That the appropriation for collection and transportation, and so forth, of pupils, and the specific appropriation for such school so selected shall be available for its support and maintenance: *Provided further,* That the consent of parents, guardians, or next of kin shall not be required to place Indian youth in said school. (June 21, 1906, ch. 3504, 34 Stat. 328.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with certain exceptions, transferred to the Secretary of the Interior, with powers vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 303. Educational loans to worthy youths.

CODIFICATION

Section, act Oct. 12, 1949, ch. 680, title I, § 101, 63 Stat. 776, was from the Department of Interior Appropriation Act, 1950, and was not repeated in the Department of Interior Appropriation Act, 1951, act Sept. 6, 1950, ch. 896, ch. VII, title I, 64 Stat. 679. Similar provisions were contained in the following prior appropriation acts:

1948—June 29, 1948, 4:58 p. m., E. D. T., ch. 754, § 1, 62 Stat. 1123.
1947—July 25, 1947, ch. 337, § 1, 61 Stat. 470.
1946—July 1, 1946, ch. 529, § 1, 60 Stat. 361.
1945—July 3, 1945, ch. 262, § 1, 59 Stat. 326.
1944—June 28, 1944, ch. 298, § 1, 58 Stat. 472.
1943—July 12, 1943, ch. 219, § 1, 57 Stat. 459.
1942—July 2, 1942, ch. 473, § 1, 56 Stat. 516.
1941—June 28, 1941, ch. 259, § 1, 55 Stat. 315.
1940—June 18, 1940, ch. 395, § 1, 54 Stat. 417.
1939—May 10, 1939, ch. 119, § 1, 53 Stat. 698.
1938—May 9, 1938, ch. 187, § 1, 52 Stat. 303.

§ 304. South Dakota Indians; State course of study.

On and after July 1, 1950, the course of study taught in any school operated and maintained by the Bureau of Indian Affairs on any Indian reservation in the State of South Dakota shall, upon a majority decision of the parents of children enrolled therein voting at a meeting called for that purpose by the superintendent of the reservation, meet the minimum education requirements prescribed by the department of public instruction for the public schools of that State. (Sept. 7, 1949, ch. 566, 63 Stat. 694.)

§ 304a. Study and investigation of Indian education in United States and Alaska; contracts; report to Congress; appropriations.

The Secretary of the Interior (hereinafter referred to as the "Secretary"), acting through the Bureau of Indian Affairs, is authorized and directed to conduct a study and investigation of Indian education in the continental United State and Alaska,

including a study and investigation of (1) the education problems of Indian children from non-English speaking homes, and (2) the possibility of establishing a more orderly, equitable, and acceptable program for transferring Indian children to public schools.

The Secretary, in carrying out the provisions of this section, is authorized to enter into contracts in accordance with the provisions of sections 452 to 455 of this title.

Not later than two years after funds are made available to carry out the purposes of this section, the Secretary shall submit to the Congress a complete report of the results of such study and investigation, together with such recommendations as he deems desirable.

There are authorized to be appropriated such sums as may be necessary for carrying out the purposes of this section. (July 14, 1956, ch. 588, §§ 1—4, 70 Stat. 531.)

REFERENCES IN TEXT

Section 455 of this title, included within the references to sections 452—455 of this title, was repealed by Pub. L. 86-533, § 1(15), June 29, 1960, 74 Stat. 248.

CODIFICATION

Section is composed of sections 1—4 of joint resolution July 14, 1956.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 304b. Deposits of funds of students and student activity associations in Indian schools.

The Secretary of the Interior may authorize officials or employees of the Bureau of Indian Affairs to accept and to disburse deposits of funds of students and student activity associations in schools operated by the Bureau of Indian Affairs in accordance with the purposes of such deposits. Such deposits and disbursements shall be accounted for under rules and regulations prescribed by the Secretary of the Interior. (Pub. L. 86-16, Apr. 27, 1959, 73 Stat. 20.)

Chapter 7A.—PROMOTION OF SOCIAL AND ECONOMIC WELFARE

Sec.
305. Indian Arts and Crafts Board; creation and composition; per diem payments.
305a. Promotion of economic welfare through development of arts and crafts; powers of Board.
305b. Rules and regulations; submission to Secretary of Interior.
305c. Appropriation.
305c-1 to 305e. Repealed.
306. Expenditures for encouragement of industry and self-support; repayment.
306a. Advances for support of old, disabled, or indigent allottees; lien against land.
307. Establishment of vocational school for children and housing and training center for adults; transfer of property; supervision.
308. Same; property taken over by Secretary of the Interior.
309. Vocational training program; eligibility; contracts or agreements.
309a. Same; authorization of appropriations.

CROSS REFERENCES

Navajo and Hopi Indian Tribes, rehabilitation program, see section 631 et seq. of this title.

Promotion of welfare of Indians in Oklahoma, see section 501 et seq. of this title.

§ 305. Indian Arts and Crafts Board; creation and composition; per diem payments.

A board is created in the Department of the Interior to be known as "Indian Arts and Crafts Board", and hereinafter referred to as the Board. The Board shall be composed of five commissioners, who shall be appointed by the Secretary of the Interior as soon as possible after August 27, 1935 and shall continue in office, two for a term of two years, one for a term of three years, and two for a term of four years from the date of their appointment, the term of each to be designated by the Secretary of the Interior, but their successors shall be appointed for a term of four years except that any person chosen to fill a vacancy shall be appointed for the unexpired term of the commissioner whom he succeeds. Both public officers and private citizens shall be eligible for membership on the Board. The Board shall elect one of the commissioners as chairman. One or two vacancies on the Board shall not impair the right of the remaining commissioners to exercise all the powers of the Board.

The commissioners shall serve without compensation: *Provided,* That each Commissioner shall be paid per diem in lieu of subsistence and other expenses at a rate that does not exceed the rate authorized by section 73b-2 of Title 5 to be paid to persons serving without compensation. (Aug. 27, 1935, ch. 748, § 1, 49 Stat. 891; Apr. 24, 1961, Pub. L. 87-23, § 1, 75 Stat. 45.)

REFERENCES IN TEXT

Section 73b-2 of Title 5, referred to in the text, was repealed in the general revision of Title 5, and the provisions are now covered by sections 5703 and 5707 of Title 5, Government Organization and Employees.

AMENDMENTS

1961—Pub. L. 87-23 substituted authorization for payment of per diem to Board members at the rate authorized for other persons serving without compensation for former provision reimbursing actual expenses, including travel expenses, subsistence and office overhead, incurred incidental to performance of duties.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 305b, 305c of this title.

§ 305a. Promotion of economic welfare through development of arts and crafts; powers of Board.

It shall be the function and the duty of the Board to promote the economic welfare of the Indian tribes and the Indian wards of the Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. In the execution of this function the Board shall have the following powers: (a) To

undertake market research to determine the best opportunity for the sale of various products; (b) to engage in technical research and give technical advice and assistance; (c) to engage in experimentation directly or through selected agencies; (d) to correlate and encourage the activities of the various governmental and private agencies in the field; (e) to offer assistance in the management of operating groups for the furtherance of specific projects; (f) to make recommendations to appropriate agencies for loans in furtherance of the production and sale of Indian products; (g) to create Government trade marks of genuineness and quality for Indian products and the products of particular Indian tribes or groups; to establish standards and regulations for the use of such trade marks; to license corporations, associations, or individuals to use them; and to charge a fee for their use; to register them in the United States Patent Office without charge; (h) to employ executive officers, including a general manager, and such other permanent and temporary personnel as may be found necessary, and prescribe the authorities, duties, responsibilities, and tenure and fix the compensation of such officers and other employees: *Provided,* That chapter 51 and subchapter III of chapter 53 of Title 5 shall be applicable to all permanent employees and that all employees shall be appointed in accordance with the civil-service laws from lists of eligibles to be supplied by the Civil Service Commission; (i) as a Government agency to negotiate and execute in its own name contracts with operating groups to supply management, personnel, and supervision at cost, and to negotiate and execute in its own name such other contracts and to carry on such other business as may be necessary for the accomplishment of the duties and purposes of the Board: *Provided,* That nothing in the foregoing enumeration of powers shall be construed to authorize the Board to borrow or lend money or to deal in Indian goods. (Aug. 27, 1935, ch. 748, § 2, 49 Stat. 891; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees.

CODIFICATION

Provisions which authorized appointment of executive officers without regard to the civil-service laws, and which provided that the classified civil service was to be applicable to all permanent employees except executive officers, were omitted since executive officers are now in the classified civil service and subject to the applicable compensation schedules.

The authority for covering excepted positions into the classified civil service was given the President by section 631a of former Title 5, Executive Departments and Government Officers and Employees. By Executive Order 8743, Apr. 25, 1941, set out as a note under section 3301 of Title 5, Government Organization and Employees, the President exercised this authority with respect to many previously excepted positions.

For positions now covered by the classified civil service, see section 5102 of Title 5. For the power of the Civil Service Commission to determine the applicability of that section to specific positions, see section 5103 of Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923" which for purposes of classification has been translated as "chapter 51 and subchapter III of chapter 53 of Title 5".

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Counterfeiting Indian Arts and Crafts Board trademark, see section 1158 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 305b, 305c of this title; title 18 section 1158.

§ 305b. Rules and regulations; submission to Secretary of Interior.

The Board shall prescribe from time to time rules and regulations governing the conduct of its business and containing such provisions as it may deem appropriate for the effective execution and administration of the powers conferred upon it by sections 305 to 305c of this title: *Provided,* That before prescribing any procedure for the disbursement of money the Board shall advise and consult with the General Accounting Office: *Provided further,* That all rules and regulations proposed by the Board shall be submitted to the Secretary of the Interior and shall become effective upon his approval. (Aug. 27, 1935, ch. 748, § 3, 49 Stat. 892.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The function of disbursement of moneys of the United States by any agency was transferred to the Treasury Department and, together with the Office of Disbursing Clerk of that Department, was consolidated in a Division of Disbursement by section 4 of Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5. The Division of Disbursement was consolidated in the Fiscal Service by 1940 Reorg. Plan No. III, § 1 (a) (3), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 305c of this title.

§ 305c. Appropriation.

There is authorized to be appropriated out of any sums in the Treasury not otherwise appropriated such sums as may be necessary to defray the expenses of the Board and carry out the purposes and provisions of sections 305 to 305c of this title. All income derived by the Board from any source shall be covered into the Treasury of the United States and shall constitute a special fund which is appropriated and made available until expended for carrying out the purposes and provisions of said sections. Out of the funds available to it at any time the Board may authorize such expenditures, consistent

with the provisions of said sections, as it may determine to be necessary for the accomplishment of the purposes and objectives of said sections. (Aug. 27, 1935, ch. 748, § 4, 49 Stat. 892.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with certain exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 305b of this title.

§ 305c-1. Repealed. Pub. L. 87-23, § 2, Apr. 24, 1961, 75 Stat. 45.

Section, act May 10, 1939, ch. 119, § 1, 53 Stat. 699, provided for a limitation of $10 per diem in lieu of subsistence on amount that may be paid to members of the Indian Arts and Crafts Board, and is covered by section 305 of this title.

§ 305d. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, act Aug. 27, 1935, ch. 748, § 5, 49 Stat. 892 related to counterfeiting of a trade mark and penalty, and is now covered by section 1158 of Title 18, Crimes and Criminal Procedure.

§ 305e. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862; June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.

Section, act Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893, related to offering for sale without trade mark goods as Indian goods, and is now covered by section 1159 of Title 18, Crimes and Criminal Procedure.

§ 306. Expenditures for encouragement of industry and self-support; repayment.

On and after May 9, 1938, the expenditures for the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before the expiration of five years, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for nor exceeding twenty years, in the discretion of the Secretary of the Interior. (May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

§ 306a. Advances for support of old, disabled, or indigent allottees; lien against land.

The Secretary of the Interior is authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their land until paid; such advances for fiscal years after 1939 to be made from appropriations specifically available for such purposes. (May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

§ 307. Establishment of vocational school for children and housing and training center for adults; transfer of property; supervision.

The Administrator of General Services is authorized and directed to transfer to the Secretary of the Interior, without reimbursement or transfer of funds for use by the Bureau of Indian Affairs as a vocational school for Indian children and a center for housing and training adult Indians for off-reservation employment and placement, the property known as the Bushnell General Hospital near Brigham City, Box Elder County, Utah, comprising two hundred and ninety-eight and five-tenths acres, more or less, together with roads, buildings, and other betterments thereon. (Mar. 17, 1949, ch. 22, § 1, 63 Stat. 14; June 30, 1949, ch. 288, title I, § 105, 63 Stat. 381.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

The functions, records, property, etc., of the War Assets Administration were transferred to the General Services Administration and the War Assets Administration was abolished by section 105 of act June 30, 1949, ch. 288, title I, 63 Stat. 379.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

§ 308. Same; property taken over by Secretary of the Interior.

The Secretary of the Interior is authorized and directed to take over the property as soon as Congress has appropriated the necessary funds to provide for alterations, maintenance, and operation. (Mar. 17, 1949, ch. 22, § 2, 63 Stat. 14.)

§ 309. Vocational training program; eligibility; contracts or agreements.

In order to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment, the Secretary of the Interior is authorized to undertake a program of vocational training that provides for vocational counseling or guidance, institutional training in any recognized vocation or trade, apprenticeship, and on-the-job training, for periods that do not exceed twenty-four months, and, for nurses' training, for periods that do not exceed thirty-six months, transportation to the place of training, and subsistence during the course of training. The program shall be available primarily to Indians who are not less than eighteen and not more than thirty-five years of age and who reside on or near an Indian reservation, and the program shall be conducted under such rules and regulations as the Secretary may prescribe. For the purposes of this program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, or with any private school which has a recognized reputation in the field of vocational education and has successfully obtained employment for its graduates in their respective fields of training, or with any corporation or association which has an existing apprenticeship or on-the-job training program which is recognized by industry and labor as leading to skilled employment, or with

any school of nursing offering a three-year course of study leading to a diploma in nursing which is accredited by a recognized body or bodies approved for such purpose by the Secretary. (Aug. 3, 1956, ch. 930, § 1, 70 Stat. 986; Dec. 23, 1963, Pub. L. 88-230, § 1(a), 77 Stat. 471.)

AMENDMENTS

1963—Pub. L. 88-230 authorized the Secretary of the Interior to undertake a program for nurses' training for periods not exceeding 36 months and to enter into contracts with accredited schools of nursing offering a 3-year course of study leading to a diploma in nursing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 309a of this title.

§ 309a. Same; authorization of appropriations.

There is authorized to be appropriated for the purposes of sections 309 and 309a of this title the sum of $25,000,000 for each fiscal year, and not to exceed $1,500,000 of such sum shall be available for administrative purposes. (Aug. 3, 1956, ch. 930, § 2, 70 Stat. 986; Sept. 22, 1961, Pub. L. 87-273, 75 Stat. 571; Dec. 23, 1963, Pub. L. 88-230, § 1(b), 77 Stat. 471; Apr. 22, 1965, Pub. L. 89-14, 79, Stat. 74; Feb. 3, 1968, Pub. L. 90-252, 80 Stat. 4.)

AMENDMENTS

1968—Pub. L. 90-252 increased the appropriation from $15,000,000 to $25,000,000.

1965—Pub. L. 89-14 increased the appropriation from $12,000,000 to $15,000,000.

1963—Pub. L. 88-230 increased the appropriation from $7,500,000 to $12,000,000 and the amount available for administrative purposes from $1,000,000 to $1,500,000.

1961—Pub. L. 87-273 increased the appropriation to $7,500,000 and the amount available for administrative purposes to $1,000,000.

Chapter 8.—RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec.
311. Opening highways.
312. Rights-of-way for railway, telegraph, and telephone lines; town-site stations.
313. Width of right-of-way.
314. Survey; maps; compensation.
315. Time for completion of road; forfeiture.
316. Rights of several roads through canyons.
317. Regulations.
318. Amendment or repeal of sections.
318a. Roads on Indian reservations; appropriation.
318b. Repealed.
319. Rights-of-way for telephone and telegraph lines.
320. Acquisition of lands for reservoirs or materials.
321. Rights-of-way for pipe lines.
322. Application of certain sections to Pueblo Indians.
323. Rights-of-way for all purposes across any Indian lands.
324. Same; consent of certain tribes; consent of individual Indians.
325. Same; payment and disposition of compensation.
326. Same; laws unaffected.
327. Same; application for grant by department or agency.
328. Same; rules and regulations.

§ 311. Opening highways.

The Secretary of the Interior is authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indian under any laws or treaties but which have not been conveyed to the allottee with full power of alienation. (Mar. 3, 1901, ch. 832, § 4, 31 Stat. 1084.)

CROSS REFERENCES

Condemnation of lands allotted in severalty to Indians under laws of States, see section 357 of this title.

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 322 of this title.

§ 312. Rights-of-way for railway, telegraph, and telephone lines; town-site stations.

A right of way for a railway, telegraph, and telephone line through any Indian reservation in any State or Territory, except Oklahoma, or through any lands reserved for an Indian agency or for other purposes in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, is granted to any railroad company organized under the laws of the United States, or of any State or Territory, which shall comply with the provisions of sections 312 to 318 of this title and such rules and regulations as may be prescribed thereunder: *Provided,* That no right of way shall be granted under said sections until the Secretary of the Interior is satisfied that the company applying has made said application in good faith and with intent and ability to construct said road, and in case objection to the granting of such right of way shall be made, said Secretary shall afford the parties so objecting a full opportunity to be heard: *Provided further,* That where a railroad has heretofore been constructed, or is in actual course of construction, no parallel right of way within ten miles on either side shall be granted by the Secretary of the Interior unless, in his opinion, public interest will be promoted thereby: *Provided also,* That as a condition precedent to each and every grant of a right of way under authority of said sections, each and every railway company applying for such grant shall stipulate that it will construct and permanently maintain suitable passenger and freight stations for the convenience of each and every town site established by the Government along said right of way. (Mar. 2, 1899, ch. 374, § 1, 30 Stat. 990; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50; June 25, 1910, ch. 431, § 16, 36 Stat. 859.)

CROSS REFERENCES

Acquisition of lands for reservoirs or materials, see section 320 of this title.

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

Rights of way for—

Pipelines, see section 321 of this title.

Telephone and telegraph lines, see section 319 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 314, 316, 317, 318, 322, 564h, 697, 747, 797, 843 of this title.

§ 313. Width of right-of-way.

Such right of way shall not exceed fifty feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when it

shall not exceed one hundred feet in width on each side of the road, and may include grounds adjacent thereto for station buildings, depots, machine shops, sidetracks, turn-outs, and water stations, not to exceed two hundred feet in width by a length of three thousand feet, and not more than one station to be located within any one continuous length of ten miles of road. (Mar. 2, 1899, ch. 374, § 2, 30 Stat. 990; June 21, 1906, ch. 3504, 34 Stat. 330.)

CROSS REFERENCES

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312 314, 316, 317, 318, 322 of this title.

§ 314. Survey; maps; compensation.

The line of route of said road may be surveyed and located through and across any of said lands at any time, upon permission therefor being obtained from the Secretary of the Interior; but before the grant of such right of way shall become effective a map of the survey of the line or route of said road must be filed with and approved by the Secretary of the Interior, and the company must make payment to the Secretary of the Interior for the benefit of the tribe or nation, of full compensation for such right of way, including all damage to improvements and adjacent lands, which compensation shall be determined and paid under the direction of the Secretary of the Interior, in such manner as he may prescribe. Before any such railroad shall be constructed through any land, claim, or improvement, held by individual occupants or allottees in pursuance of any treaties or laws of the United States, compensation shall be made to such occupant or allottee for all property to be taken, or damage done, by reason of the construction of such railroad. In case of failure to make amicable settlement with any such occupant or allottee, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed by the Secretary of the Interior, who, before entering upon the duties of their appointment, shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to the Secretary of the Interior. If the referees cannot agree, then any two of them are authorized to make the award. Either party being dissatisfied with the finding of the referees shall have the right within sixty days after the making of the award and notice of the same, to appeal, if said land is situated in any State or Territory other than Oklahoma, to the United States district court for such State or Territory, where the case shall be tried de novo and the judgment for damages rendered by the court shall be final and conclusive.

When proceedings are commenced in court as aforesaid, the railroad company shall deposit the amount of the award made by the referees with the court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway. Each of the referees shall receive for his compensation the sum of $4 per day while engaged in the hearing of any case submitted to them under sections 312 to 318 of this title. Witnesses shall receive the fees usually allowed by courts within the district where such land is located. Costs, including compensation of the referees, shall be made part of the award or judgment, and be paid by such railroad company. (Mar. 2, 1899, ch. 374, § 3, 30 Stat. 991; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50.)

CROSS REFERENCES

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 316, 317, 318, 322 of this title.

§ 315. Time for completion of road; forfeiture.

If any such company shall fail to construct and put in operation one-tenth of its entire line in one year, or to complete its road within three years after the approval of its map of location by the Secretary of the Interior, the right of way granted shall be deemed forfeited and abandoned ipso facto as to that portion of the road not then constructed and in operation: *Provided,* That the Secretary may, when he deems proper, extend, for a period not exceeding two years, the time for the completion of any road for which right of way has been granted and a part of which shall have been built. (Mar. 2, 1899, ch. 374, § 4, 30 Stat. 991.)

CROSS REFERENCES

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 314, 316, 317, 318, 322 of this title.

§ 316. Rights of several roads through canyons.

The provisions of section 935 of Title 43 relating to the rights of several railroads through any canyon, pass, or defile are extended and made applicable to rights of way granted under sections 312 to 318 of this title, and to railroad companies obtaining such rights of way. (Mar. 2, 1899, ch. 374, § 6, 30 Stat. 992.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 314, 317, 318 of this title.

§ 317. Regulations.

The Secretary of the Interior shall make all needful rules and regulations, not inconsistent with sections 312 to 318 of this title, for the proper execution and carrying into effect of all the provisions of said sections. (Mar. 2, 1899, ch. 374, § 7, 30 Stat. 992.)

CROSS REFERENCES

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 314, 316, 318, 322 of this title.

§ 318. Amendment or repeal of sections.

Congress reserves the right at any time to alter, amend, or repeal sections 312 to 318 of this title or any portion thereof. (Mar. 2, 1899, ch. 374, § 8, 30 Stat. 992.)

CROSS REFERENCES

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 314, 316, 317, 322 of this title.

§ 318a. Roads on Indian reservations; appropriation.

Appropriations are authorized out of any money in the Treasury not otherwise appropriated for material, equipment, supervision and engineering, and the employment of Indian labor in survey, improvement, construction, and maintenance of Indian reservation roads not eligible to Government aid under the Federal Highway Act and for which no other appropriation is available, under such rules and regulations as may be prescribed by the Secretary of the Interior. (May 26, 1928, ch. 756, 45 Stat. 750.)

REFERENCES IN TEXT

The Federal Highway Act, referred to in text, is act Nov. 9, 1921, ch. 119, 42 Stat. 212, which was repealed by Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 919. See Title 23, Highways. See, also, note to section 1 of Title 23, Highways.

APPROPRIATIONS FOR FISCAL YEARS 1950 AND 1951

Section 4 (c) of act June 29, 1948, ch. 732, 62 Stat. 1105, authorized the appropriation of $6,000,000 for fiscal years 1950 and 1951, respectively, for the carrying out of the provisions of this section.

§ 318b. Repealed. Pub. L. 85-767, § 2 [19, 23], Aug. 27, 1958, 72 Stat. 919.

Section, acts June 16, 1936, ch. 582, § 6, 49 Stat. 1521; Sept. 5, 1940, ch. 715, § 10, 54 Stat. 870; June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380; 1949 Reorg. Plan No. 7, § 1, eff. Aug. 19, 1949, 14 F. R. 5228, 63 Stat. 1070, related to location and design of roads by the Bureau of Public Roads.

§ 319. Rights-of-way for telephone and telegraph lines.

The Secretary of the Interior is authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices for general telephone and telegraph business through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from the Secretary of the Interior, and the maps of definite location of the lines shall be subject to his approval. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval; and where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each ten miles of line so constructed and maintained; and all such lines shall be constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority; and Congress expressly reserves the right to regulate the tolls or charges for the transmission of messages over any lines constructed under the provisions of this section: *Provided,* That incorporated cities and towns into or through which such telephone or telegraphic lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities. (Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1083.)

CODIFICATION

Section is comprised of the first par. of section 3 of Act Mar. 3, 1901. The second par. of such section 3 is classified to section 357 of this title.

CROSS REFERENCES

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 322 of this title.

§ 320. Acquisition of lands for reservoirs or materials.

When, in the judgment of the Secretary of the Interior, it is necessary for any railway company owning or operating a line of railway in any Indian reservation to acquire lands in such Indian reservation for reservoirs, material, or ballast pits for the construction, repair, and maintenance of its railway, or for the purpose of planting and growing thereon trees to protect its line of railway, the said Secretary is authorized to grant such lands to any such railway company under such terms and conditions and such rules and regulations as may be prescribed by the said Secretary.

When any railway company desiring to secure the benefits of this provision shall file with the Secretary of the Interior an application describing the lands which it desires to purchase, upon the payment of the price agreed upon the said Secretary shall cause such lands to be conveyed to the railway company applying therefor upon such terms and conditions as he may deem proper: *Provided,* That no lands shall be acquired under the terms of this provision in greater quantities than forty acres for any one reservoir, and one hundred and sixty acres for any material or ballast pit, to the extent of not more than one reservoir and one material or gravel pit in any one section of ten miles of any such railway in any Indian reservation: *And provided further,* That the lands acquired for tree planting shall be taken only at such places along the line of the railway company applying therefor as in the judgment of the said Secretary may be necessary, and shall be taken in strips adjoining and parallel with the right of way of the railway company taking the same, and shall not exceed one hundred and fifty feet in width.

All moneys paid for such lands shall be deposited in the Treasury of the United States to the credit of the tribe or tribes, and the moneys received by said Secretary as damages sustained by individual members of the Indian tribe, which damages shall be ascertained by the Secretary of the Interior and paid by the railway company taking such lands, shall be paid by said Secretary to the Indian or Indians sustaining such damages. The provisions of this section are extended and made applicable to any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation; the damages and compensation to be paid to any Indian allottee shall be ascertained and fixed in such manner as the Secretary of the Interior may direct and shall be paid by the railway company to said Secretary; the damages and compensation paid to the Secretary of the Interior by the railway company taking any such land shall be paid by said Secretary to the allottee sustaining such damages. (Mar. 3, 1909, ch. 263, 35 Stat. 781, 782; May 6, 1910, ch. 204, 36 Stat. 349.)

CROSS REFERENCES

Acquisition of lands, see section 465 of this title.

§ 321. Rights-of-way for pipe lines.

The Secretary of the Interior is authorized and empowered to grant a right-of-way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian Service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation upon the terms and conditions herein expressed. Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: *Provided,* That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines: *Provided,* That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe-line company: *Provided further,* That in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements cannot be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe-line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each ten miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: *Provided,* That the rights herein granted shall not extend beyond a period of twenty years: *Provided further,* That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this section for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper. The right to alter, amend, or repeal this section is expressly reserved. (Mar. 11, 1904, ch. 505, §§ 1, 2, 33 Stat. 65; Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973.)

CROSS REFERENCES

Acquisition of lands, see section 465 of this title.

Pueblo Indians of New Mexico, application of section, see section 322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 322 of this title.

§ 322. Application of certain sections to Pueblo Indians.

The provisions of the Statutes of the United States governing the acquisition of rights-of-way through Indian lands, to wit, sections 311 to 315, 317, 318, 319, and 321 of this title and section 935 of Title 43, and the basic Acts of Congress cited in such sections are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe. (Apr. 21, 1928, ch. 400, 45 Stat. 442.)

§ 323. Rights-of-way for all purposes across any Indian lands.

The Secretary of the Interior be, and he is empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the

lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians. (Feb. 5, 1948, ch. 45, § 1, 62 Stat. 17.)

EFFECTIVE DATE

Section 7 of act Feb. 5, 1948, provided that sections 323—328 should not become operative until 30 days after Feb. 5, 1948.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 326, 327, 328 of this title; title 43 section 421c.

§ 324. Same; consent of certain tribes; consent of individual Indians.

No grant of a right-of-way over and across any lands belonging to a tribe organized under sections 461 to 473 and 474 to 479 of this title; section 473a of this title and sections 358a and 362 of Title 48; and sections 501 to 509 of this title, shall be made without the consent of the proper tribal officials. Rights-of-way over and across lands of individual Indians may be granted without the consent of the individual Indian owners if (1) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary of the Interior finds that the grant will cause no substantial injury to the land or any owner thereof; or (4) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof. (Feb. 5, 1948, ch. 45, § 2, 62 Stat. 18.)

REFERENCE IN TEXT

Sections 358a and 362 of Title 48, referred to in the text, have been omitted from the Code as obsolete.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 326, 327, 328 of this title; title 43 section 421c.

§ 325. Same; payment and disposition of compensation.

No grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just. The compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior. (Feb. 5, 1948, ch. 45, § 3, 62 Stat. 18.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 326, 327, 328 of this title; title 43 section 421c.

§ 326. Same; laws unaffected.

Sections 323 to 328 of this title shall not in any manner amend or repeal the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063), as amended by the Act of August 26, 1935 (49 Stat. 838), nor shall any existing statutory authority empowering the Secretary of the Interior to grant rights-of-way over Indian lands be repealed. (Feb. 5, 1948, ch. 45, § 4, 62 Stat. 18.)

REFERENCES IN TEXT

The Federal Water Power Act of June 10, 1920 (41 Stat. 1063), as amended by the Act of August 26, 1935 (49 Stat. 838), referred to in text, was redesignated as the Federal Power Act by section 791a of Title 16, Conservation, and is classified generally to chapter 12 of Title 16.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 327, 328 of this title; title 43 section 421c.

§ 327. Same; application for grant by department or agency.

Rights-of-way for the use of the United States may be granted under sections 323 to 328 of this title upon application by the department or agency having jurisdiction over the activity for which the right-of-way is to be used. (Feb. 5, 1948, ch. 45, § 5, 62 Stat. 18.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 326, 328 of this title; title 43 section 421c.

§ 328. Same; rules and regulations.

The Secretary of the Interior is authorized to prescribe any necessary regulations for the purpose of administering the provisions of sections 323 to 327 of this title. (Feb. 5, 1948, ch. 45, § 6, 62 Stat. 18.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 326, 327 of this title; title 43 section 421c.

Chapter 9.—ALLOTMENT OF INDIAN LANDS

Sec.
331. Allotments on reservations; irrigable and nonirrigable lands.
332. Selection of allotments.
333. Making of allotments by agents.
334. Allotments to Indians not residing on reservations.
335. Extension of provisions as to allotments.
336. Allotments to Indians making settlement.
337. Allotments in national forests.
337a. San Juan County, Utah; discontinuance of allotments.
338. Repealed.
339. Tribes excepted from certain provisions.
340. Extension of certain provisions.
341. Power to grant rights-of-way not affected.
342. Removal of Southern Utes to new reservation.
343. Correction of errors in allotments and patents.
344. Cancellation of allotment of unsuitable land.
344a. Cancellation of patent issued to Indian allottee dying without heirs.
345. Actions for allotments.
346. Proceedings in actions for allotments.
347. Limitations of actions for lands patented in severalty under treaties.
348. Patents to be held in trust; descent and partition.
348a. Same; extension of trust period for Indians of Klamath River Reservation.
349. Patents in fee to allottees.
350. Surrender of patent, and selection of other land.
351. Patents with restrictions for lots in villages in Washington.
352. Cancellation of trust patents within power or reservoir sites
352a. Cancellation of patents in fee simple for allotments held in trust.
352b. Same; partial cancellation; issuance of new trust patents.
352c. Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust.
353. Sections inapplicable to certain tribes.
354. Lands not liable for debts prior to final patent.
355. Laws applicable to lands of full-blooded members of Five Civilized Tribes.

Sec.
356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes.
357. Condemnation of lands under laws of States.
358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys.

§ 331. Allotments on reservations; irrigable and nonirrigable lands.

In all cases where any tribe or band of Indians has been or shall be located upon any reservation created for their use by treaty stipulation, Act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allotments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest, not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of nonirrigable agricultural land and four times the number of acres of nonirrigable grazing land: *Provided,* That the remaining area to which any Indian may be entitled under existing law after he shall have received his proportion of irrigable land on the basis of equalization herein established may be allotted to him from nonirrigable agricultural or grazing lands: *Provided further,* That where a treaty or Act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or Act, subject, however, to the basis of equalization between irrigable and nonirrigable lands established herein, but in such cases allotments may be made in quantity as specified herein, with the consent of the Indians expressed in such manner as the President in his discretion may require. (Feb. 8, 1887, ch. 119, § 1, 24 Stat. 388; Feb. 28, 1891, ch. 383, § 1, 26 Stat. 794; June 25, 1910, ch. 431, § 17, 36 Stat. 859.)

PRIOR LAW

This section was derived from section 1 of act of 1887 as amended by act of 1891 as amended by act of 1910. The act of 1887 was entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes" and the derivative section, as originally enacted, provided for allotments of different quantities of land to various classes of Indians, viz., heads of families, single persons over 18 years of age, orphan children under 18 years of age, and other single persons under that age.

It was amended by section 1 of the act of 1891, by substituting for those provisions a clause providing for allotment to each Indian of one-eighth of a section of land, and besides some minor changes, by inserting a proviso for making allotments in the quantity specified, where existing agreements or laws provided for allotments in accordance with the original act.

Section 1 of the amendatory act was thereafter amended by section 17 of the act of 1910, by making numerous verbal changes, by changing the provision as to the quantity of land to be allotted to each Indian so that it should not exceed 80 acres of agricultural land or 160 acres of grazing land, by inserting the provisions as to allotment of irrigable and nonirrigable lands which are contained in the Code section and the two provisos set forth here, and by omitting other provisos of the original and first amendatory acts.

The first amendatory act Feb. 28, 1891, ch. 383, 26 Stat. 794, was entitled "An act to amend and further extend the benefits of" said General Allotment Act of Feb. 8, 1887.

Section 2 of amendatory act Feb. 28, 1891, ch. 383, provided that where allotments had been made upon any reservation under the original act, and the quantity of land in that reservation was sufficient to give each member of the tribe 80 acres, those allotments should be revised and equalized under the provisions of the amendatory act. Said section is omitted as temporary merely, and executed.

The other sections of the amendatory act of Feb. 28, 1891, ch. 383, being sections 3—5 thereof, so far as they remain in force, are set forth under sections 336, 371 and 397 of this title.

Act Mar. 2, 1917, ch. 146, § 18, 39 Stat. 986, provided in part as follows: "Hereafter no allotments of land shall be made to members of the Creek Nation".

Act Feb. 25, 1920, ch. 87, 41 Stat. 452, provides for allotments on the Flathead Reservation, Montana, to all unallotted, living children, enrolled with the tribe, enrolled or entitled to enrollment.

Provisions for the allotment of lands of the Crow Tribe of Indians within the Crow Indian Reservation in Montana, and for the distribution of tribal funds, were made by act June 4, 1920, ch. 224, 41 Stat. 751. The time for making allotments on the Crow Reservation, Montana, as provided by this act was extended for a period of two years from Dec. 4, 1921, by act Sept. 21, 1922, ch. 367, 42 Stat. 994.

Act Mar. 3, 1921, ch. 135, 41 Stat. 1355, provides for the enrollment of the Indians of the Gros Ventre and Assiniboine Tribes in the Fort Belknap Reservation, Montana, and for the allotment among such enrolled Indians of the unreserved and undisposed of lands on the reservation; declares the Indians to whom trust patents for such allotted lands shall be issued to be citizens of the United States; provides for reservation from allotment of lands chiefly valuable for the development of water power, and for Indian agency, school, religious, cemetery and administrative purposes; provides for the reservation of certain of the lands for park purposes and for a site for a sanatorium for the benefit of the Indians; provides for the issue of patents for a certain limited number of acres of the lands to missionary, religious and educational purposes; provides for the examination of the lands, prior to their allotment, to determine the mineral character thereof; provides for the reservation of coal on the lands for certain purposes; provides that the timber lands shall remain tribal property and for the use of the timber thereon by the Indians; provides for the reservation and disposition of town-sites on the lands; provides for the construction of irrigation projects on the lands; provides for the grant of certain of the lands to the State of Montana for school lands and makes an appropriation to carry out the purposes of the act.

Act Mar. 4, 1923, ch. 297, 42 Stat. 1561, reads as follows: "That the period of restriction against alienation on surplus lands allotted to minor members of the Kansas or Kaw Tribe of Indians in Oklahoma, under the provisions of the agreement with said tribe of Indians as ratified and confirmed by the Act of Congress of July 1, 1902 (Thirty-second Statutes at Large, page 636), be, and is hereby, extended for a period of twenty-five years from the date of the approval of this Act in all cases where the allottees have not reached the age of majority."

Act Apr. 12, 1924, ch. 95, 43 Stat. 94, provides that any right to an interest in lands, money, or mineral interests, as provided in act June 28, 1906, ch. 3572, 34 Stat. 539

(Osage Indians), and in the amendatory and supplemental acts, vested in, determined, or adjudged to be the right or property of any person not an Indian by blood, may, with the approval of the Secretary of the Interior, and not otherwise, be sold, assigned, and transferred under such rules and regulations as the Secretary of the Interior may prescribe.

Act May 19, 1924, ch. 158, 43 Stat. 132, provides for the enrollment and allotment of members of the Lac du Flambeau Band of Lake Superior Chippewas, in Wisconsin.

Act June 4, 1924, ch. 253, 43 Stat. 376, reads as follows: "That the Eastern Band of Cherokee Indians of North Carolina is hereby authorized, pursuant to the resolution of its council adopted the 6th day of November 1919, to convey to the United States of America, in trust, all land, money, and other property of said band for final disposition thereof as hereinafter provided; and the United States will accept such conveyance when approved by the Secretary of the Interior.

"2. That upon approval of such conveyance the Secretary of the Interior shall cause to be prepared a roll of the members of said band, to contain the names of all living on the date of this Act, and no person born after that date shall be entitled to enrollment.

"The roll shall show the name, age, sex, and degree of Cherokee Indian blood, and separately of that derived from any other Indian ancestor, of each member. The day of the month indicating the birthday of each member shall also be shown upon said roll: Provided, That if such date is unknown and cannot be ascertained, the date of the entry of the name on the schedule shall be taken for the purposes of this Act to be the birth date of the member to whom the entry applies.

"Said roll when approved by the Secretary of the Interior shall be final and conclusive as to the membership of said band, and as to the ages and degree of Indian blood of the members, but clerical changes relating to the names of such members or to sex designations may be made at any time thereafter.

"3. That in the preparation of said roll due consideration shall be given to all rolls and lists heretofore made of the membership of said band, together with any evidence elicited in the course of any investigations, and to all documents and records on file in the Interior Department or any of its bureaus or offices.

"The fact that the name of any person appears on any such roll or list shall not be accepted to establish, conclusively, his right or that of his descendants to enrollment. Nor shall the absence of his name from such former rolls conclusively bar any person or his descendants from enrollment.

"That in the preparation of said roll the act of the State of North Carolina of March 8, 1895, chapter 166, entitled 'An Act to amend chapter 211, laws of 1889, relating to the charter of the Eastern Band of Cherokee Indians' shall be disregarded.

"Applications for enrollment may be presented in such manner and within such time as may be prescribed by regulations made by the Secretary of the Interior, but lack of application shall not prevent consideration of the right to enrollment of any person whose name appears on any former roll and his descendants or of any name brought in any manner to the attention of those in charge of the enrollment work, including the names of those persons of Cherokee Indian blood living July 27, 1868, in any of the counties of North Carolina, in which the common lands of said band are located, or in any of the contiguous counties of that State or of the States of Georgia and Tennessee, and of their descendants.

"4. That the lands so conveyed shall be surveyed, where found necessary, and divided into appropriate tracts or parcels and appraised at their true value as of the date of such appraisement, without consideration being given to the location thereof or to any mineral deposits therein or to improvements thereon, but such appraisement shall include all merchantable timber on all allottable lands.

"5. That reservations from allotment may be made, in the discretion of the Secretary of the Interior, of lands for cemeteries, schools, water-power sites, rights of way, and for other public purposes, with proper safeguards, however, for compensation to individuals who may suffer losses by reason of such reservations.

"There may also be reserved any tract chiefly valuable because of the timber or of stone, marble, or other quarries thereon, or which by reason of location or topographical features may be unsuitable for allotment purposes.

"Any land or other property reserved from allotment as above provided and lands not needed for allotments may be sold at such time, in such manner, and upon such terms as the Secretary may direct, and the proceeds of such sale shall be added to the funds of the band: Provided, That in the sale of timberlands the timber and the land may be sold separately.

"Conveyances under such sales shall be made as provided in the case of conveyances to allottees.

"6. That all oil, gas, coal, and other mineral deposits on said lands are hereby reserved to said band for a period of twenty-five years from the date of this Act, and during such period said deposits may be leased for prospecting and mining purposes by the Secretary of the Interior, for such periods (not exceeding the period for which such minerals are reserved) and upon such terms and conditions as he may prescribe: Provided, That at the end of such twenty-five year period all such deposits shall become the property of the individual owner of the surface of such land, unless Congress shall otherwise provide.

"7. That all improvements on the lands of said band of a permanent and substantial character shall be appraised separately from the lands upon which the same may be, and shall be listed in the names of the members of the band prima facie entitled thereto, but the designation of ownership shall be tentative only until the true ownership thereof is ascertained and declared, after due notice and hearing. The right to have such improvements appraised, and to make disposition thereof, shall extend to all members, except tenants, owning such improvements at the date of this Act.

"Any person held to be the owner of improvements may remove the same, where found to be practicable, within ninety days from the date they are declared to belong to him, or may, within that period, dispose of the same at not more than the appraised value to any member of the band entitled to receive an allotment, under regulations to be prescribed: Provided, That the vendor shall have a lien upon the rents and profits accruing from the tract on which such improvements may be located until the purchase price thereof is fully paid.

"8. That the lands and money of said band shall be allotted and divided among the members thereof so as to give each an equal share of the whole in value, as nearly as may be, and to accomplish that the value of the standard allotment share shall be determined by dividing the total appraised value of all allotted and allottable lands by the total number of enrolled members.

"If any member shall fail to receive his full share of the tribal lands, he shall be entitled to the payment of money so as to adjust the difference as nearly as possible. If any member shall receive an allotment exceeding in value his full share of the tribal lands, the difference shall be adjusted by deduction from his distributive share of the tribal funds.

"9. That when the tracts available for allotments are ascertained, each member of the said band may apply for a tract or tracts of land to the extent of thirty acres, as nearly as practicable, to include his home and improvements, if he so desires, and the selection so made shall be final as to the right to occupy and use the land so applied for as against all other members if no contest is filed against such selection within ninety days from and after formal application is made therefor: Provided, That any person claiming the right to select any given tract of land by reason of the purchase of improvements thereon shall have ninety days to make application therefor from and after the date of approval of any sale conveying to him said improvements, and such application shall become final as in other cases, subject to the right of any other member to contest such selection, ninety days from and after the same is duly made. All contests shall be instituted and heard pursuant to the rules and regulations of the Interior Department applicable thereto. Any allotment selection may be modified or limited, in the discretion of those in charge of the work, so as to give the selector of adjacent or contiguous lands access to firewood and drinking water.

"10. That adults may select their own allotments, where mentally capable of so doing, but allotments for minors may be selected by their father or mother, in the order named, or by the officers in charge of the allotment work. The said officers may also select allotments for prisoners, convicts, aged, infirm, and insane or otherwise mentally incompetent members and for the estates of deceased members and, if necessary to complete any allotments or to bring the allotment work to a close, may make arbitrary selections for and on behalf of any member of said band.

"11. That allotments may be selected for the members of any family, wherever practicable, from contiguous lands or other lands held by the head of the family, including both adult and minor children and such other relatives as are members of the household: Provided, That if any adult child shall claim the benefit of this section, he shall not be entitled as a matter of right to have his selection made from the lands desired by his father or mother or from lands needed by any minor member of the family for allotment purposes, but this shall not prevent selection of lands outside the family holdings if desired.

"12. That where annuity or other payments to individuals have heretofore been suspended because their enrollment status has been questioned, the amounts involved in such suspended payments shall be paid to individuals found entitled to enrollment or to their heirs, and all funds of said band, after making such payments and after payments needed for equalizing allotments as hereinbefore provided and all other payments herein directed to be made, shall be distributed per capita among the enrolled members of said band and the heirs of those who shall die before distribution is completed, and shall be paid to the distributees or conserved and used for their benefit, according to whether they belong to the restricted or unrestricted class, at such time and in such manner as shall be deemed advisable.

"13. That any member of said band whose degree of Indian blood is less than one-sixteenth may, in the discretion of the Secretary of the Interior, be paid a cash equivalent in lieu of an allotment of land. Any person desiring to avail himself of this provision may make application to the officers in charge of the allotment work at any time within ninety days after the date of the approval of the final roll, and preference shall be given in the order of application. The said officers shall have the power to add to the register of such names the names of any other members of the same class, including minors for whom no application is made for such time as may be allowed for the purpose by the regulations. Applications should be made in person by adults and for minors by their fathers or mothers, in the order named.

"14. That if any member shall claim that he is the owner of a so-called private land claim, for the reason that money was advanced by him or his ancestor to pay in whole or in part for any land the title to which is now in the band, such claim may be submitted to and equitably adjusted by the Secretary of the Interior, whose decision thereon shall be final and not subject to review by the courts. In such adjustment due consideration shall be given to matters presented by the band in the way of offsets or counterclaims.

"15. That a certificate of allotment shall be issued to each allottee upon the expiration of the contest period, if no contest is then pending, or, if a contest is then pending, upon final disposition thereof, but shall be dated as of the date of selection. Each certificate shall contain the name and roll number of the allottee, and the legal effect thereof shall be to give the allottee the right to occupy and use the surface of the land described therein, as against each and every other member of the band, but not as against the band itself, or against the United States: Provided, That the Secretary of the Interior may cancel any certificate of allotment at any time before title to the land described therein is conveyed to the allottee, if in his judgment said land should be reserved for allotment for any purpose herein authorized or for any other good and sufficient reason, but before such action is taken the allottee shall have due notice and opportunity to be heard. If any such certificate shall be revoked, the allottee may select other lands as if no certificate had been issued to him.

"16. That as soon as practicable after a certificate of allotment is issued there shall be issued to the allottee a deed conveying all right, title, and interest of the United States, as trustee, and of the band, and of every other member thereof, in and to the land described in said certificate. Each deed shall recite the roll number and degree of Indian blood of the grantee and shall be executed by or in the name of the Secretary of the Interior, who is hereby authorized to designate any clerk or employee of the department to sign his name for him to all such deeds.

"Each deed, when so issued, shall be recorded in the office of the recorder of deeds for the county in which the land conveyed thereby is located. When so recorded title to the land shall vest in the allottee subject to the conditions, limitations, and restrictions herein imposed. Upon the recording of any deed it shall be the duty of the officers representing the Government of the United States to deliver it to the allottee named therein.

"17. That if any member enrolled as provided in this Act shall die before receiving his distributive share of the band or tribal property, the land and moneys to which he would be entitled, if living, shall descend to his heirs according to the laws of the State of North Carolina and be distributed to them accordingly, but in all such cases the allotment and deed therefor shall be made in the name of the deceased ancestor and shall be given the same force and effect as if made during his lifetime: Provided, That the provisions of the Act of Congress approved June 25, 1910 (Thirty-sixth Statutes, page 855), as amended by the Act of Congress of February 14, 1913 (Thirty-seventh Statutes, page 678), relating to the determination of heirs and approval of wills by the Secretary of the Interior, and to other matters, are hereby made applicable to the persons and estates of the members of the said band, and in the construction of said Acts no distinction shall be made between restricted lands and moneys and those conveyed or held in trust.

"18. That leases of lands allotted under this Act may be made during the restricted period for any purpose and for any term of years, under rules and regulations to be prescribed by the Secretary of the Interior: Provided, That such leases shall be executed on behalf of minors and other incompetents, including any Indian deemed to be incapable, mentally or physically, of managing his business affairs properly and with benefit to himself and in their names, by a duly authorized representative of the Indian Service designated by said Secretary for the purpose: Provided further, That all leases of unpartioned estates shall be so made and approved unless all of the Indian heirs or owners are of the unrestricted class, and shall be subject to supervision during the restricted period the same as leases made on other restricted lands, but all rents and royalties accruing therefrom to unrestricted owners shall be paid, by the proper officers of the Indian Service, to such owners at the earliest date practicable after the collection thereof.

"Parents may use the lands allotted to their children and receive the rents and profits arising herefrom during the minority of such children: Provided, That this privilege may be revoked by the Commissioner of Indian Affairs at any time while said lands are restricted for such cause as may by him be deemed good and sufficient.

"19. That lands allotted under this Act shall not be alienable, either by voluntary or enforced sale by the allottee or his heirs or otherwise, for a period of twenty-five years from and after the date when the deed conveying such land to the allottee is recorded as directed herein: Provided, That upon the completion of the allotments and the recording of the deeds as herein directed each allottee shall become a citizen of the United States and a citizen of the particular State wherein he (or she) may reside, with all the rights, privileges, and immunities of such citizens: Provided further, That the Secretary of the Interior may, in his discretion, at any time after a deed is recorded remove the restrictions on the lands described therein, either with or without application by the owner or owners, under such rules and regulations or special orders governing the terms of sale and the disposition of the proceeds as he shall prescribe.

"20. That lands allotted under this Act shall not be subjected or held liable to any form of personal claim, or demand, against the allottee, arising or existing prior

to the removal of restrictions; and any attempted alienation or incumbrance of restricted land by deed, mortgage, contract to sell, power of attorney, or other method of incumbering real estate, except leases specifically authorized by law, made before or after the approval of this Act and prior to removal of restrictions therefrom, shall be absolutely null and void.

"21. That all lands, and other property, of the band, or the members thereof, except funds held in trust by the United States, may be taxed by the State of North Carolina, to and including the tax year following the date of this Act. Such taxes shall be paid from the common funds of said band for such period, except upon such tracts as shall have been lawfully sold prior to the date when tax assessments can be made thereon under the State law. All tax assessments made pursuant to this Act on restricted allotments or undivided tribal property held in trust by the United States shall be subject to revision by the Commissioner of Indian Affairs for a period of one year following the date when such assessments are spread on the local tax rolls, but if he shall take no action thereon during said year, such assessments shall be final, but this shall not be construed to deprive any allottee of any remedy to which he would be entitled under the State law: Provided, That such restricted and undivided property shall be exempt from sale for unpaid taxes for two years from the date when such taxes become due and payable, and no penalty for delinquency in the payment of such taxes shall be charged or collected for or during said period, so that Congress may have an opportunity to make provision for the payment of such taxes if the band, or tribal, funds are found insufficient for the purpose.

"After the expiration of the tax year following that in which this Act is approved all lands allotted to members of said band, from which restrictions shall have been removed, shall be subject to taxation the same as other lands. But from and after the expiration of said tax year all restricted allotments and undivided property shall be exempt from taxation until the restrictions on the alienation of such allotments are removed or the title of the band to such undivided property is extinguished.

"22. That the removal of restrictions upon allotted lands shall not deprive the United States of the duty or authority to institute and prosecute such action in its own name, in the courts of the United States, as may be necessary to protect the rights of the allottees, or of their heirs, until the said band shall be dissolved by congressional action, unless the order removing such restrictions is based upon an express finding that the Indian to whom it relates is fully competent and capable of managing his own affairs.

"23. That the authority of the Eastern Band of Cherokee Indians of North Carolina to execute conveyances of lands owned by said band, or any interest therein, is recognized, and any such conveyance heretofore made, whether to the United States or to others, shall not be questioned in any case where the title conveyed or the instrument of conveyance has been or shall be accepted or approved by the Secretary of the Interior.

"24. That the reinvestment of the proceeds arising from the sale of surplus and unallotted lands of said band in other lands in the vicinity of the Indian school at Cherokee, North Carolina, is hereby authorized, in the discretion of the Secretary of the Interior, and lands so purchased may be allotted as provided for herein respecting the allotment of lands now owned by said band.

"25. That all things provided for herein shall be done under the direction of the Secretary of the Interior, who is authorized to prescribe needed rules and regulations.

"All questions as to enrollment and as to all other matters involving the disposition of the lands or moneys of said band, or of the members thereof, shall be decided by the Secretary of the Interior, and such decision as to any matter of fact or law shall be final.

"26. That in addition to any sum or sums heretofore or hereafter regularly appropriated for salaries and expenses, there is hereby authorized to be appropriated, from the funds of the United States in the Treasury not otherwise appropriated, the sum of $10,000, or so much thereof as may be necessary, for the payment of such expenses as shall be necessarily incurred, including the salaries of additional employees in the administration of this Act."

Act June 7, 1924, ch. 331, 43 Stat. 636, as amended by act May 31, 1933, ch. 45, § 7, 48 Stat. 111, reads as follows:

"That in order to quiet title to various lots, parcels, and tracts of land in the State of New Mexico for which claim shall be made by or on behalf of the Pueblo Indians of said State as hereinafter provided, the United States of America, in its sovereign capacity as guardian of said Pueblo Indians shall, by its Attorney General, file in the District Court of the United States for the District of New Mexico, its bill or bills of complaint with a prayer for discovery of the nature of any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians, as hereinafter determined.

"2. That there shall be, and hereby is, established a board to be known as 'Pueblo Lands Board' to consist of the Secretary of the Interior, the Attorney General, each of whom may act through an assistant in all hearings, investigations, and deliberations in New Mexico, and a third member to be appointed by the President of the United States. The board shall be provided with suitable quarters in the city of Santa Fé, New Mexico, and shall have power to require the presence of witnesses and the production of documents by subpoena, to employ a clerk who shall be empowered to administer oaths and take acknowledgments, shall employ such clerical assistance, interpreters, and stenographers with such compensation as the Attorney General shall deem adequate, and it shall be provided with such necessary supplies and equipment as it may require on requisitions to the Department of Justice. The compensation and allowance for travel and expenses of the member appointed by the President shall be fixed by the Attorney General.

"It shall be the duty of said board to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act, and the board shall not include in their report any claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of section 4 of this Act: Provided, however, That the board shall be unanimous in all decisions whereby it shall be determined that the Indian title has been extinguished.

"The board shall report upon each pueblo as a separate unit and upon the completion of each report one copy shall be filed with the United States District Court for the District of New Mexico, one with the Attorney General of the United States, one with the Secretary of the Interior, and one with the Board of Indian Commissioners.

"3. That upon the filing of each report by the said board, the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been extinguished.

"4. That all persons claiming title to, or ownership of, any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had under the laws of the Territory and State of New Mexico, plead limitation of action, as follows, to wit:

"(a) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed, under color of title from the 6th day of January, 1902, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation, or adverse possession of the Territory or of the State of New Mexico, since

the 6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

"(b) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed with claim of ownership, but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the 16th day of March, 1899, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

"Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases: Provided, however, That any contract entered into with any attorney or attorneys by the Pueblo Indians of New Mexico, to carry on such litigation shall be subject to and in accordance with existing laws of the United States.

"5. The plea of such limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them, their heirs, executors, successors, and assigns for the premises so claimed by them, respectively, or so much thereof as may be established, which shall have the effect of a deed of quitclaim as against the United States and said Indians, and a decree in favor of claimants upon any other ground shall have a like effect.

"The United States may plead in favor of the pueblo, or any individual Indian thereof, as the case might be, the said limitations hereinbefore defined.

"6. It shall be the further duty of the board to separately report in respect of each such pueblo—

"(a) The area and character of any tract or tracts of land within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and the extent, source, and character of any water right appurtenant thereto in possession of non-Indian claimants at the time of filing such report, which are not claimed for said Indians by any report of the board.

"(b) Whether or not such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians. Seasonable prosecution is defined to mean prosecution by the United States within the same period of time as that within which suits to recover real property could have been brought under the limitation statutes of the Territory and State of New Mexico.

"(c) The fair market value of said water rights and of said tract or tracts of land (exclusive of any improvements made therein or placed thereon by non-Indian claimants) whenever the board shall determine that such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians, and the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute any such right.

"The United States shall be liable, and the board shall award compensation, to the pueblo within the exterior boundaries of whose lands such tract or tracts of land shall be situated or to which such water rights shall have been appurtenant to the extent of any loss suffered by said Indians through failure of the United States seasonably to prosecute any right of the United States or of said Indians, subject to review as herein provided. Such report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses. Such report shall be filed simultaneously with and in like manner as the reports hereinbefore provided to be made and filed in section 2 of this Act.

"At any time within sixty days after the filing of said report with the United States District Court for the District of New Mexico as herein provided the United States or any pueblo or Indians concerned therein or affected thereby may, in respect of any report upon liability or of any finding of amount or award of compensation set forth in such report, petition said court for judicial review of said report, specifying the portions thereof in which review is desired. Said court shall thereupon have jurisdiction to review, and shall review, such report, finding, or award in like manner as in the case of proceedings in equity. In any such proceeding the report of the board shall be prima facie evidence of the facts, the values, and the liability therein set forth, subject, however, to be rebutted by competent evidence. Any party in interest may offer evidence in support or in opposition to the findings in said report in any respect. Said court shall after hearing render its decision so soon as practicable, confirming, modifying, or rejecting said report or any part thereof. At any time within thirty days after such decision is rendered said court shall, upon petition of any party aggrieved, certify the portions of such report, review of which has been sought, together with the record in connection therewith, to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have jurisdiction to consider, review, and decide all questions arising upon such report and record in like manner as in the case of appeals in equity, and its decision thereon shall be final.

"Petition for review of any specific finding or award of compensation in any report shall not affect the finality of any findings nor delay the payment of any award set forth in such report, review of which shall not have been so sought, nor in any proceeding for review in any court under the provisions of this section shall costs be awarded against any party.

"7. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior who shall report to the Congress of the United States, together with his recommendation, the fair market value of lands, improvements appurtenant thereto, and water rights of non-Indian claimants who, in person or through their predecessors in title prior to January 6, 1912, in good faith and for a valuable consideration purchased and entered upon Indian lands under a claim of right based upon a deed or document purporting to convey title to the land claimed or upon a grant, or license from the governing body of a pueblo to said land, but fail to sustain such claim under the provisions of this Act, together with a statement of the loss in money value thereby suffered by such non-Indian claimants. Any lands lying within the exterior boundaries of the pueblo of Nambe land grant, which were conveyed to any holder or occupant thereof or his predecessor or predecessors in interest by the governing authorities of said pueblo, in writing, prior to January 6, 1912, shall unless found by said board to have been obtained through fraud or deception, be recognized as constituting valid claims by said board and by said courts, and disposed of in such manner as lands the Indian title to which has been determined to have been extinguished pursuant to the provisions of this Act: Provided, That nothing in this section contained with reference to the said Nambe Pueblo Indians shall be construed as depriving the said Indians of the right to impeach any such deed or conveyance for fraud or to have mistakes therein corrected through a suit in behalf of said pueblo or of an individual Indian under the provisions of this Act.

"8. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior the area and the value of the lands and improvements appurtenant thereto of non-Indian claimants within or adjacent to Pueblo Indian settlements or towns in New Mexico, title to which in such non-Indian claimants is valid and indefeasible, said report to include a finding as to the benefit to the Indians in anywise of the removal of such non-Indian claimants by purchase of their lands and improvements and the transfer of the

same to the Indians, and the Secretary of the Interior shall report to Congress the facts with his recommendations in the premises.

"9. That all lands, the title to which is determined in said suit or suits, shall, where necessary, be surveyed and mapped under the direction of the Secretary of the Interior, at the expense of the United States, but such survey shall be subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved by said judge shall be filed in said court and become a part of the decree or decrees entered in said district court.

"10. That necessary costs in all original proceedings under this Act, to be determined by the court, shall be taxed against the United States and any party aggrieved by any final judgment or decree shall have the right to a review thereof by appeal or writ of error or other process, as in other cases, but upon such appeal being taken each party shall pay his own costs.

"11. That in the sense in which used in this Act the word 'purchase' shall be taken to mean the acquisition of community lands by the Indians other than by grant or donation from a sovereign.

"12. That any person claiming any interest in the premises involved but not impleaded in any such action may be made a party defendant thereto or may intervene in such action, setting up his claim in usual form.

"13. That as to all lands within the exterior boundaries of any lands granted or confirmed to the Pueblo Indians of New Mexico, by any authority of the United States of America or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise and which have not been claimed for said Indians by court proceedings then pending or the findings and report of the board as herein provided, the Secretary of the Interior at any time after two years after the filing of said reports of the board shall file field notes and plat for each pueblo in the office of the surveyor general of New Mexico at Santa Fé, New Mexico, showing the lands to which the Indian title has been extinguished as in said report set out, but excluding therefrom lands claimed by or for the Indians in court proceedings then pending, and copies of said plat and field notes certified by the surveyor general of New Mexico as true and correct copies shall be accepted in any court as competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes and of any claim of the United States in or to the same. And the Secretary of the Interior within thirty days after the Indians' right to bring independent suits under this Act shall have expired, shall cause notice to be published in some newspaper or newspapers of general circulation issued, if any there be, in the county wherein lie such lands claimed by non-Indian claimants, respectively, or wherein some part of such lands are situated, otherwise in some newspaper or newspapers of general circulation published nearest to such lands, once a week for five consecutive weeks, setting forth as nearly as may be the names of such non-Indian claimants of land holdings not claimed by or for the Indians as herein provided, with a description of such several holdings, as shown by a survey of Pueblo Indian lands heretofore made under the direction of the Secretary of the Interior and commonly known as the 'Joy Survey,' or as may be otherwise shown or defined by authority of the Secretary of the Interior, and requiring that any person or persons claiming such described parcel or parcels of land or any part thereof, adversely to the apparent claimant or claimants so named as aforesaid, or their heirs or assigns, shall, on or before the thirtieth day after the last publication of such notice, file his or their adverse claim in the United States Land Office in the land district wherein such parcel or parcels of land are situate, in the nature of a contest, stating the character and basis of such adverse claim, and notice of such contest shall be served upon the claimant or claimants named in the said notice, in the same manner as in cases of contest of homestead entries. If no such contest is instituted as aforesaid, the Secretary of the Interior shall issue to the claimant or claimants, or their heirs or assigns, a patent or other certificate of title for the parcel or parcels of land so described in said notice; but if a contest be filed it shall proceed and be heard and decided as contests of homestead entries are heard and decided under the rules and regulations of the General Land Office pertinent thereto. Upon such contest either party may claim the benefit of the provisions of section 4 of this Act to the same extent as if he were a party to a suit to quiet title brought under the provisions of this Act, and the successful party shall receive a patent or certificate of title for the land as to which he is successful in such proceeding. Any patent or certificate of title issued under the provisions of this Act shall have the effect only of a relinquishment by the United States of America and the said Indians.

"If after such notice more than one person or group of persons united in interest makes claim in such land office adverse to the claimant or claimants named in the said notice, or to any other person or group of persons who may have filed such contest, each contestant shall be required to set forth the basis and nature of his respective claim, and thereupon the said claims shall be heard and decided as upon an original contest or intervention.

"And in all cases any person or persons whose right to a given parcel or parcels of land has become fixed either by the action of the said board or the said court or in such contest may apply to the Commissioner of the General Land Office for a patent or certificate of title and receive the same without cost or charge.

"14. That if any non-Indian party to any such suit shall assert against the Indian title a claim based upon a Spanish or Mexican grant, and if the court should finally find that such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, or against the United States of America acting in their behalf. In such case the court shall ascertain the area and value of the land thus held by any non-Indian claimant under such superior title, excluding therefrom the area and value of lots or parcels of land the title to which has been found to be in other persons under the provisions of this Act: Provided, however, That any findings by the court under the provisions of this section may be reviewed on appeal or writ of error at the instance of any party aggrieved thereby, in the same manner, to the same extent, and with like effect as if such findings were a final judgment or decree. When such finding adverse to the Indian claim has become final, the Secretary of the Interior shall report to Congress the facts, including the area and value of the land so adjudged against the Indian claim, with his recommendations in the premises.

"15. That when any claimant, other than the United States for said Indians not covered by the report provided for in section 7 of this Act, fails to sustain his claim to any parcel of land within any Pueblo Indian grant, purchase, or donation under the provisions of this Act, but has held and occupied any such parcel in good faith, claiming the same as his own, and the same has been improved, the value of the improvements upon the said parcel of land shall be found by the court and reported by the Secretary of the Interior to Congress, with his recommendations in the premises.

"16. That if the Secretary of the Interior deems it to be for the best interest of the Indians that any land adjudged by the court or said Lands Board against any claimant be sold, he may, with the consent of the governing authorities of the pueblo, order the sale thereof, under such regulations as he may make, to the highest bidder for cash; and if the buyer thereof be other than the losing claimant, the purchase price shall be used in paying to such losing claimant the adjudicated value of the improvements aforesaid, if found under the provisions of section 15 hereof, and the balance thereof, if any, shall be paid over to the proper officer, or officers, of the Indian community, but if the buyer be the losing claimant, and the value of his improvements has been adjudicated as aforesaid, such buyer shall be entitled to have credit upon his bid for the value of such improvements so adjudicated.

"17. No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the

the 6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

"(b) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed with claim of ownership, but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the 16th day of March, 1899, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

"Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases: Provided, however, That any contract entered into with any attorney or attorneys by the Pueblo Indians of New Mexico, to carry on such litigation shall be subject to and in accordance with existing laws of the United States.

"5. The plea of such limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them, their heirs, executors, successors, and assigns for the premises so claimed by them, respectively, or so much thereof as may be established, which shall have the effect of a deed of quitclaim as against the United States and said Indians, and a decree in favor of claimants upon any other ground shall have a like effect.

"The United States may plead in favor of the pueblo, or any individual Indian thereof, as the case might be, the said limitations hereinbefore defined.

"6. It shall be the further duty of the board to separately report in respect of each such pueblo—

"(a) The area and character of any tract or tracts of land within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and the extent, source, and character of any water right appurtenant thereto in possession of non-Indian claimants at the time of filing such report, which are not claimed for said Indians by any report of the board.

"(b) Whether or not such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians. Seasonable prosecution is defined to mean prosecution by the United States within the same period of time as that within which suits to recover real property could have been brought under the limitation statutes of the Territory and State of New Mexico.

"(c) The fair market value of said water rights and of said tract or tracts of land (exclusive of any improvements made therein or placed thereon by non-Indian claimants) whenever the board shall determine that such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians, and the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute any such right.

"The United States shall be liable, and the board shall award compensation, to the pueblo within the exterior boundaries of whose lands such tract or tracts of land shall be situated or to which such water rights shall have been appurtenant to the extent of any loss suffered by said Indians through failure of the United States seasonably to prosecute any right of the United States or of said Indians, subject to review as herein provided. Such report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses. Such report shall be filed simultaneously with and in like manner as the reports hereinbefore provided to be made and filed in section 2 of this Act.

"At any time within sixty days after the filing of said report with the United States District Court for the District of New Mexico as herein provided the United States or any pueblo or Indians concerned therein or affected thereby may, in respect of any report upon liability or of any finding of amount or award of compensation set forth in such report, petition said court for judicial review of said report, specifying the portions thereof in which review is desired. Said court shall thereupon have jurisdiction to review, and shall review, such report, finding, or award in like manner as in the case of proceedings in equity. In any such proceeding the report of the board shall be prima facie evidence of the facts, the values, and the liability therein set forth, subject, however, to be rebutted by competent evidence. Any party in interest may offer evidence in support or in opposition to the findings in said report in any respect. Said court shall after hearing render its decision so soon as practicable, confirming, modifying, or rejecting said report or any part thereof. At any time within thirty days after such decision is rendered said court shall, upon petition of any party aggrieved, certify the portions of such report, review of which has been sought, together with the record in connection therewith, to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have jurisdiction to consider, review, and decide all questions arising upon such report and record in like manner as in the case of appeals in equity, and its decision thereon shall be final.

"Petition for review of any specific finding or award of compensation in any report shall not affect the finality of any findings nor delay the payment of any award set forth in such report, review of which shall not have been so sought, nor in any proceeding for review in any court under the provisions of this section shall costs be awarded against any party.

"7. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior who shall report to the Congress of the United States, together with his recommendation, the fair market value of lands, improvements appurtenant thereto, and water rights of non-Indian claimants who, in person or through their predecessors in title prior to January 6, 1912, in good faith and for a valuable consideration purchased and entered upon Indian lands under a claim of right based upon a deed or document purporting to convey title to the land claimed or upon a grant, or license from the governing body of a pueblo to said land, but fail to sustain such claim under the provisions of this Act, together with a statement of the loss in money value thereby suffered by such non-Indian claimants. Any lands lying within the exterior boundaries of the pueblo of Nambe land grant, which were conveyed to any holder or occupant thereof or his predecessor or predecessors in interest by the governing authorities of said pueblo, in writing, prior to January 6, 1912, shall unless found by said board to have been obtained through fraud or deception, be recognized as constituting valid claims by said board and by said courts, and disposed of in such manner as lands the Indian title to which has been determined to have been extinguished pursuant to the provisions of this Act: Provided, That nothing in this section contained with reference to the said Nambe Pueblo Indians shall be construed as depriving the said Indians of the right to impeach any such deed or conveyance for fraud or to have mistakes therein corrected through a suit in behalf of said pueblo or of an individual Indian under the provisions of this Act.

"8. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior the area and the value of the lands and improvements appurtenant thereto of non-Indian claimants within or adjacent to Pueblo Indian settlements or towns in New Mexico, title to which in such non-Indian claimants is valid and indefeasible, said report to include a finding as to the benefit to the Indians in anywise of the removal of such non-Indian claimants by purchase of their lands and improvements and the transfer of the

same to the Indians, and the Secretary of the Interior shall report to Congress the facts with his recommendations in the premises.

"9. That all lands, the title to which is determined in said suit or suits, shall, where necessary, be surveyed and mapped under the direction of the Secretary of the Interior, at the expense of the United States, but such survey shall be subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved by said judge shall be filed in said court and become a part of the decree or decrees entered in said district court.

"10. That necessary costs in all original proceedings under this Act, to be determined by the court, shall be taxed against the United States and any party aggrieved by any final judgment or decree shall have the right to a review thereof by appeal or writ of error or other process, as in other cases, but upon such appeal being taken each party shall pay his own costs.

"11. That in the sense in which used in this Act the word 'purchase' shall be taken to mean the acquisition of community lands by the Indians other than by grant or donation from a sovereign.

"12. That any person claiming any interest in the premises involved but not impleaded in any such action may be made a party defendant thereto or may intervene in such action, setting up his claim in usual form.

"13. That as to all lands within the exterior boundaries of any lands granted or confirmed to the Pueblo Indians of New Mexico, by any authority of the United States of America or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise and which have not been claimed for said Indians by court proceedings then pending or the findings and report of the board as herein provided, the Secretary of the Interior at any time after two years after the filing of said reports of the board shall file field notes and plat for each pueblo in the office of the surveyor general of New Mexico at Santa Fé, New Mexico, showing the lands to which the Indian title has been extinguished as in said report set out, but excluding therefrom lands claimed by or for the Indians in court proceedings then pending, and copies of said plat and field notes certified by the surveyor general of New Mexico as true and correct copies shall be accepted in any court as competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes and of any claim of the United States in or to the same. And the Secretary of the Interior within thirty days after the Indians' right to bring independent suits under this Act shall have expired, shall cause notice to be published in some newspaper or newspapers of general circulation issued, if any there be, in the county wherein lie such lands claimed by non-Indian claimants, respectively, or wherein some part of such lands are situated, otherwise in some newspaper or newspapers of general circulation published nearest to such lands, once a week for five consecutive weeks, setting forth as nearly as may be the names of such non-Indian claimants of land holdings not claimed by or for the Indians as herein provided, with a description of such several holdings, as shown by a survey of Pueblo Indian lands heretofore made under the direction of the Secretary of the Interior and commonly known as the 'Joy Survey,' or as may be otherwise shown or defined by authority of the Secretary of the Interior, and requiring that any person or persons claiming such described parcel or parcels of land or any part thereof, adversely to the apparent claimant or claimants so named as aforesaid, or their heirs or assigns, shall, on or before the thirtieth day after the last publication of such notice, file his or their adverse claim in the United States Land Office in the land district wherein such parcel or parcels of land are situate, in the nature of a contest, stating the character and basis of such adverse claim, and notice of such contest shall be served upon the claimant or claimants named in the said notice, in the same manner as in cases of contest of homestead entries. If no such contest is instituted as aforesaid, the Secretary of the Interior shall issue to the claimant or claimants, or their heirs or assigns, a patent or other certificate of title for the parcel or parcels of land so described in said notice; but if a contest be filed it shall proceed and be heard and decided as contests of homestead entries are heard and decided under the rules and regulations of the General Land Office pertinent thereto. Upon such contest either party may claim the benefit of the provisions of section 4 of this Act to the same extent as if he were a party to a suit to quiet title brought under the provisions of this Act, and the successful party shall receive a patent or certificate of title for the land as to which he is successful in such proceeding. Any patent or certificate of title issued under the provisions of this Act shall have the effect only of a relinquishment by the United States of America and the said Indians.

"If after such notice more than one person or group of persons united in interest makes claim in such land office adverse to the claimant or claimants named in the said notice, or to any other person or group of persons who may have filed such contest, each contestant shall be required to set forth the basis and nature of his respective claim, and thereupon the said claims shall be heard and decided as upon an original contest or intervention.

"And in all cases any person or persons whose right to a given parcel or parcels of land has become fixed either by the action of the said board or the said court or in such contest may apply to the Commissioner of the General Land Office for a patent or certificate of title and receive the same without cost or charge.

"14. That if any non-Indian party to any such suit shall assert against the Indian title a claim based upon a Spanish or Mexican grant, and if the court should finally find that such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, or against the United States of America acting in their behalf. In such case the court shall ascertain the area and value of the land thus held by any non-Indian claimant under such superior title, excluding therefrom the area and value of lots or parcels of land the title to which has been found to be in other persons under the provisions of this Act: Provided, however, That any findings by the court under the provisions of this section may be reviewed on appeal or writ of error at the instance of any party aggrieved thereby, in the same manner, to the same extent, and with like effect as if such findings were a final judgment or decree. When such finding adverse to the Indian claim has become final, the Secretary of the Interior shall report to Congress the facts, including the area and value of the land so adjudged against the Indian claim, with his recommendations in the premises.

"15. That when any claimant, other than the United States for said Indians not covered by the report provided for in section 7 of this Act, fails to sustain his claim to any parcel of land within any Pueblo Indian grant, purchase, or donation under the provisions of this Act, but has held and occupied any such parcel in good faith, claiming the same as his own, and the same has been improved, the value of the improvements upon the said parcel of land shall be found by the court and reported by the Secretary of the Interior to Congress, with his recommendations in the premises.

"16. That if the Secretary of the Interior deems it to be for the best interest of the Indians that any land adjudged by the court or said Lands Board against any claimant be sold, he may, with the consent of the governing authorities of the pueblo, order the sale thereof, under such regulations as he may make, to the highest bidder for cash; and if the buyer thereof be other than the losing claimant, the purchase price shall be used in paying to such losing claimant the adjudicated value of the improvements aforesaid, if found under the provisions of section 15 hereof, and the balance thereof, if any, shall be paid over to the proper officer, or officers, of the Indian community, but if the buyer be the losing claimant, and the value of his improvements has been adjudicated as aforesaid, such buyer shall be entitled to have credit upon his bid for the value of such improvements so adjudicated.

"17. No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the

laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

"18. That the pleading, practice, procedure, and rules of evidence shall be the same in all causes arising under this Act as in other civil causes in the Federal courts, except as otherwise herein provided.

"19. That all sums of money which may hereafter be appropriated by the Congress of the United States for the purpose of paying in whole or in part any liability found or decreed under this Act from the United States to any pueblo or to any of the Indians of any pueblo, shall be paid over to the Bureau of Indian Affairs, which Bureau, under the direction of the Secretary of the Interior, shall use such moneys at such times and in such amounts as may seem wise and proper for the purpose of the purchase of lands and water rights to replace those which have been lost to said pueblo or to said Indians, or for purchase or construction of reservoirs, irrigation works, or the making of other permanent improvements upon, or for the benefit of lands held by said pueblo or said Indians."

Act Mar. 3, 1925, ch. 431, 43 Stat. 1114, reads as follows: "That the Secretary of the Interior be, and he is hereby, authorized in his discretion, to cancel any restricted fee patents that have been issued to Indians of the Winnebago Reservation in Nebraska, under the provisions of the Act of Congress of February 21, 1863 (Twelfth Statutes at Large, page 658), and to issue in lieu thereof, to the original allottees, or heirs, trust patents of the form and subject to all the provisions set out in the general allotment act of February 8, 1887 (Twenty-fourth Statutes at Large, page 388), as amended: Provided, That the trust period shall be ten years from the date of issuance of the lieu trust patents."

Act May 31, 1933, ch. 45, §§ 4, 5, 6, 8, and 9, 48 Stat. 109—111, in addition to authorizing appropriations to pay in part the liability of the United States to the Indian pueblos, provided as follows:

"§ 4. That for the purpose of safeguarding the interests and welfare of the tribe of Indians known as the Pueblo de Taos of New Mexico in the certain lands hereinafter described, upon which lands said Indians depend for water supply, forage for their domestic livestock, wood and timber for their personal use and as the scene of certain of their religious ceremonials, the Secretary of Agriculture may and he hereby is authorized and directed to designate and segregate said lands, which shall not thereafter be subject to entry under the land laws of the United States, and to thereafter grant to said Pueblo de Taos, upon application of the governor and council thereof, a permit to occupy said lands and use the resources thereof for the personal use and benefit of said tribe of Indians for a period of fifty years, with provision for subsequent renewals if the use and occupancy by said tribe of Indians shall continue, the provisions of the permit are met and the continued protection of the watershed is required by public interest. Such permit shall specifically provide for and safeguard all rights and equities hitherto established and enjoyed by said tribe of Indians under any contracts or agreements hitherto existing, shall authorize the free use of wood, forage, and lands for the personal or tribal needs of said Indians, shall define the conditions under which natural resources under the control of the Department of Agriculture not needed by said Indians shall be made available for commercial use by the Indians or others, and shall establish necessary and proper safeguards for the efficient supervision and operation of the area for national forest purposes and all other purposes herein stated, the area referred to being described as follows:

"Beginning at the northeast corner of the Pueblo de Taos grant, thence northeasterly along the divide between Rio Pueblo de Taos and Rio Lucero and along the divide between Rio Pueblo de Taos and Red River to a point a half mile east of Rio Pueblo de Taos; thence southwesterly on a line half mile east of Rio Pueblo de Taos and parallel thereto to the northwest corner of township 25 north, range 15 east; thence south on the west boundary of township 25 north, range 15 east, to the divide between Rio Pueblo de Taos and Rio Fernandez de Taos; thence westerly along the divide to the east boundary of the Pueblo de Taos grant; thence north to the point of beginning; containing approximately thirty thousand acres, more or less.

"§ 5. Except as otherwise provided herein the Secretary of the Interior shall disburse and expend the amounts of money herein authorized to be appropriated, in accordance with and under the terms and conditions of the Act approved June 7, 1924: Provided, however, That the Secretary be authorized to cause necessary surveys and investigations to be made promptly to ascertain the lands and water rights that can be purchased out of the foregoing appropriations and earlier appropriations made for the same purpose, with full authority to disburse said funds in the purchase of said lands and water rights without being limited to the appraised values thereof as fixed by the appraisers appointed by the Pueblo Lands Board appointed under said Act of June 7, 1924, and all prior Acts limiting the Secretary of the Interior in the disbursement of said funds to the appraised value of said lands as fixed by said appraisers of said Pueblo Lands Board be, and the same are, expressly repealed: Provided further, That the Secretary of the Interior be, and he is hereby, authorized to disburse a portion of said funds for the purpose of securing options upon said lands and water rights and necessary abstracts of title thereof for the necessary period required to investigate titles and which may be required before disbursement can be authorized: Provided further, That the Secretary of the Interior be, and he is hereby, authorized, out of the appropriations of the foregoing amounts and out of the funds heretofore appropriated for the same purpose, to purchase any available lands within the several pueblos which in his discretion it is desirable to purchase, without waiting for the issuance of final patents directed to be issued under the provisions of the Act of June 7, 1924, where the right of said pueblos to bring independent suits, under the provisions of the Act of June 7, 1924, has expired; Provided further, That the Secretary of the Interior shall not make any expenditures out of the pueblo funds resulting from the appropriations set forth herein, or prior appropriations for the same purpose, without first obtaining the approval of the governing authorities of the pueblo affected: And provided further, That the governing authorities of any pueblo may initiate matters pertaining to the purchase of lands in behalf of their respective pueblos, which matters, or contracts relative thereto, will not be binding or concluded until approved by the Secretary of the Interior.

"§ 6. Nothing in this Act shall be construed to prevent any pueblo from prosecuting independent suits as authorized under section 4 of the Act of June 7, 1924. The Secretary of the Interior is authorized to enter into contract with the several Pueblo Indian tribes, affected by the terms of this Act, in consideration of the authorization of appropriations contained in section 2 hereof, providing for the dismissal of pending and the abandonment of contemplated original proceedings, in law or equity, by, or in behalf of said Pueblo Indian tribes, under the provisions of section 4 of the Act of June 7, 1924 (43 Stat. L. 636), and the pueblo concerned may elect to accept the appropriations herein authorized, in the sums herein set forth, in full discharge of all claims to compensation under the terms of said Act, notifying the Secretary of the Interior in writing of its election so to do: Provided, That if said election by said pueblo be not made, said pueblo shall have one year from the date of the approval of this Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which period the right to file such suit shall expire by limitation: And provided further, That no ejectment suits shall be filed against non-Indians entitled to compensation under this Act, in less than six months after the sums herein authorized are appropriated.

"§ 8. The attorney or attorneys for such Indian tribe or tribes shall be paid such fee as may be agreed upon by such attorney or attorneys and such Indian tribe or tribes, but in no case shall the fee be more than 10 per centum of the sum herein authorized to be appropriated

for the benefit of such tribe or tribes, and such attorney's fees shall be disbursed by the Secretary of the Interior in accordance herewith out of any funds appropriated for said Indian tribe or tribes under the provisions of the Act of June 7, 1924 (43 Stat. L. 636), or this Act: Provided however, That 25 per centum of the amount agreed upon as attorneys' fees shall be retained by the Secretary of the Interior to be disbursed by him under the terms of the contract, subject to approval of the Secretary of the Interior, between said attorneys and said Indian tribes, providing for further services and expenses of said attorneys in furtherance of the objects set forth in section 19 of the Act of June 7, 1924.

"§ 9. Nothing herein contained shall in any manner be construed to deprive any of the Pueblo Indians of a prior right to the use of water from streams running through or bordering on their respective pueblos for domestic, stock-water, and irrigation purposes for the lands remaining in Indian ownership, and such water rights shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians."

Osage World War II Veterans; Benefits of Servicemen's Readjustment Act or Chapter 37 of Title 38

Act Aug. 4, 1947, ch. 474, § 1, 61 Stat. 747, as amended by Pub. L. 85–857, § 13 (n), Sept. 2, 1958, 72 Stat. 1266, provided: "That the provisions of section 6 of the Act approved February 27, 1925 (43 Stat. 1008) [set out in note under this section], as amended by section 5 of the Act approved March 2, 1929 (45 Stat. 1478) [set out in note under this section], which make invalid contracts of debt entered into by certain members of the Osage Tribe of Indians, shall not apply to any debt contracted pursuant to title III of the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, by any member of such tribe who, by reason of his service in the armed forces of the United States during World War II, is eligible for the benefits of such title III or chapter 37; and any other member of the Osage Tribe upon attaining the age of twenty-one years may contract a valid debt without approval of the Secretary of the Interior: *Provided,* That the Osage lands and funds and any other property which has heretofore or which may hereafter be held in trust or under supervision of the United States for such Osage Indians not having a certificate of competency shall not be subject to lien, levy, attachment, or forced sale to satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency."

Osage Indian Tribe in Oklahoma; Certificates of Competency

Act Feb. 5, 1948, ch. 46, 62 Stat. 18, provided: "That the Secretary of the Interior shall issue a certificate of competency to each member of the Osage Tribe of less than one-half Indian blood heretofore or hereafter attaining the age of twenty-one years; and shall thereupon pay and deliver to such member, or to his legal guardian if such member has been declared incompetent by a court of competent jurisdiction, all money, property, and funds theretofore accrued or hereafter accruing to the individual credit of such member; and all payments to the legal guardian of such member may be expended without the approval of the superintendent of the Osage Agency: *Provided,* That all restrictions against alienation of the property of every kind and character, except headright shares or interests in the Osage tribal mineral estate, of members of the Osage Tribe who now have, or may hereafter receive, a certificate of competency, are hereby removed."

Osage Indians of Oklahoma

Act Feb. 27, 1925, ch. 359, 43 Stat. 1008, as amended Mar. 2, 1929, ch. 493, §§ 3, 4, 45 Stat. 1480; Sept. 1, 1950, ch. 832, 64 Stat. 572, provided that:

"The Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe of Indians in Oklahoma having a certificate of competency, his or her pro rata share, either as a member of the tribe or heir or devisee of a deceased member, of the interest on trust funds, the bonus received from the sale of oil or gas leases, the royalties therefrom and any other moneys due such Indian received during each fiscal quarter, including all moneys received prior to the passage of this Act and remaining unpaid; and so long as the accumulated income is sufficient the Secretary of the Interior shall cause to be paid to the adult members of said tribe not having a certificate of competency $1,000 quarterly, except where such adult members have legal guardians, in which case the amounts provided for herein may be paid to the legal guardian or direct to such Indian in the discretion of the Secretary of the Interior, the total amounts of such payments, however, shall not exceed $1,000 quarterly except as hereinafter provided; and shall cause to be paid for the maintenance and education, to either one of the parents or legal guardians actually having personally in charge, enrolled or unenrolled, minor member under twenty-one years of age, and above eighteen years of age, $1,000 quarterly out of the income of each of said minors, and out of the income of minors under eighteen years of age, $500 quarterly, and so long as the accumulated income of the parent or parents of a minor who has no income or whose income is less than $500 per quarter is sufficient, shall cause to be paid to either of said parents having the care and custody of such minor $500 quarterly, or such proportion thereof as the income of such minor may be less than $500, in addition to the allowances above provided for such parents. Rentals due such adult members from their lands and their minor children's lands and all income from such adults' investments shall be paid to them in addition to the allowance above provided. All payments to legal guardians of Osage Indians shall be expended subject to the joint approval in writing of the court and the superintendent of the Osage Agency. All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the superintendent of the Osage Agency: *Provided,* That if an adult member, not having a certificate of competency, so desires, his entire income accumulating in the future from the sources herein specified may be paid to him without supervision, unless the Secretary of the Interior shall find, after notice and hearing, that such member is wasting or squandering his income, in which event the Secretary of the Interior shall pay to such member only the amounts hereinbefore specified to be paid to adult members not having certificates of competency. The Secretary of the Interior shall invest the remainder, after paying the taxes of such members, in United States bonds, Oklahoma State bonds, real estate, first mortgage real estate loans not to exceed 50 per centum of the appraised value of such real estate, and where the member is a resident of Oklahoma such investment shall be in loans on Oklahoma real estate, stock in Oklahoma building and loan associations, livestock, or deposit the same in banks in Oklahoma, or expend the same for the benefit of such member, such expenditures, investments, and deposits to be made under such restrictions, rules, and regulations as he may prescribe: *Provided,* That the Secretary of the Interior shall not make any investment for an adult member without first securing the approval of such member of such investment: *Provided further,* That at the beginning of each fiscal year there shall first be reserved and set aside, out of Osage tribal funds available for that purpose, a sufficient amount of money for the expenditures authorized by Congress out of Osage funds for that fiscal year. No guardian shall be appointed except on the written application or approval of the Secretary of the Interior for the estate of a member of the Osage Tribe of Indians who does not have a certificate of competency or who is of one-half or more Indian blood. All moneys now in the possession or control of legal guardians heretofore paid to them in excess of $4,000 per annum each for adults and $2,000 each for minors under the Act of Congress of March 3, 1921, relating to the Osage Tribe of Indians, shall be returned by such guardians to the Secretary of the Interior, and all property, bonds, securities, and stock purchased, or investments made by such guardians out of said moneys paid them shall be delivered to the Secretary of the Interior by them, to be held by him or disposed of by him

as he shall deem to be for the best interest of the members to whom the same belongs. All bonds, securities, stocks, and property purchased and other investments made by legal guardians shall not be subject to alienation, sale, disposal, or assignment without the approval of the Secretary of the Interior. Any indebtedness heretofore lawfully incurred by guardians shall be paid out of the funds of the members for whom such indebtedness was incurred by the Secretary of the Interior. All funds other than as above mentioned, and other property heretofore or hereafter received by a guardian of a member of the Osage Tribe of Indians, which was theretofore under the supervision and control of the Secretary of the Interior or the title to which was held in trust for such Indian by the United States, shall not thereby become divested of the supervision and control of the Secretary of the Interior or the United States be relieved of its trust; and such guardian shall not sell, dispose of or otherwise encumber such fund or property without the approval of the Secretary of the Interior, and in accordance with orders of the county court of Osage County, Oklahoma. In case of the death, resignation, or removal from office of such a guardian, the funds and property in his possession subject to supervision and control of the Secretary of the Interior or to which the United States held the title in trust shall be immediately delivered to the superintendent of the Osage Agency, to be held by him and supervised or invested as hereinbefore provided. Within thirty days after the passage of this Act, such guardian shall render and file with the Secretary of the Interior or the superintendent of the Osage Agency a complete accounting, fully itemized, under oath, for the funds so paid to him and pay to the said Secretary or superintendent any and all moneys in his hands at the time of the passage of this Act, which have been paid him in excess of $4,000 per annum each for adults and $2,000 each for minors. The said guardian shall at the same time tender to said Secretary or superintendent all property of whatsoever kind in his possession at the time of the passage of this Act, representing the investment by him of said funds. The Secretary or superintendent is hereby authorized to accept such property or any part thereof at the price paid therefore by said guardian for the benefit of the ward of such guardian, if in his judgment he deems it advisable, and to make such settlement with such guardian as he deems best for such ward. Failing to make satisfactory settlement with said guardian as to said investments or any part thereof, the Secretary is authorized to bring such suit or suits against said guardian, his bond, and other parties in interest as he may deem necessary for the protection of the interests of the ward and may bring such action in any State court of competent jurisdiction or in the United States district court for the district in which said guardian resides.

"The Secretary of the Interior be, and is hereby, authorized, in his discretion, under such rules and regulations as he may prescribe, upon application of any member of the Osage Tribe of Indians not having a certificate of competency, to pay all or any part of the funds held in trust for such Indian: *Provided,* That the Secretary of the Interior shall, within one year after this Act is approved, pay to each enrolled Indian of less than half Osage blood, one-fifth part of his or her proportionate share of accumulated funds. And such Secretary shall on or before the expiration of ten years from the date of the approval of this Act, advance and pay over to such Osage Indians of less than one-half Osage Indian blood, all of the balance appearing to his credit of accumulated funds, and shall issue to such Indian a certificate of competency: *And provided further,* That nothing herein contained shall be construed to interfere in any way with the removal by the Secretary of the Interior of restrictions from and against any Osage Indian at any time.

"2. Upon the death of an Osage Indian of one-half or more Indian blood who does not have a certificate of competency, his or her moneys and funds and other property accrued and accruing to his or her credit and which have heretofore been subject to supervision as provided by law may be paid to the administrator or executor of the estate of such deceased Indian or direct to his heirs or devisees, or may be retained by the Secretary of the Interior in the discretion of the Secretary of the Interior, under regulations to be promulgated by him: *Provided,* That the Secretary of the Interior shall pay to administrators and executors of the estates of such deceased Osage Indians a sufficient amount of money out of such estates to pay all lawful indebtedness and costs and expenses of administration when approved by him; and, out of the shares belonging to heirs or devisees, above referred to, he shall pay the costs and expenses of such heirs or devisees, including attorney fees, when approved by him, in the determination of heirs or contest of wills. Upon the death of any Osage Indian of less than one-half of Osage Indian blood or upon the death of an Osage Indian who has a certificate of competency, his moneys and funds and other property accrued and accruing to his credit shall be paid and delivered to the administrator or executor of his estate to be administered upon according to the laws of the State of Oklahoma: *Provided,* That upon the settlement of such estate any funds or property subject to the control or supervision of the Secretary of the Interior on the date of the approval of this Act, which have been inherited by or devised to any adult or minor heir or devisee of one-half or more Osage Indian blood who does not have a certificate of competency, and which have been paid or delivered by the Secretary of the Interior to the administrator or executor shall be paid or delivered by such administrator or executor to the Secretary of the Interior for the benefit of such Indian and shall be subject to the supervision of the Secretary as provided by law.

"3. Lands devised to members of the Osage Tribe of one-half or more Indian blood or who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment except taxes, or be subject to alienation, without the approval of the Secretary of the Interior.

"4. Whenever the Secretary of the Interior shall find that any member of the Osage Tribe of more than one-half Indian blood, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may revoke such certificate of competency after notice and hearing in accordance with such rules and regulations as he may prescribe, and thereafter the income of such member shall be subject to supervision and investment as herein provided for members not having certificates of competency to the same extent as if a certificate of competency had never been granted: *Provided,* That all just indebtedness of such member existing at the time his certificate of competency is revoked shall be paid by the Secretary of the Interior, or his authorized representative, out of the income of such member, in addition the quarterly income hereinbefore provided for: And provided further, That such revocation or cancellation of any certificate of competency shall not affect the legality of any transactions theretofore made by reason of the issuance of any certificate of competency.

"5. No person convicted of having taken, or convicted of causing or procuring another to take, the life of an Osage Indian shall inherit from or receive any interest in the estate of the decedent, regardless of where the crime was committed and the conviction obtained.

"6. No contract for debt hereafter made with a member of the Osage Tribe of Indians not having a certificate of competency, shall have any validity, unless approved by the Secretary of the Interior. In addition to the payment of funds heretofore authorized, the Secretary of the Interior is hereby authorized in his discretion to pay, out of the funds of a member of the Osage Tribe not having a certificate of competency, any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts of carelessness or negligence.

"7. Hereafter none but heirs of Indian blood shall inherit from those who are of one-half or more Indian blood of the Osage Tribe of Indians any right, title, or interest to any restricted lands, moneys, or mineral interests of the Osage Tribe: *Provided,* That (except in cases where a person claiming as such heir is a party to

judicial proceedings pending on the date of the enactment of this proviso in which the claimant has filed a formal pleading alleging Indian blood) no claim of heirship shall be recognized unless the claimant shall establish that he is a citizen of the United States and is enrolled on a membership, census, or other roll prepared under the direction of the Secretary of the Interior, or has a lineal Indian ancestor so enrolled: *Provided further*, That this section shall not apply to spouses under marriages existing on February 27, 1925."

BLACKFEET RESERVATION; ALIENATION OF HOMESTEADS

Act June 30, 1919, ch. 4, § 10, 41 Stat. 16, which provided for the allotment of lands within the Blackfeet Indian Reservation in Montana, was amended by act June 4, 1953, ch. 99, § 1, 67 Stat. 42, in order to remove the restrictions on alienation of the homestead allotments by making 80 acres of each allotment subject to sale, partition, issuance of patent in fee, or other disposition in accordance with the laws relating to the other allotments on the Reservation.

Act June 30, 1919, had provided that the 80-acre homestead allotment should remain inalienable. This restriction was removed on the alienation of homestead allotments after the death of the original allottee by act June 2, 1924, ch. 231, 43 Stat. 252, formerly set out as a note under this section. The restriction was completely removed by section 1 of act June 4, 1953. Section 2 of act June 4, 1953, repealed act June 2, 1924.

CROW RESERVATION; SALE OF LANDS

Act June 4, 1953, ch. 100, 67 Stat. 42, permits the Indian owners of homestead, irrigable, or agricultural land on the Crow Indian Reservation in Montana to sell such land, upon application in writing and subject to the approval of the Secretary of the Interior or his authorized representative. Restrictions against such sales were contained in act June 4, 1920, ch. 224, 41 Stat. 751. The act of June 4, 1920, set out as a note under this section, provided for the allotment of lands on the Crow Reservation.

CROW RESERVATION; LANDS SUBJECT TO LIQUOR LAWS

Act Aug. 15, 1953, ch. 502, § 4, 67 Stat. 587, repealed section 9 of act June 4, 1920, ch. 224, 41 Stat. 751, formerly set out as a note under this section. The act June 4, 1920, provided for allotment of lands of the Crow Tribe and section 9 of the act had provided that lands of the Crow Reservation should "be subject to all laws of the United States prohibiting the introduction of intoxicating liquors into the Indian country until otherwise provided by Congress".

CROW RESERVATION; RESERVATION IN PERPETUITY OF MINERALS

Pub. L. 90–308, May 17, 1968, 82 Stat. 123, amended section 6 of act June 4, 1920, c. 224, to provide for a reservation in perpetuity, for the benefit of the Crow Indian Tribe, of the minerals on or underlying the allotted lands on the Crow Indian Reservation.

CROSS REFERENCES

Allotments in severalty, see section 461 of this title.

Surrender of patent and selection of other land, see section 350 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 339, 340, 341, 342, 348, 349, 350, 354, 358, 371, 564h, 697, 747, 797, 843 of this title.

§ 332. Selection of allotments.

All allotments set apart under the provisions of sections 331 to 334, 339, 341, 342, 348, 349, and 381 of this title shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under said sections: *Provided,* That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner. (Feb. 8, 1887, ch. 119, § 2, 24 Stat. 388.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 333, 334, 335, 339, 340, 341, 342, 348, 349, 350, 354 of this title.

§ 333. Making of allotments by agents.

The allotments provided for in sections 331 to 334, 339, 341, 342, 348, 349 and 381 of this title, shall be made by special agents appointed by the President for such purpose, and the superintendents or agents in charge of the respective reservations on which the allotments are directed to be made, or in the discretion of the Secretary of the Interior, such allotments may be made by the superintendent or agent in charge of such reservation, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such special allotting agents, superintendents, or agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the Bureau of Land Management. (Feb. 8, 1887, ch. 119, § 3, 24 Stat. 389; June 25, 1910, ch. 431, § 9, 36 Stat. 858; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3, set out in the Appendix to Title 5.

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 334, 335, 339, 340, 341, 342, 348, 349, 350, 354, 564h, 697, 747, 797, 843 of this title.

§ 334. Allotments to Indians not residing on reservations.

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in sections 331 to 334, 339, 341, 342, 348, 349 and 381 of this title for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 348 and 349 of this title. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Secretary of the Interior or such officer as he may designate, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 8, 1887, ch. 119, § 4, 24 Stat. 389; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of the Interior or such officer as he may designate" was substituted for "Commissioner of the General Land Office" on authority of 1946 Reorg. Plan No. 3, set out in the Appendix to Title 5.

PERMANENT APPROPRIATION; REPEALS

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225. See section 725 (b) of Title 31, Money and Finance.

CROSS REFERENCES

Allotments to Indians making settlement on public lands, see section 336 of this title.

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

Fees collected by officers of land offices to be covered into the Treasury, see section 79c of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 335, 339, 340, 341, 342, 348, 349, 350, 354, 358 of this title.

§ 335. Extension of provisions as to allotments.

Unless otherwise specifically provided, the provisions of sections 331 to 334, 339, 341, 342, 348, 349, and 381 of this title are extended to all lands heretofore purchased or which may be purchased by authority of Congress for the use or benefit of any individual Indian or band or tribe of Indians. (Feb. 14, 1923, ch. 76, 42 Stat. 1246.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 336. Allotments to Indians making settlement.

Where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in sections 348 and 349 of this title. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Secretary of the Interior or such officer as he may designate, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior. (Feb. 28, 1891, ch. 383, § 4, 26 Stat. 795; June 25, 1910, ch. 431, § 17, 36 Stat. 860; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of the Interior or such officer as he may designate" was substituted for "Commissioner of the General Land Office, on authority of 1946 Reorg. Plan No. 3, set out in the Appendix to Title 5.

PERMANENT APPROPRIATION; REPEALS

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225. See section 725 (b) of Title 31, Money and Finance.

CROSS REFERENCES

Cherokee Outlet, provisions inapplicable to, see section 371 of this title.

Fees collected by officers of land offices to be covered into the Treasury, see section 79c of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 371, 564h, 697, 747, 797, 843 of this title.

§ 337. Allotments in national forests.

The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided. (June 25, 1910, ch. 431, § 31, 36 Stat. 863.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§ 337a. San Juan County, Utah; discontinuance of allotments.

No further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah. (Mar. 1, 1933, ch. 160, § 1, 47 Stat. 1418.)

CODIFICATION

Section is repeated in section 190a of Title 43, Public Lands.

§ 338. Repealed May 29, 1928, ch 901, § 1 (64), 45 Stat. 991.

Section, act Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270, required the Secretary of Interior to submit to Congress a cost account of survey and allotment work.

§ 339. Tribes excepted from certain provisions.

The provisions of sections 331 to 334, 341, 342, 348, 349, and 381 of this title shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in Oklahoma, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order. (Feb. 8, 1887, ch. 119, § 8, 24 Stat. 391.)

SACS AND FOXES; MISSOURI INDIANS

No allotment of lands was to be made or annuities of money to be paid to any of the Sacs and Foxes of the Missouri Indians who were not enrolled as members of the tribe on Jan. 1, 1890, by a proviso annexed to act Feb. 28, 1891, ch. 383, § 5, 26 Stat. 796.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 340, 341, 342, 348, 349, 350 of this title.

§ 340. Extension of certain provisions.

The provisions of sections 331 to 334, 339, 341, 342, 348, 349, and 381, of this title, are declared to extend to and are made applicable to the Confederated Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, located in the northeastern part of the former Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said sections, except and as otherwise hereinafter provided. (Mar. 2, 1889, ch. 422, § 1, 25 Stat. 1013.)

§ 341. Power to grant rights-of-way not affected.

Nothing in sections 331 to 334, 339, 342, 348, 349, and 381 of this title shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation. (Feb. 8. 1887, ch. 119, § 10, 24 Stat. 391.)

CROSS REFERENCES

Condemnation of lands under laws of States, see section 357 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 339, 340, 342, 348, 349, 350 of this title.

§ 342. Removal of Southern Utes to new reservation.

Nothing in sections 331 to 334, 339, 342, 348, 349, and 381 of this title, shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe. (Feb. 8, 1887, ch. 119, § 11, 24 Stat. 391.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 339, 340, 341, 348, 349, 350 of this title.

§ 343. Correction of errors in allotments and patents.

In all cases where it shall appear that a double allotment of land has been wrongfully or erroneously made by the Secretary of the Interior to any Indian by an assumed name or otherwise, or where a mistake has been made in the description of the land inserted in any patent, said Secretary is authorized and directed, during the time that the United States may hold the title to the land in trust for any such Indian, and for which a conditional patent may have been issued, to rectify and correct such mistakes and cancel any patent which may have been thus erroneously and wrongfully issued whenever in his opinion the same ought to be canceled for error in the issue thereof, and if possession of the original patent cannot be obtained, such cancellation shall be effective if made upon the records of the Bureau of Land Management; and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: *And provided,* That such lands shall not be open to settlement for sixty days after such cancellation: *And further provided,* That no conditional patent that has been or that may be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent is relinquished by the patentee or his heirs to take another allotment, shall be subject to cancellation without authority of Congress. (Jan.

26, 1895, ch. 50, 28 Stat. 641; Apr. 23, 1904, ch. 1489, 33 Stat. 297; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3, set out in the Appendix to Title 5.

§ 344. Cancellation of allotment of unsuitable land.

If any Indian of a tribe whose surplus lands have been ceded or opened to disposal has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect. (Mar. 3, 1909, ch. 263, 35 Stat. 784.)

CROSS REFERENCES

Provisions of sections 331—334, 339, 341, 342, 348, 349, and 381 not to extend to any Indians in the former Indian Territory, see section 349 of this title.

§ 344a. Cancellation of patent issued to Indian allottee dying without heirs.

The Secretary of the Interior is authorized to investigate the allotment in the name of any deceased Indian and if it be shown to his satisfaction that the allottee died without heirs he shall report the facts to Congress with a recommendation for the cancellation of the patent issued in the name of such Indian. (June 25, 1910, ch. 431, § 12, 36 Stat. 858.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564h, 697, 747, 797, 843 of this title.

§ 345. Actions for allotments.

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided,* That the right of appeal shall be allowed to either party as in other cases. (Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305; Feb. 6, 1901, ch. 217, § 1, 31 Stat. 760; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 346 of this title.

§ 346. Proceedings in actions for allotments.

The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the United States attorney in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the United States attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided,* That should the United States attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. (Feb. 6, 1901, ch. 217, § 2, 31 Stat. 760; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States". See section 541 of Title 28, Judiciary and Judicial Procedure.

§ 347. Limitations of actions for lands patented in severalty under treaties.

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time

prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians. (May 31, 1902, ch. 946, § 1, 32 Stat. 284.)

§ 348. Patents to be held in trust; descent and partition.

Upon the approval of the allotments provided for in sections 331 to 334 of this title, by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided,* That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided,* That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided: *And provided further,* That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided, however,* That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further,* That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at 3 per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the Bureau of Land Management, and afterwards delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization was occupying on February 8, 1887, any of the public lands to which sections 331 to 334, 339, 341, 342, 348, 349, and 381 of this title are applicable, for religious or educational work among the Indians, the Secretary of the Interior is authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by the aforementioned sections, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of the said sections and become citizens of the United States shall be preferred.

Provided further, That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the Siletz Indian Reservation, in the State of Oregon, fully capable of managing their own business affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise, become the owner of more than eighty acres of land upon said reservation, he shall cause patents to be issued to such Indian or Indians for all of such lands over and above the eighty acres thereof. Said patent or patents shall be issued for the least valuable portions of said lands, and the same shall be discharged of any trust and free of all charge, incumbrance, or restriction whatsoever; and the Secretary of the Interior is authorized and directed to ascertain, as soon as shall be practicable, whether any of said Indians of the Siletz Reservation should receive patents conveying in fee lands to them under the provisions of sections 331 to 334, 339, 341, 342, 348, 349, and 381 of this title. (Feb. 8, 1887, ch. 119, § 5, 24 Stat. 389; Mar. 3, 1901, ch. 832, § 9, 31 Stat. 1085; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3, set out in the Appendix to Title 5.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F. R. 5385, set out as a note under section 301 of Title 3, The President.

EXTENSION OF TRUST PERIODS

The periods of trust applying to Indian lands, whether of a tribal or individual status, which would expire during the years 1943–1950, were extended for a further period of twenty-five years, respectively, by Ex. Ord. No. 9272, Nov. 17, 1942, 7 F. R. 9475; Ex. Ord. No. 9398, Nov. 25, 1943, 8 F. R. 16269; Ex. Ord. No. 9500, Nov. 14, 1944, 9 F. R. 13699; Ex. Ord. No. 9659, Nov. 21, 1945, 10 F. R. 14353; Ex. Ord. No. 9811, Dec. 17, 1946, 11 F. R. 14483; Ex. Ord. No. 9920, Jan. 8, 1948, 13 F. R. 143; Ex. Ord. No. 10027, Jan. 7, 1949, 14 F. R. 107; Ex. Ord. No 10091, Dec. 11, 1949, 14 F. R. 7513.

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

Continuance of restrictions on alienation in patents of Indian lands, see section 391 of this title.

Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles, see sections 484—486 of this title.

Negotiations for cession to United States of surplus unallotted lands to be made through United States Indian inspector and be subject to ratification by Congress, see section 1195 of Title 43, Public Lands.

EX. ORD. NO. 10191. EXTENSION OF TRUST PERIODS ON INDIAN LANDS EXPIRING DURING 1951

Ex. Ord. No. 10191, Dec. 13, 1950, 15 F. R. 8889, provided: By virtue of and pursuant to the authority vested in me by section 5 of the act of February 8, 1887, 24 Stat. 388, 389 [this section], by the act of June 21, 1906, 34 Stat. 325, 326, and by the act of March 2, 1917, 39 Stat. 969, 976, and other applicable provisions of law, it is hereby ordered that the periods of trust or other restrictions against alienation contained in any patent applying to Indian lands, whether of a tribal or individual status, which, unless extended, will expire during the calendar year 1951, be, and they are hereby, extended for a further period of twenty-five years from the date on which any such trust would otherwise expire.

This order is not intended to apply to any case in which the Congress has specifically reserved to itself authority to extend the period of trust on tribal or individual Indian lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 336, 339, 340, 341, 342, 348a, 349, 350, 352b, 371 of this title.

§ 348a. Same; extension of trust period for Indians of Klamath River Reservation.

The period of trust on lands allotted to Indians of the Klamath River Reservation, California, which expired July 31, 1919, and the legal title to which is still in the United States, is reimposed and extended for a period of twenty-five years from July 31, 1919: *Provided,* That further extension of the period of trust may be made by the President, in his discretion, as provided by section 348 and section 391 of this title. (Dec. 24, 1942, ch. 814, 56 Stat. 1081.)

CROSS REFERENCES

Extension of trust period by Executive Order, see notes under section 348 of this title.

§ 349. Patents in fee to allottees.

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: *Provided,* That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further,* That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further,* That the provisions of sections 331 to 334, 339, 341, 342, 349, and 381 of this title shall not extend to any Indians in the former Indian Territory. (Feb. 8, 1887, ch. 119, § 6, 24 Stat. 390; May 8, 1906, ch. 2348, 34 Stat. 182.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 336, 339, 340, 341, 342, 348, 350, 352b of this title.

§ 350. Surrender of patent, and selection of other land.

The Secretary of the Interior is authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under sections 331 to 334, 339, 341, 342, 348, 349 and 381 of this title, to permit any Indian to whom a patent has been issued for land on the reservation to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: *Provided,* That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of said sections. (Oct. 19, 1888, ch. 1214, § 2, 25 Stat. 612.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 351. Patents with restrictions for lots in villages in Washington.

The Secretary of the Interior is authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the State of Washington to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to June 25, 1910, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and

shall be disposed of as provided for in section 372 of this title. (June 25, 1910, ch. 431, § 10, 36 Stat. 858.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§ 352. Cancellation of trust patents within power or reservoir sites.

The Secretary of the Interior, after notice and hearing, is authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: *Provided,* That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: *Provided further,* That any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project. (June 25, 1910, ch. 431, § 14, 36 Stat. 859.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

Irrigation projects under Reclamation Act, see section 382 of this title.

Withdrawal of lands in Indian reservations for power or reservoir sites, see section 148 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§ 352a. Cancellation of patents in fee simple for allotments held in trust.

The Secretary of the Interior is authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided,* That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also,* That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued. (Feb. 26, 1927, ch. 215, 44 Stat. 1247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 352b of this title.

§ 352b. Same; partial cancellation; issuance of new trust patents.

Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by sections 348 and 349 of this title, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided,* That this section and section 352a of this title shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired. (Feb. 26, 1927, ch. 215, § 2, as added Feb. 21, 1931, ch. 271, 46 Stat. 1205.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 352c. Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust.

The Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees, or Indian heirs or Indian devisees of allottees, for all taxes paid, including penalties and interest, on so much of their allotted lands as have been patented in fee prior to the expiration of the period of trust without application by or consent of the patentee: *Provided,* That if the Indian allottee, or his or her Indian heirs or Indian devisees, have by their own act accepted such patent, no reimbursement shall be made for taxes paid, including penalties and interest, subsequent to acceptance of the patent: *Provided further,* That the fact of such acceptance shall be determined by the Secretary of the Interior.

In any case in which a claim against a State, county, or political subdivision thereof, for taxes collected upon such lands during the trust period has been reduced to judgment and such judgment remains unsatisfied in whole or in part, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes including penalties and interest paid thereon, and upon payment by the judgment debtor of the costs of the suit, to cause such judgment to be released: *Provided further,* That in any case, upon submission of adequate proof, the claims for taxes paid by or on behalf of the patentee or his Indian heirs or Indian devisees have been satisfied, in whole or in part, by the State, county, or political subdivision thereof, the Secretary of the Interior is authorized to reimburse the State, county, or political subdivision

for such amounts as may have been paid by them. (June 11, 1940, ch. 315, § 1, 54 Stat. 298; Feb. 10, 1942, ch. 56, § 1, 56 Stat. 87.)

AMENDMENTS

1942—Act Feb. 10, 1942, added the two provisos to the first par., substituted in the first par. "Indian allottees, or Indian heirs or Indian devisees of allottees" and "have been patented" for "Indian allottees and Indian heirs of allottees" and "having been patented", deleted from the first par. ", has been or may be restored to trust status through cancellation of the fee patent by the Secretary of the Interior" following "consent of the patentee", designated as the second par, the two provisos of the original par., inserted in the second par. "in whole or in part" following "remains unsatisfied" and substituted in the second par. "during the trust period" and "by the judgment debtor" for "while the patent in fee was outstanding" and "by the State, county, or political subdivision thereof" and in the proviso ", upon submission of adequate proof, the claims for taxes paid by or on behalf of the patentee or his Indian heirs or Indian devisees have been satisfied, in whole or in part, by the State, county, or political subdivision thereof, the Secretary of the Interior is authorized to reimburse the State, county, or political subdivision for such amounts as may have been paid by them" for "in which a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to reimburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation."

APPROPRIATIONS

Section 2 of act Feb. 10, 1942, authorized appropriations to remain available until expended.

§ 353. Sections inapplicable to certain tribes.

The provisions of sections 337, 351, 352, 372, 373, 403, 406, 407, and 408 of this title shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma. Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died, or who dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life. (June 25, 1910, ch. 431, §§ 32, 33, 36 Stat. 863.)

CODIFICATION

The first and second sentences are from sections 33 and 32, respectively of act June 25, 1910.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564h, 697, 747, 797, 843 of this title.

§ 354. Lands not liable for debts prior to final patent.

No lands acquired under the provisions of sections 331 to 334 of this title shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor. (Feb. 8, 1887, ch. 119, 24 Stat. 388; June 21, 1906, ch. 3504, 34 Stat. 327.)

§ 355. Laws applicable to lands of full-blooded members of Five Civilized Tribes.

The lands of full-blooded members of any of the Five Civilized Tribes are made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character. (June 14, 1918, ch. 101, § 2, 40 Stat. 606.)

CHOCTAW TRIBE; SALE OF LANDS AND INTERESTS THEREIN; TRANSFER TO TRIBAL CORPORATION OR FOUNDATION; PER CAPITA DISTRIBUTION

Pub. L. 91–386, § 1, Aug. 24, 1970, 84 Stat. 828, repealed Pub. L. 86–192, §§ 1–12, Aug. 25, 1959, 73 Stat. 420, as amended by Pub. L. 87–609, §§ 1, 2, Aug. 24, 1962, 76 Stat. 405; Pub. L. 89–107, Aug. 4, 1965, 79 Stat. 432; Pub. L. 90–476, Aug. 11, 1968, 82 Stat. 703, which provided for termination of Federal supervision over affairs of the Choctaw Tribe, including termination of eligibility of individual Choctaw members for certain Federal services and benefits provided Indians because of their status as Indians; authority to establish a trustee, corporation, or other legal entity under State law as a successor in interest to the tribal entity; and authority for Secretary of Interior to sell land and interest in land owned by the Choctaw Tribe for benefit of the tribe, to convey to the successor entity certain lands and mineral interests of the Choctaw Tribe, and to distribute per capita funds held by the United States for benefit of the Choctaw Tribe.

Section 2 of Pub. L. 91–386, Aug. 24, 1970, 84 Stat. 828, provided that: "Repeal of the Act of August 25, 1959 [see preceding note] shall not be construed to abrogate, impair, annul, or otherwise affect any right or interest which may have vested under the provisions of said Act nor shall repeal affect any legal action pending on the date of enactment of this Act [Aug. 24, 1970]."

EXTENSION OF PERIOD OF RESTRICTIONS ON LANDS

Act Aug. 11, 1955, ch. 786, 69 Stat. 666, extended for the lives of the Indians who own lands the period of restrictions against alienation, lease, mortgage, or other encumbrance of land; provided for application to Secretary of Interior for removal of restrictions; authorized the Secretary, without application, to remove restrictions on lands of Indians who are able to manage their own affairs; permitted proceeding in county court where Secretary disapproved or failed to either approve or disapprove the application for removal; granted right of appeal; required Secretary to turn over full ownership and control of any money and property held in trust when an order removing restrictions becomes effective; and, continued existing exemptions from taxation that constitute a vested property right.

VALIDATION OF LAND TITLES AND COURT JUDGMENTS

Act July 2, 1945, ch. 223, 59 Stat. 313, validated titles to certain lands conveyed by the Indians of the Five Civilized Tribes on and after April 26, 1931, and prior to July 2, 1945; amended act Jan. 27, 1933, ch. 23, 47 Stat. 777, by limiting restrictions on the alienation of lands or interests in lands acquired by inheritance, devise, or in any other manner where such lands or interests were not restricted against alienation at the time of acquisition, and all conveyances executed after Jan. 27, 1937, and prior to July 2, 1945; and validated State court judgments in Oklahoma and judgments of the United States District Courts of the State of Oklahoma.

CREATION OF TRUSTS

Act Jan. 27, 1933, ch. 23, 47 Stat. 777, as amended by act Aug. 4, 1947, ch. 458, § 12, 61 Stat. 734, provided for the creation of trusts by Indians; authorized transfers to trustees; denied release of trust agreement restrictions and alienation of corpus and income; made approved contracts irrevocable; provided remedy for illegally procured trusts by cancellation proceedings; and delegated administration of act to Secretary of the Interior.

REMOVAL OF LAND RESTRICTION AT DEATH; APPROVAL OF CONVEYANCE; JURISDICTION OF OKLAHOMA STATE COURTS; TAX EXEMPTION

Act Aug. 4, 1947, ch. 458, 61 Stat. 731, provided that death removed restrictions on land; clarified the laws relating to the approval of conveyances of restricted lands; defined the jurisdiction of Oklahoma State courts over

certain classes of Indian litigation; set out the procedure governing the removal of cases to the Federal courts and authorized appeals from orders of remand; and limited the tax-exempt acreage of restricted Indian lands.

Section 6 (e) of act Aug. 4, 1947, was amended by act Aug. 12, 1953, ch. 409, § 2, 67 Stat. 558, by permitting the filing of a list of nontaxable lands that have been sold during the preceding year, instead of cumulative lists showing all restricted lands of the Five Civilized Tribes that are tax exempt.

REMOVAL OF RESTRICTIONS FROM PART OF ALLOTTED LANDS; LEASES; TAXATION; APPOINTMENT OF LOCAL AGENTS

Act May 27, 1908, ch. 199, 35 Stat. 312, as amended by act Apr. 12, 1926, ch. 115, § 1, 44 Stat. 239, provided in part for the removal of restrictions from part of the lands of allottees; authorized leases of allotted lands; made unrestricted lands subject to taxation; voided alienation or incumbrance of restricted lands; and authorized appointment of local agents to investigate estates of minors and to advise and represent allottees.

FINAL DISPOSITION OF AFFAIRS OF THE FIVE CIVILIZED TRIBES

Act Apr. 26, 1906, ch. 1876, 34 Stat. 137, provided in part for membership and enrollment rules; required patents to issue in name of allottee and to be recorded; transferred records of land offices to the clerk of the United States district court; transferred control of tribal schools to Secretary of Interior; abolished tribal taxes; extended restrictions on alienation of allotted lands; authorized conveyances of inherited lands; authorized disposal of property by will; provided that lands upon dissolution of the tribes be held in trust by the United States; and continued tribal governments.

§ 356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes.

No undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, shall be forwarded to the Secretary of the Interior for approval, but all such undisputed claims or uncontested leases (except oil and gas leases) shall be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: *Provided, however,* That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the same to the Secretary of the Interior within thirty days from the date of said decision or order. (Feb. 14, 1920, ch. 75, § 18, 41 Stat. 426.)

CODIFICATION

The clause "heretofore required to be approved under existing law by the Secretary of the Interior" after the words "but all such undisputed claims or uncontested leases (except oil and gas leases)" was omitted as superfluous.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 357. Condemnation of lands under laws of States.

Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee. (Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1084.)

CODIFICATION

Section is comprised of the second paragraph of section 3 of act Mar. 3, 1901. The first paragraph of such section 3 is classified to section 319 of this title.

§ 358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys.

Any and all provisions contained in any Act passed prior to March 7, 1928, for the survey, resurvey, classification, and allotment of lands in severalty under sections 331 and 334 of this title, which provide for the repayment of funds appropriated proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes, are repealed: *Provided further,* That the repeal shall not affect any funds authorized to be reimbursed by any special Act of Congress wherein a particular or special fund is mentioned from which reimbursement shall be made. (Mar. 7, 1928, ch. 137, § 1, 45 Stat. 206.)

Chapter 10.—DESCENT AND DISTRIBUTION; HEIRS OF ALLOTTEE

Sec.
371. Descent of land.
372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.
372–1. Administrative Procedure Act inapplicable to appointment of hearing examiners for probate work.
372a. Heirs by adoption.
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373b. Same; restricted estate or homestead on the public domain.
373c. Sections 373a and 373b as inapplicable to certain Indians.
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375d. Disposition of estates of intestate members of Cherokee, Chicasaw, Choctaw, and Seminole Nations of Oklahona dying without heirs.
376. Oaths in investigations.
377. Payment or deduction of cost of determining heirs.
378. Partition of allotment among heirs; patents.
379. Sale of allotted lands by heirs.
380. Lease of inherited allotments by superintendent.

§ 371. Descent of land.

For the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of section 348, of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be

the legitimate issue of the father of such child: *Provided,* That the provisions of this section and sections 331, 336, and 397 of this title shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet." (Feb. 28, 1891, ch. 383, § 5, 26 Stat. 795.)

CROSS REFERENCES

Determination of heirship of deceased members of Five Civilized Tribes, see section 375 of this title.

§ 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.

When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided,* That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by this or any other Act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of 10 per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid on such deferred payments, all payments made, together with all interest paid on such deferred installments, shall be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the allottee or his heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided,* That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent as their respective interests shall appear: *Provided further,* That the Secretary of the Interior is authorized, in his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further,* That any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: *Provided,* That the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior. (June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 647.)

AMENDMENTS

1934—Act Apr. 30, 1934, substituted ", all payments made, together with all interest paid on such deferred installments, shall be so forfeited" for "a further amount, not exceeding 15 per centum of the purchase price together with all interest paid on such deferred installments may be so forfeited", inserted "allottee or his" in the sentence "All forfeitures shall insure" and deleted from the last "Provided further" clause the term "hereafter."

1928—Act Mar. 3, 1928, inserted in the introductory clause "or may hereafter be made," following "has been made,", "together with all interest paid on such deferred installments" following "purchase price", "or may hereafter be" following "restrictions on alienation has been", and "hereafter" in the last "Provided further" clause, and substituted "by this or any other Act" for "by any Act."

CROSS REFERENCES

Deposits in banks, see section 151 of this title.

Indian agents abolished, see note under section 64 of this title.

Klamath Tribe, heirs and devisees of restricted or trust property, see section 556 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 353, 373, 374, 564h, 697, 747, 797, 843 of this title.

§ 372-1. Administrative Procedure Act inapplicable to appointment of hearing examiners for probate work.

On and after June 24, 1967, hearing officers appointed for Indian probate work need not be appointed pursuant to the Administrative Procedure Act, as amended. (Pub. L. 90-28, title I, § 100, June 24, 1967, 81 Stat. 69.)

REFERENCES IN TEXT

The Administrative Procedure Act, as amended, referred to in text, is classified to sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

Section is from Department of the Interior and Related Agencies Appropriation Act, 1968, Pub. L. 90-28. Similar provisions were contained in the following appropriation acts:

1966—May 31, 1966, Pub. L. 89-435, title I, § 100, 80 Stat. 181.

1965—June 28, 1965, Pub. L. 89-52, title I, § 100, 79 Stat. 185.

1964—July 7, 1964, Pub. L. 88-356, title I, § 100, 78 Stat. 284.

1963—July 26, 1963, Pub. L. 88-79, title I, § 100, 77 Stat. 107.

1962—Aug. 9, 1962, Pub. L. 87-578, title I, § 100, 76 Stat. 345.

1961—Aug. 3, 1961, Pub. L. 87-122, title I, § 100, 75 Stat. 256.

1960—May 13, 1960, Pub. L. 86-455, title I, § 100, 74 Stat. 104.

1959—June 23, 1959, Pub. L. 86-60, title I, § 100, 73 Stat. 92.

1958—June 4, 1958, Pub. L. 85-439, title I, § 100, 72 Stat. 155.

1957—July 1, 1957, Pub. L. 85-77, title I, § 1, 71 Stat. 257.

1956—June 13, 1956, ch. 380, title I, § 101, 70 Stat. 257.

1955—June 16, 1955, ch. 147, title I, § 1, 69 Stat. 141.

1954—Aug. 26, 1954, ch. 935, ch. VII, § 701, 68 Stat. 813.

§ 372a. Heirs by adoption.

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption—

(1) Unless such adoption shall have been—

(a) by a judgment or decree of a State court;

(b) by a judgment or decree of an Indian court;

(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or

(d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or

(2) Unless such adoption shall have been recognized by the Department of the Interior prior to the effective date of this section or in the distribution of the estate of an Indian who has died prior to that date: *Provided,* That an adoption by Indian custom made prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation.

This section shall not apply with respect to the distribution of the estates of Indians of the Five Civilized Tribes or the Osage Tribe in the State of Oklahoma, or with respect to the distribution of estates of Indians who have died prior to the effective date of this section. (July 8, 1940, ch. 555, §§ 1, 2, 54 Stat. 746.)

REFERENCES IN TEXT

For effective date of this section, referred to in the text, see note set out below.

CODIFICATION

First and second paragraphs of this section are from sections 1 and 2, respectively, of act July 8, 1940.

EFFECTIVE DATE

Section 3 of act July 8, 1940, provided that: "This Act shall become effective six months after the date of its approval [July 8, 1940]."

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 373. Disposal by will of allotments held under trust.

Any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: *Provided, however,* That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further,* That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located: *Provided further,* That the approval of the will and the death of the testator shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit: *Provided also,* That this section and section 372 of this title shall not apply to the Five Civilized Tribes or the Osage Indians. (June 25, 1910, ch. 431, § 2, 36 Stat. 856; Feb. 14, 1913, ch. 55, 37 Stat. 678.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 374, 397, 564h, 747, 797, 843 of this title.

§ 373a. Disposition of trust or restricted estate of intestate without heirs; successor tribe; sale of land.

Upon final determination by the Secretary of the Interior that the Indian holder of a trust or restricted allotment of lands or an interest therein has died intestate without heirs, the lands or interest so owned, together with all accumulated rents, issues, and profits therefrom held in trust for the decedent, shall escheat to the tribe owning the land at the time of allotment subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate and subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder.

If the tribe which owned the land at the time of allotment has been reorganized or reconstituted by reason of amalgamation with another tribe or group of Indians or of subdivision within the tribe or otherwise, the land shall escheat to the tribe or group which has succeeded to the jurisdiction of the original tribe over the area in question. If neither the tribe which owned the land at the time of allotment nor a successor tribe or group exists, the land or interest therein shall be held in trust for such Indians as the Secretary may designate within the State or

States wherein the land is situated or, if the Secretary determines that the land cannot appropriately be used by or for such Indians, it shall be sold, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the proceeds of such sale shall be held in trust for such Indians as the Secretary may designate, within the State or States wherein the land is situated. (Nov. 24, 1942, ch. 640, § 1, 56 Stat. 1021.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 373c of this title.

§ 373b. Same; restricted estate or homestead on the public domain.

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the land shall become part of the public domain subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate: *Provided*, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $2,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder. (Nov. 24, 1942, ch. 640, § 2, 56 Stat. 1022.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 373c of this title.

§ 373c. Sections 373a and 373b as inapplicable to certain Indians.

The provisions of sections 373a and 373b of this title shall not apply to the Indians of the Five Civilized Tribes or the Osage Reservation, in Oklahoma. (Nov. 24, 1942, ch. 640, § 3, 56 Stat. 1022.)

§ 374. Attendance of witnesses.

The authority delegated to judges of the United States courts by section 56 of Title 35 is conferred upon the Secretary of the Interior to require the attendance of witnesses at hearings, upon proper showing by any of the parties to determine the heirs of decedents, held in accordance with sections 372 and 373 of this title, under such rules and regulations as he may prescribe. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

REFERENCES IN TEXT

Section 56 of Title 35, referred to in text, was repealed by act July 19, 1952, ch. 950, § 5, 66 Stat. 815, and is now covered by section 24 of Title 35, Patents.

§ 375. Determination of heirship of deceased members of Five Civilized Tribes.

A determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: *Provided*, That an appeal may be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: *Provided further*, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws: *Provided further*, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving nonresident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be concluded equally with parties personally served or voluntarily appearing. (June 14, 1918, ch. 101, § 1, 40 Stat. 606.)

ADMINISTRATION EXPENSES; COMPENSATION; RESTRICTION ON USE OF FUNDS; APPEAL

Section 18 of act June 30, 1919, ch. 4, 41 Stat. 21, appropriated $205,000 for expenses of administration of the affairs of the Five Civilized Tribes, Oklahoma, and the compensation of employees, prohibited any part of the appropriation from being used in forwarding the undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or in forwarding uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, to the Secretary of the Interior for approval, provided that all such undisputed claims or uncontested leases (except oil and gas leases) required to be approved under existing law by the Secretary of the Interior shall be paid, approved, rejected or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma and authorized an appeal within thirty days by party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma to the Secretary of the Interior.

§ 375a. Same; jurisdiction of Secretary of the Interior over probate and distribution of estates not exceeding $2,500.

Exclusive jurisdiction is conferred on the Secretary of the Interior to determine the heirs after notice and hearing under such rules and regulations as he may prescribe, and to probate the estate of any deceased restricted Indian, enrolled or unenrolled, of the Five Civilized Tribes of Oklahoma, whenever the restricted estate consists only of funds or securities under the control of the Department of the Interior of an aggregate value not exceeding $2,500: *Provided*, That where such decedent died prior to December 24, 1942, the distribution of such funds and securities, including the decedent's share of any tribal funds, shall be made in accordance with the

statute of descent and distribution applicable at the date of death: *And provided further,* That where the decedent dies subsequently to December 24, 1942 distribution of all such funds and securities, including tribal funds aforesaid, shall be effected in accordance with the statute of descent and distribution of the State of Oklahoma. (Dec. 24, 1942, ch. 813, § 1, 56 Stat. 1080.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 375b of this title.

§ 375b. Same; schedule of fees.

Prior to distribution of the estate to the individuals found entitled thereto under the provisions of section 375a of this title, the Secretary of the Interior shall collect out of the funds or other property involved and pay into the Treasury of the United States a fee of $20 in those cases where the value of the estate is $250 or more but does not exceed $1,000; a fee of $25 where the value of the estate is more than $1,000 but less than $2,000; and a fee of $30 where the value of the estate is $2,000 or more. (Dec. 24, 1942, ch. 813, § 2, 56 Stat. 1081.)

§ 375c. Same; disbursement of sums not exceeding $500 to heirs or legatees.

The Secretary of the Interior is granted authority to disburse to the heirs or legatees of deceased members of the Five Civilized Tribes any sum of money on deposit to the credit of such deceased Indian or Indians, not exceeding $500, where said decedent died seized of no lands or the lands have since been lawfully alienated. Said funds shall be disbursed on proof of death and heirship or bequest satisfactory to the Secretary of the Interior and his finding thereon shall be final and conclusive: *Provided,* That such transfer of funds so disbursed shall not be taxable. (Aug. 12, 1953, ch. 409, § 1, 67 Stat. 558.)

§ 375d. Disposition of estates of intestate members of Cherokee, Chickasaw, Choctaw, and Seminole Nations of Oklahoma dying without heirs.

Upon the final determination of a court having jurisdiction or by decision of the Secretary of the Interior after a period of five years from the death of the decedant, it is determined that a member of the Cherokee, Chickasaw, Choctaw, or Seminole Nations or Tribes of Oklahoma or a person of the blood of said tribes has died intestate without heirs, owning trust or restricted Indian lands in Oklahoma or an interest therein or rents or profits therefrom, such lands, interests, or profits shall escheat to the Nation or tribe from which title to the trust or restricted Indian lands or interest therein was derived and shall be held thereafter in trust by the United States for said nation or tribe. (Pub. L. 91-240, May 7, 1970, 84 Stat. 203.)

§ 376. Oaths in investigations.

Any officer or employee appointed or designated by the Secretary of the Interior or the Commissioner of Indian Affairs as special examiner in heirship cases shall be authorized to administer oaths in investigations committed to him: *Provided further,* That the provisions of this paragraph shall not apply to the Osage Indians nor to the Five Civilized Tribes of Indians in Oklahoma. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 377. Payment or deduction of cost of determining heirs.

Upon a determination of the heirs to any trust or restricted Indian property of the value of $250 or more, or to any allotment, or, after approval by the Secretary of the Interior, of any will covering such trust or restricted property, there shall be paid by such heirs, or by the beneficiaries under such will, or from the estate of the decedent, or from the proceeds of sale of the allotment, or from any trust funds belonging to the estate of the decedent, the sum of $20 where the appraised value of the estate of the decedent is $250 or more and does not exceed $1,000. Where the appraised value of the estate of the decedent is more than $1,000 and less than $2,000, $25; where the appraised value of the estate of the decedent is $2,000 or more and does not exceed $3,000, $30; where the appraised value of the estate of the decedent is more than $3,000 but does not exceed $5,000, $50; where the appraised value of the estate of the decedent is more than $5,000 but does not exceed $7,500, $65; and where the appraised value of the estate of the decedent is more than $7,500, $75; which amount shall be accounted for and paid into the Treasury of the United States: *Provided,* That the provisions of this paragraph shall not apply to the Osage Indians nor to the Five Civilized Tribes of Oklahoma. (Jan. 24, 1923, ch. 42, 42 Stat. 1185; May 29, 1928, ch. 901, § 1 (84), 45 Stat. 992.)

AMENDMENTS

1928—Act May 29, 1928, eliminated requirement that the Secretary of the Interior make to the Congress an annual report on or before the first Monday in December of moneys collected and deposited in the Treasury of the United States.

SIMILAR PROVISIONS

Similar provisions were contained in prior appropriation acts:

1914—Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.
1913—June 30, 1913, ch. 4, § 1, 38 Stat. 80.

§ 378. Partition of allotment among heirs; patents.

If the Secretary of the Interior shall find that any inherited trust allotment or allotments are capable of partition to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (May 18, 1916, ch. 125, § 1, 39 Stat. 127.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 379. Sale of allotted lands by heirs.

The adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent, but in case of minor heirs their interests shall be sold only by a guardian duly appointed by the proper court upon the order of such court, made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser, the same as if a final patent without restriction upon the alienation had been issued to the allottee. All allotted land so alienated by the heirs of an Indian allottee and all land so patented to a white allottee shall thereupon be subject to taxation under the laws of the State or Territory where the same is situate: *Provided,* That the sale herein provided for shall not apply to the homestead during the life of the father, mother, or the minority of any child or children. (May 27, 1902, ch. 888, § 7, 32 Stat. 275.)

CROSS REFERENCES

Allotments of deceased Indians located within limits of National Forest in Minnesota may be relinquished by the heirs to the United States, see act May 23, 1908, ch. 193, § 3, 39 Stat. 271.

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 380. Lease of inherited allotments by superintendent.

Restricted allotments of deceased Indians may be leased, except for oil and gas mining purposes, by the superintendents of the reservation within which the lands are located (1) when the heirs or devisees of such decedents have not been determined and (2) when the heirs or devisees of the decedents have been determined, and such lands are not in use by any of the heirs and the heirs have not been able during a three-months' period to agree upon a lease by reason of the number of the heirs, their absence from the reservation, or for other cause, under such rules and regulations as the Secretary of the Interior may prescribe. The proceeds derived from such leases shall be credited to the estates or other accounts of the individuals entitled thereto in accordance with their respective interests. (July 8, 1940, ch. 554, 54 Stat. 745.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Navajo and Hopi Indians, lease of restricted allotments of deceased Indians in connection with rehabilitation program, by persons prescribed in this section, see section 635 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403c, 415a, 416c, 635 of this title.

Chapter 11.—IRRIGATION OF ALLOTTED LANDS

Sec.
381. Irrigation lands; regulation of use of water.
382. Irrigation projects under Reclamation Act.
383. Estimates of cost; limitations as to.
384. Employment of superintendents of irrigation.
385. Maintenance charges; reimbursement of construction costs; apportionment of cost.
386. Reimbursement of construction charges.
386a. Adjustment of reimbursable debts; construction charges.
387. Basis of apportionment of costs of irrigation projects including maintenance; liens.
388. Claims for damages; settlement by agreement.
389. Investigation and adjustment of irrigation charges on lands within projects on Indian reservations.
389a. Same; declaring lands to be temporarily nonirrigable.
389b. Elimination to permanently nonirrigable lands.
389c. Same; cancellation of charges in absence of lien or contract for payment.
389d. Same; rules and regulations.
389e. Same; reports to Congress.
390. Concessions on reservoir sites and other lands in Indian irrigation projects; leases for agricultural, grazing, and other purposes.

§ 381. Irrigation lands; regulation of use of water.

In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor. (Feb. 8, 1887, ch. 119, § 7, 24 Stat. 390.)

CROSS REFERENCES

Cancellation of trust patents within power or reservoir sites, see section 352 of this title.

Irrigation projects under Reclamation Act to be carried on under such arrangements and agreements as Secretary of Interior deems for best interests of the Indians, see section 382 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 339, 340, 341, 342, 348, 349, 350 of this title.

§ 382. Irrigation projects under Reclamation Act.

In carrying out any irrigation project which may be undertaken under the provisions of the Reclamation Act, and which may make possible, and provide for in connection with the reclamation of other lands, the irrigation of all or any part of the irrigable lands heretofore included in allotments made to Indians under section 334 of this title, the Secretary of the Interior is authorized to make such arrangement and agreement in reference thereto as said Secretary deems for the best interest of the Indians: *Provided,* That no lien or charge for construction, operation, or maintenance shall thereby be created against any such lands. (Apr. 30, 1908, ch. 153, 35 Stat. 85; Mar. 3, 1909, ch. 263, 35 Stat. 798.)

REFERENCES IN TEXT

The Reclamation Act, referred to in text, is classified to sections 372, 373, 381 [repealed], 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, 498, and 1457 of Title 43, Public Lands.

CODIFICATION

A further proviso authorized the expenditure of a limited amount from the appropriation in the act for irrigation, to meet the cost of carrying out this section, and was omitted as temporary.

§ 383. Estimates of cost; limitations as to.

No new irrigation project on any Indian reservation, allotments, or lands, shall be undertaken until it shall have been estimated for and a maximum limit of cost ascertained from surveys, plans, and reports submitted by the chief irrigation engineer in the Indian Service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and such limit of cost shall in no case be exceeded without express authorization of Congress, and no project to cost in the aggregate to exceed $35,000 shall be undertaken on any Indian reservation or allotment, without specific authority of Congress. (Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 384. Employment of superintendents of irrigation.

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation who shall be skilled irrigation engineers, not to exceed seven in number. (Apr. 4, 1910, ch. 140, § 1, 36 Stat. 271.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 385. Maintenance charges; reimbursement of construction costs; apportionment of cost.

For lands irrigable under any irrigation system or reclamation project the Secretary of the Interior may fix maintenance charges which shall be paid as he may direct, such payments to be available for use in maintaining the project or system for which collected: *Provided further,* That all moneys expended under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided further,* That the Secretary of the Interior is authorized and directed to apportion the cost of any irrigation project constructed for Indians and made reimbursable out of tribal funds of said Indians in accordance with the benefits received by each individual Indian so far as practicable from said irrigation project, said cost to be apportioned against such individual Indian under such rules, regulations, and conditions as the Secretary of the Interior may prescribe. (Apr. 4, 1910, ch. 140, §§ 1, 3, 36 Stat. 270, 272; Aug. 1, 1914, ch. 222, § 1, 38 Stat. 583; Aug. 7, 1946, ch. 770, § 1 (8), 60 Stat. 867.)

AMENDMENTS

1946—Act Aug. 7, 1946, repealed the provisions requiring the Secretary of the Interior to transmit annual cost accounts to Congress of all moneys expended on each irrigation project.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 615mm.

§ 386. Reimbursement of construction charges.

The Secretary of the Interior is authorized and directed to require the owners of irrigable land under any irrigation system constructed for the benefit of Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges, where reimbursement is required by law, at such times and in such amounts as he may deem best; all payments hereunder to be credited on a per acre basis in favor of the land in behalf of which such payments shall have been made and to be deducted from the total per acre charge assessable against said land. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 409.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 386a of this title.

§ 386a. Adjustment of reimbursable debts; construction charges.

The Secretary of the Interior is authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: *Provided,* That the collection of all construction costs against any Indian-owned lands within any Government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such lands in accordance with the provisions of section 386 of this title, and uncollected, are hereby canceled: *Provided further,* That a report shall be made to Congress annually, on the first Monday in December, showing adjustments so made during the preceding fiscal year: *Provided further,* That any proceedings hereunder shall not be effective until approved by Congress unless Congress shall have failed to act favorably or unfavorably thereon by concurrent resolution within sixty legislative days after the filing of said report, in which case they shall become effective at the termination of the said sixty legislative days. (July 1, 1932, ch. 369, 47 Stat. 564.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 564*l* of this title; title 43 sections 620c, 1542.

§ 387. Basis of apportionment of costs of irrigation projects including maintenance; liens.

CODIFICATION

Section, which related to basis of apportionment of costs of irrigation projects was from the Interior Department Appropriation Act, 1946, July 3, 1945, ch. 262, § 1, 59 Stat. 328, and was not repeated in the Interior Department Appropriation Act of 1947, act July 1, 1946, ch. 529, 60 Stat. 348.

SIMILAR PROVISIONS

Provisions similar to those of the Interior Department Appropriation Act, 1946, were in the following prior acts:

1944—June 28, 1944, ch. 298, § 1, 58 Stat. 474.
1943—July 12, 1943, ch. 219, § 1, 57 Stat. 461.
1942—July 2, 1942, ch. 473, § 1, 56 Stat. 518.
1941—June 28, 1941, ch. 259, § 1, 55 Stat. 317.
1940—June 18, 1940, ch. 395, § 1, 54 Stat. 419.
1939—May 10, 1939, ch. 119, § 1, 53 Stat. 700.
1938—May 9, 1938, ch. 187, § 1, 52 Stat. 304.
1937—Aug. 9, 1937, ch. 570, § 1, 50 Stat. 577.
1936—June 22, 1936, ch. 691, § 1, 49 Stat. 1769.
1935—May 9, 1935, ch. 101, § 1, 49 Stat. 186.
1934—Mar. 2, 1934, ch. 38, § 1, 48 Stat. 370.
1933—Feb. 17, 1933, ch. 98, § 1, 47 Stat. 829.
1932—Apr. 22, 1932, ch. 125, § 1, 47 Stat. 100.
1931—Feb. 14, 1931, ch. 187, § 1, 46 Stat. 1126.
1930—May 14, 1930, ch. 273, § 1, 46 Stat. 290.
1929—Mar. 4, 1929, ch. 705, § 1, 45 Stat. 1573.
1928—Mar. 7, 1928, ch. 137, § 1, 45 Stat. 210.

§ 388. Claims for damages; settlement by agreement.

The Secretary of the Interior is authorized to pay out of funds available for the Indian irrigation projects for damages caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works of such projects and which may be compromised by agreement between the claimant and the Secretary of the Interior or such officers as he may designate: *Provided,* That the total of any such claims authorized to be settled as herein contemplated shall not exceed 5 per centum of the funds available for the project under which such claims arise during any one fiscal year. (Feb. 20, 1929, ch. 279, 45 Stat. 1252.)

§ 389. Investigation and adjustment of irrigation charges on lands within projects on Indian reservations.

The Secretary of the Interior is authorized and directed to cause an investigation to be made to determine whether the owners of non-Indian lands under Indian irrigation projects and under projects where the United States has purchased water rights for Indians are unable to pay irrigation charges, including construction, maintenance, and operating charges, because of inability to operate such lands profitably by reason of lack of fertility of the soil, inadequacy of water supply, defects of irrigation works, or for any other causes. Where the Secretary finds that said landowners are unable to make payment due to the existence of such causes, he may adjust, defer, or cancel such charges, in whole or in part, as the facts and conditions warrant. In adjusting or deferring any such charges the Secretary may enter into contracts with said land owners for the payment of past due charges, but such contracts shall not extend the payment of such charges over a period in excess of ten years. (June 22, 1936, ch. 692, § 1, 49 Stat. 1803.)

FORT PECK INDIAN IRRIGATION PROJECT

Pub. L. 90–143, Nov. 16, 1967, 81 Stat. 465, provided: "That, in accordance with provisions of the Act of June 22, 1936 (49 Stat. 1803; 25 U.S.C. 389–389e), the order of the Secretary of the Interior canceling delinquent irrigation operation and maintenance charges in the amount of $461.40 and any accrued interest thereon for certain lands adjacent to but outside the boundary of the Fort Peck Indian irrigation project, Montana, and reimbursable irrigation construction costs in the amount of $206,902.21 against lands within the Fort Peck Indian irrigation project, Montana, as listed and described in schedules referred to in such order, is hereby approved.

"SEC. 2. Unassessed construction costs of $118,266.64 allocable against both the Indian- and non-Indian-owned lands in the Frazier-Wolf Point unit of the Fort Peck Indian irrigation project, Montana, are hereby canceled."

WIND RIVER INDIAN IRRIGATION PROJECT

Pub. L. 88–116, Sept. 6, 1963, 77 Stat. 151, provided: "That, in accordance with the provision of the Act of June 22, 1936 (49 Stat. 1803, 25 U.S.C. 389—389e, the order of the Secretary of the Interior canceling delinquent operation and maintenance irrigation charges in the amount of $1,134.99, which includes both principal and accrued interest thereon, against lands on the Wind River Indian irrigation project, Wyoming, described as the northwest quarter northwest quarter, southwest quarter northwest quarter of section 9, township 1 south, range 4 east, Wind River meridian, and a contract for the deferred payment of delinquent charges in the amount of $2,331.59, are hereby approved."

Pub. L. 87–516, July 2, 1962, 76 Stat. 128, provided: "That, in accordance with the provisions of the Act of June 22, 1936 (49 Stat. 1803, 25 U.S.C. 389—389e), the order of the Secretary of the Interior, canceling $36,439.70 of delinquent irrigation charges, plus accrued interest thereon, and providing for the deferred payment of $8,706.27, as shown on schedules A, B, and C, which are referred to in such order, is hereby approved; *Provided,* That the cancellation of $2,093.14 under schedule B shall not become effective until the landowners have executed contracts as provided in the Act of June 22, 1936, agreeing to pay the balance of such delinquent charges amounting to $1,556.40".

FLATHEAD INDIAN IRRIGATION PROJECT

Act July 26, 1947, ch. 340, 61 Stat. 494, provided that notwithstanding any provisions of sections 389—389e of this title, the Secretary of the Interior could defer the collection of irrigation construction charges on the Flathead Indian Irrigation Project until January 1, 1949.

UINTAH INDIAN IRRIGATION PROJECT

Action of Secretary of the Interior taken pursuant to authority contained in sections 389—389e of this title with respect to lands within the Uintah Indian Irrigation Project was confirmed by Congress in act May 28, 1941, ch. 142, 55 Stat. 209.

Pub. L. 91–403, § § 1–5, Sept. 18, 1970, 84 Stat. 843, 844 authorized the Secretary of Interior to reimburse the Ute Tribe of the Uintah and Ourau Reservation for tribal funds that were used to construct, operate, and maintain the Uintah Indian irrigation project, Utah.

OROVILLE-TONASKET IRRIGATION DISTRICT

Action of the Secretary of the Interior taken on May 19, 1942, pursuant to authority contained in sections 389—389e of this title with respect to lands within the Oroville-Tonasket Irrigation District was confirmed by Congress in act Dec. 24, 1942, ch. 816, 56 Stat. 1082.

WAPATO INDIAN IRRIGATION PROJECT

In accordance with sections 389—389e of this title, order of Secretary of the Interior dated Sept. 12, 1962, canceling $4,494.58 of delinquent irrigation charges, providing for the deferred payment of $10,356.03, and providing for the removal of 78.12 acres of assessable land from the Wapato Indian irrigation project, was approved by Pub. L. 88–159, Oct. 28, 1963, 77 Stat. 278.

In accordance with sections 389—389e of this title, order of Secretary of the Interior canceling $35,700.72 of delinquent irrigation charges, providing for the deferred payment of $13,851.98, and providing for the removal of two hundred thirty-two and fifty-six one hundredths acres of assessable land from the Wapato Indian irrigation project, was approved by Pub. L. 86–281, Sept. 16, 1959, 73 Stat. 564.

Action by the Secretary of the Interior taken Sept. 9, 1942, pursuant to authority contained in sections 389—389e of this title with respect to lands within the Wapato Indian irrigation project was confirmed in act Dec. 24, 1942, ch. 815, 56 Stat. 1081.

KLAMATH INDIAN IRRIGATION PROJECT

In accordance with sections 389—389e of this title, the order of the Secretary of Interior canceling $401,440.55 of reimbursable irrigation costs and any accrued interest thereon chargeable to lands in the Klamath Indian irrigation project, was approved by Pub. L. 88-456, Aug. 20, 1964, 78 Stat. 554.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 389d, 389e of this title.

§ 389a. Same; declaring lands to be temporarily nonirrigable.

Where the Secretary finds that any such lands cannot be cultivated profitably due to a present lack of water supply, proper drainage facilities, or need of additional construction work, he shall declare such lands temporarily nonirrigable for periods not to exceed five years and no charges shall be assessed against such lands during such periods. (June 22, 1936, ch. 692, § 2, 49 Stat. 1804.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 389d, 389e of this title.

§ 389b. Elimination to permanently nonirrigable lands.

Where the Secretary finds that any such lands are permanently nonirrigable he may, with the consent of the landowner, eliminate such lands from the project. (June 22, 1936, ch. 692, § 3, 49 Stat. 1804.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 389d, 389e of this title.

§ 389c. Same; cancellation of charges in absence of lien or contract for payment.

Where irrigation assessments against any such lands remained unpaid at the time the Indian title to such lands became extinguished and no lien existed and attached to such lands for the payment of charges so assessed and no contract for the payment of such charges was entered into, the Secretary shall cancel all such charges. (June 22, 1936, ch. 692, § 4, 49 Stat. 1804.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 389d, 389e of this title.

§ 389d. Same; rules and regulations.

The Secretary shall have power to make such rules and regulations as may be necessary to carry out the provisions of sections 389 to 389c of this title. (June 22, 1936, ch. 692, § 5, 49 Stat. 1804.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 389e of this title.

§ 389e. Same; reports to Congress.

The Secretary shall make reports to the Congress on the first Monday of each regular session, and from time to time thereafter, showing the action taken under the provisions of sections 389 to 389d of this title during the preceding year. No proceedings under such sections shall become effective until approved by the Congress. (June 22, 1936, ch. 692, § 6, 49 Stat. 1804.)

APPROVAL OF SECRETARY'S ACTION

The action of the Secretary of the Interior in deferring the collection of certain irrigation charges against lands under the Blackfeet Indian irrigation project in Montana was approved by Joint Res. Apr. 11, 1940, ch. 78, 54 Stat. 105.

§ 390. Concessions on reservoir sites and other lands in Indian irrigation projects; leases for agricultural, grazing, and other purposes.

The Secretary of the Interior be, and he is, authorized, in his discretion, to grant concessions on reservoir sites, reserves for canals or flowage areas, and other lands under his jurisdiction which have been withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead, and Duck Valley or Western Shoshone irrigation projects for the benefit in whole or in part of Indians, and to lease such lands for agricultural, grazing, or other purposes: *Provided,* That no lands so leased shall be eligible for benefit payments under the crop control program, or the soil conservation act: *Provided further,* That such concessions may be granted or lands leased by the Secretary of the Interior under such rules, regulations, and laws as govern his administration of the public domain as far as applicable, for such considerations, monetary or otherwise, and for such periods of time as he may deem proper, the term of no concession to exceed a period of ten years: *Provided further,* That the funds derived from such concessions or leases, except funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure in accordance with the existing laws in the operation and maintenance of the irrigation projects with which they are connected. Any funds derived from reserves for which the tribe has not been compensated shall be deposited to the credit of the proper tribe: *Provided further,* That where tribal lands of any Indian tribe organized under section 476 of this title, have been withdrawn or reserved for the purposes hereinbefore mentioned, such lands may be leased or concessions may be granted thereon only by the proper tribal authorities, upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws or charter of the respective tribes. (Apr. 4, 1938, ch. 63, 52 Stat. 193.)

Chapter 12.—LEASE, SALE, OR SURRENDER OF ALLOTTED OR UNALLOTTED LANDS

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§ 391. Continuance of restrictions on alienation in patent.

Prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or shall be issued under any law or treaty the President may, in his discretion, continue such restrictions on alienation for such period as he may deem best: *Provided, however,* That this shall not apply to lands in the former Indian Territory. (June 21, 1906, ch. 3504, 34 Stat. 326.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

Extension of trust periods expiring in 1943, and extension of trust periods of certain lands, see notes under section 348 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 348a of this title.

§ 391a. Sale for town site; removal of restriction.

For the purpose of allowing any Indian allottee to sell for townsite purposes any portion of the lands allotted to him, the Secretary of the Interior may, by order, remove restrictions upon the alienation of such lands and issue fee-simple patents therefor under such rules and regulations as he may prescribe. (June 21, 1906, ch. 3504, 34 Stat. 373.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 392. Consent to or approval of alienation of allotments by Secretary of Interior.

Whenever, in any law or treaty or in any patent issued to Indian allottees for lands in severalty pursuant to such law or treaty, there appears a provision to the effect that the lands so allotted cannot be alienated without the consent of the President of the United States, the Secretary of the Interior shall have full power and authority to consent to or approve of the alienation of such allotments, in whole or in part, in his discretion, by deed, will, lease, or any other form of conveyance, and such consent or approval by the Secretary of the Interior had in all such cases shall have the same force and legal effect as though the consent or approval of the President had previously been obtained: *Provided, however,* That the approval by the Secretary of the Interior of wills by Indian allottees or their heirs involving lands held under such patents shall not operate to remove the restrictions against alienation unless such

order of approval by said Secretary shall specifically so direct. (Sept. 21, 1922, ch. 367, § 6, 42 Stat. 995.)

CROSS REFERENCES

Certain lands not to be allotted in severalty to any Indian, see section 461 of this title.

§ 393. Leases of restricted allotments.

The restricted allotment of any Indian may be leased for farming and grazing purposes by the allottee or his heirs, subject only to the approval of the superintendent or other officer in charge of the reservation where the land is located, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That this provision shall not apply to the Five Civilized Tribes. (Mar. 3, 1921, ch. 119, § 1, 41 Stat. 1232.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Lease of inherited allotments by superintendent in certain cases, see section 380 of this title.

§ 393a. Same; lands of Five Civilized Tribes.

From and after thirty days from February 11, 1936 the restricted lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, may be leased for periods of not to exceed five years for farming and grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe and not otherwise. Such leases shall be made by the owner or owners of such lands, if adults, subject to approval by the superintendent or other official in charge of the Five Civilized Tribes Agency, and by such superintendent or other official in charge of said agency in cases of minors and of Indians who are non compos mentis. (Feb. 11, 1936, ch. 50, 49 Stat. 1135.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 394. Leases of arid allotted lands.

Whenever it shall appear to the satisfaction of the Secretary of the Interior that the allotted lands of any Indian are arid but susceptible of irrigation and that the allottee, by reason of old age or other disability, cannot personally occupy or improve his allotment or any portion thereof, such lands, or such portion thereof, may be leased for a period not exceeding ten years, under such terms, rules, and regulations as may be prescribed by the Secretary of the Interior. (May 18, 1916, ch. 125, § 1, 39 Stat. 128.)

CROSS REFERENCES

Restricted allotments authorized to be leased for farming and grazing purposes, see section 393 of this title.

§ 395. Leases of allotted lands where allottee is incapacitated.

Whenever it shall be made to appear to the Secretary of the Interior that, by reason of age, disability, or inability, any allottee of Indian lands cannot personally, and with benefit to himself, occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years, for farming purposes only. (May 31, 1900, ch. 598, § 1, 31 Stat. 229.)

CODIFICATION

Act May 31, 1900 is applicable to "any allottee of Indian lands" and authorizes leases "for a term not exceeding five years, for farming purposes only" and supersedes the following prior provisions:

1897—Act June 7, 1897, ch. 3, § 1, 30 Stat. 85.
1896—Act June 10, 1896, ch. 398, § 1, 29 Stat. 340.
1895—Act Mar. 2, 1895, ch. 188, § 1, 28 Stat. 900.
1894—Act Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305.

OTHER LEASING PROVISIONS

Special provisions for leasing allotted lands on certain reservations named in Utah and in Wyoming, for cultivation under irrigation, were made by act Apr. 30, 1908, ch. 153, 35 Stat. 95, 97.

Special provisions permitting Indians to whom lands have been allotted on the Yakima Indian reservation in the State of Washington, to lease such lands for agricultural purposes for a term not exceeding 5 years, or unimproved lands for a term not exceeding 10 years were made by acts May 31, 1900, ch. 598, § 1, 31 Stat. 246; Mar. 1, 1899, ch. 324, § 1, 30 Stat. 941.

CROSS REFERENCES

Lands held in trust may be leased by allottee for period not to exceed five years under rules and regulations of the Secretary of the Interior, see section 403 of this title.

Leases of arid allotted lands susceptible of irrigation where Indian is unable personally to occupy and improve his allotment, see section 394 of this title.

§ 396. Leases of allotted lands for mining purposes.

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this section into full force and effect: *Provided,* That if the said allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, the Secretary of the Interior may offer for sale leases for mining purposes to the highest responsible qualified bidder, at public auction, or on sealed bids, after notice and advertisement, upon such terms and conditions as the Secretary of the Interior may prescribe. The Secretary of the Interior shall have the right to reject all bids

whenever in his judgment the interests of the Indians will be served by so doing, and to readvertise such lease for sale. (Mar. 3, 1909, ch. 263, 35 Stat. 783; Aug. 9, 1955, ch. 615, § 3, 69 Stat. 540.)

AMENDMENTS

1955—Act Aug. 9, 1955, authorized the Secretary of Interior to lease allotted lands for mining purposes where the allottee is deceased and the heirs to or devisees of any interest in the allotment either have not been determined or cannot be located.

CROSS REFERENCES

Lands held in trust may be leased by allottee for period not to exceed five years under rules and regulations of the Secretary of the Interior, see section 403 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 396g, 415a, 415b, 415c, 415d of this title.

§ 396a. Leases of unallotted lands for mining purposes; duration of leases.

On and after May 11, 1938, unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of this section by section 396f of this title, may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities. (May 11, 1938, ch. 198, § 1, 52 Stat. 347.)

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: "All Acts or parts of Acts inconsistent herewith are hereby repealed."

CROSS REFERENCES

Wind River Indian Reservation, administration and leasing of minerals, see note set out under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 396d, 396f, 396g of this title.

§ 396b. Public auction of oil and gas leases; requirements.

Leases for oil- and/or gas-mining purposes covering such unallotted lands shall be offered for sale to the highest responsible qualified bidder, at public auction or on sealed bids, after notice and advertisement, upon such terms and subject to such conditions as the Secretary of the Interior may prescribe. Such advertisement shall reserve to the Secretary of the Interior the right to reject all bids whenever in his judgment the interest of the Indians will be served by so doing, and if no satisfactory bid is received, or the accepted bidder fails to complete the lease, or the Secretary of the Interior shall determine that it is unwise in the interest of the Indians to accept the highest bid, said Secretary may readvertise such lease for sale, or with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations: *Provided,* That the foregoing provisions shall in no manner restrict the right of tribes organized and incorporated under sections 476 and 477 of this title, to lease lands for mining purposes as therein provided and in accordance with the provisions of any constitution and charter adopted by any Indian tribe pursuant to sections 461, 462, 463, 464 to 475, 476 to 478, and 479 of this title. (May 11, 1938, ch. 198, § 2, 52 Stat. 347.)

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: "All Acts or parts of Acts inconsistent herewith are hereby repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 396d, 396f of this title.

§ 396c. Lessees of restricted lands to furnish bonds for performance.

Lessees of restricted Indian lands, tribal or allotted, for mining purposes, including oil and gas, shall furnish corporate surety bonds, in amounts satisfactory to the Secretary of the Interior, guaranteeing compliance with the terms of their leases: *Provided,* That personal surety bonds may be accepted where the sureties deposit as collateral with the said Secretary of the Interior any public-debt obligations of the United States guaranteed as to principal and interest by the United States equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership to unencumbered real estate of a value equal to twice the amount of the bonds. (May 11, 1938, ch. 198, § 3, 52 Stat. 348.)

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: "All Acts or parts of Acts inconsistent herewith are hereby repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 396d, 396f of this title.

§ 396d. Rules and regulations governing operations; limitations on oil or gas leases.

All operations under any oil, gas, or other mineral lease issued pursuant to the terms of any act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior. In the discretion of the said Secretary, any lease for oil or gas issued under the provisions of sections 396a to 396g of this title shall be made subject to the terms of any reasonable cooperative unit or other plan approved or prescribed by said Secretary prior or subsequent to the issuance of any such lease which involves the development or production of oil or gas from land covered by such lease. (May 11, 1938, ch. 198, § 4, 52 Stat. 348.)

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: "All Acts or parts of Acts inconsistent herewith are hereby repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 396f of this title.

§ 396e. Officials authorized to approve leases.

The Secretary of the Interior may, in his discretion, authorize superintendents or other officials in the Indian Service to approve leases for oil, gas, or other mining purposes covering any restricted Indian lands, tribal or allotted. (May 11, 1938, ch. 198, § 5, 52 Stat. 348.)

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: "All Acts or parts of Acts inconsistent herewith are hereby repealed."

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 34 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 396d of this title.

§ 396f. Lands excepted from leasing provisions.

Sections 396a, 396b, 396c, and 396d of this title shall not apply to the Crow Reservation in Montana, the ceded lands of the Shoshone Reservation in Wyoming, the Osage Reservation in Oklahoma, nor to the coal and asphalt lands of the Choctaw and Chickasaw Tribes in Oklahoma. (May 11, 1938, ch. 198, § 6, 52 Stat. 348; May 27, 1955, ch. 106, § 2, 69 Stat. 68.)

AMENDMENTS

1955—Act May 27, 1955, deleted the words "the Papago Indian Reservation in Arizona,".

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: "All Acts or parts of Acts inconsistent herewith are hereby repealed."

PAPAGO INDIAN RESERVATION

Section 1 of act May 27, 1955, authorized the leasing of minerals for mining purposes. See note under section 463 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 396a, 396d of this title.

§ 396g. Subsurface storage of oil or gas.

The Secretary of the Interior, to avoid waste or to promote the conservation of natural resources or the welfare of the Indians, is authorized in his discretion to approve leases of lands that are subject to lease under section 396 or 396a of this title, for the subsurface storage of oil and gas, irrespective of the lands from which initially produced, and the Secretary is authorized, in order to provide for the subsurface storage of oil or gas, to approve modifications, amendments, or extensions of the oil and gas or other mining lease(s), if any, in effect as to restricted Indian lands, tribal or allotted, and may promulgate rules and regulations consistent with such leases, modifications, amendments, and extensions, relating to the storage of oil or gas thereunder. Any such leases may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. It may be provided that any oil and gas lease under which storage of oil or gas is so authorized shall be continued in effect at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities. (May 11, 1938, ch. 198, § 8, as added Aug. 1, 1956, ch. 808, 70 Stat. 774.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 396d of this title.

§ 397. Leases of lands for grazing or mining.

Where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior. (Feb. 28, 1891, ch. 383, § 3, 26 Stat. 795.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Cherokee Outlet, provisions inapplicable to, see section 371 of this title.

Lands held in trust may be leased by allottee for period not to exceed five years under rules and regulations of Secretary of Interior, see section 403 of this title.

Unallotted lands authorized to be leased for oil and gas, mining purposes, see section 398 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 371, 398 of this title.

§ 398. Leases of unallotted lands for oil and gas mining purposes.

Unallotted land on Indian reservations other than lands of the Five Civilized Tribes and the Osage Reservation subject to lease for mining purposes for a period of ten years under section 397 of this title may be leased at public auction by the Secretary of the Interior, with the consent of the council speaking for such Indians, for oil and gas mining purposes for a period of not to exceed ten years, and as much longer as oil or gas shall be found in paying quantities, and the terms of any existing oil and gas mining lease may in like manner be amended by extending the term thereof for as long as oil or gas shall be found in paying quantities: *Provided,* That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however,* That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner. (May 29, 1924, ch. 210, 43 Stat. 244.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 398a of this title.

§ 398a. Leases of unallotted lands for oil and gas mining purposes within Executive order Indian reservations.

Unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any

Indians or tribe may be leased for oil and gas mining purposes in accordance with the provisions contained in section 398 of this title. (Mar. 3, 1927, ch. 299, § 1, 44 Stat. 1347.)

§ 398b. Same; proceeds from rentals, royalties, and bonuses; disposition.

The proceeds from rentals, royalties, or bonuses of oil and gas leases upon lands within Executive order Indian reservations or withdrawals shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created or who are using and occupying the land, and shall draw interest at the rate of 4 per centum per annum and be available for appropriation by Congress for expenses in connection with the supervision of the development and operation of the oil and gas industry and for the use and benefit of such Indians: *Provided,* That said Indians, or their tribal council, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by Act of Congress. (Mar. 3, 1927, ch. 299, § 2, 44 Stat. 1347.)

§ 398c. Same; taxes.

Taxes may be levied and collected by the State or local authority upon improvements, output of mines or oil and gas wells, or other rights, property, or assets of any lessee upon lands within Executive order Indian reservations in the same manner as such taxes are otherwise levied and collected, and such taxes may be levied against the share obtained for the Indians as bonuses, rentals, and royalties, and the Secretary of the Interior is authorized and directed to cause such taxes to be paid out of the tribal funds in the Treasury: *Provided,* That such taxes shall not become a lien or charge of any kind against the land or other property of such Indians. (Mar. 3, 1927, ch. 299, § 3, 44 Stat. 1347.)

§ 398d. Same; changes in boundaries of Executive order reservations.

Changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided,* That this shall not apply to temporary withdrawals by the Secretary of the Interior. (Mar. 3, 1927, ch. 299, § 4, 44 Stat. 1347.)

§ 398e. Same; applications for permits to prospect for oil and gas filed under other statutes; disposition.

The Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to allow any person who prior to May 27, 1924, filed an application for a permit in accordance with the provisions of the Act of February 25, 1920, to prospect for oil and gas upon lands within an Indian reservation or withdrawal created by Executive order who shall show to the satisfaction of the Secretary of the Interior that he, or the party with whom he has contracted, has done prior to January 1, 1926, any or all of the following things, to wit, expended money or labor in geologically surveying the lands covered by such application, has built a road for the benefit of such lands, or has drilled or contributed toward the drilling of the geologic structure upon which such lands are located, or who in good faith has either filed a motion for reinstatement or rehearing; or performed any other act which in the judgment of the Secretary of the Interior entitles him to equitable relief, to prospect for a period of two years from March 3, 1927, or for such further time as the Secretary of the Interior may deem reasonable or necessary for the full exploration of the land described in his application under the terms and conditions therein set out, and a substantial contribution toward the drilling of the geologic structure thereon by such applicant for a permit thereon may be considered as prospecting under the provisions hereof; and upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any such application, he shall be entitled to a lease for one-fourth of the land embraced in the application: *Provided,* That the applicant shall be granted a lease for as much as one hundred and sixty acres of said lands if there be that number of acres within the application. The area to be selected by the applicant shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public land surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposit made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they may accrue for that year, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior. The applicant shall also be entitled to a preference right to a lease for the remainder of the land in his application at a royalty of not less than 12½ per centum in amount or value of the production, the royalty to be determined by competitive bidding or fixed by such other methods as the Secretary of the Interior may by regulations prescribe: *Provided further,* That the Secretary of the Interior shall have the right to reject any or all bids. (Mar. 3, 1927, ch. 299, § 5, 44 Stat. 1347.)

REFERENCES IN TEXT

The act of February 25, 1920, referred to in the text, is classified to chapter 3A of Title 30, Mineral Lands and Mining.

§ 399. Leases of unallotted mineral lands withdrawn from entry under mining laws.

Authority of Secretary of Interior to lease.—The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him and under such terms and conditions as he may prescribe, not inconsistent with the terms of this section, to lease to citizens of the United States, or

to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof, any part of the unallotted lands within any Indian reservation within the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, or Wyoming withdrawn prior to June 30, 1919, from entry under the mining laws for the purpose of mining for deposits of gold, silver, copper, and other valuable metalliferous minerals, and nonmetalliferous minerals, not including oil and gas, which leases shall be irrevocable, except as herein provided, but which may be declared null and void upon breach of any of their terms.

Location of mining claims.—Unallotted lands, or such portion thereof as the Secretary of the Interior shall determine, within Indian reservations withheld prior to June 30, 1919, from disposition under the mining laws may be declared by the Secretary of the Interior to be subject to exploration for the discovery of deposits of gold, silver, copper, and other valuable metalliferous minerals and nonmetalliferous minerals, not including oil and gas, by citizens of the United States, and after such declaration mining claims may be located by such citizens in the same manner as mining claims are located under the mining laws of the United States.

Preference right of locators of claims to lease of lands.—The locators of all such mining claims, or their heirs, successors, or assigns, shall have a preference right to apply to the Secretary of the Interior for a lease, under the terms and conditions of this section, within one year after the date of the location of any mining claim, and any such locator who shall fail to apply for a lease within one year from the date of location shall forfeit all rights to such mining claim.

Filing copies of location notices.—Duplicate copies of the location notice shall be filed within sixty days with the superintendent in charge of the reservation on which the mining claim is located, and application for a lease under this section may be filed with such superintendent for transmission, through official channels, to the Secretary of the Interior.

Lands excepted from entry as mining claims.—Lands containing springs, water holes, or other bodies of water needed or used by the Indians for watering livestock, irrigation, or water-power purposes shall not be designated by the Secretary of the Interior as subject to entry under this section.

Term of lease; renewal.—Leases under this section shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

Relinquishment of rights by lessee.—The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease and upon acceptance thereof be thereby relieved of all future obligations under said lease.

Lease of additional land for camp sites and other purposes.—In addition to areas of mineral land to be included in leases under this section the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, subject to the payment of an annual rental of not less than $1 per acre, a tract of unoccupied land, not exceeding forty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

Reservation of surface of leased land to United States; easements.—The Secretary of the Interior, in his discretion, in making any lease under this section, may reserve to the United States the right to lease for a term not exceeding that of the mineral lease, the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided,* That the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

Rights and duties of successors to lessees.—Any successor in interest or assignee of any lease granted under this section, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the lease under which such rights are held and also subject to all the provisions and conditions of this section to the same extent as though such successor or assign were the original lessee hereunder.

Forfeiture of leases; notice.—Any lease granted under this section may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some part thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this section or with such conditions not inconsistent herewith as may be specifically recited in the lease.

Royalties payable by lessees.—For the privilege of mining or extracting the mineral deposits in the ground covered by the lease the lessee shall pay to the United States, for the benefit of the Indians, a royalty which shall not be less than 5 per centum of the net value of the output of the minerals at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine, and an annual rental, payable at the date of such lease and annually thereafter on the area covered by such lease, at the rate of not less than 25 cents per acre for the first calendar year thereafter; not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively; and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

Development work by locators or lessees; damage to land.—In addition to the payment of the royalties and rentals as herein provided the lessee shall expend annually not less than $100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States: *Provided,* That the lessee shall also agree to pay all damages occasioned by

reason of his mining operations to the land or allotment of any Indian or to the crops or improvements thereon.

Cutting timber by lessees.—No timber shall be cut upon the reservation by the lessee except for mining purposes and then only after first obtaining a permit from the superintendent of the reservation and upon payment of the fair value thereof.

Examination of books and accounts of lessees.—The Secretary of the Interior is authorized to examine the books and accounts of lessees, and to require them to submit statements, representations, or reports, including information as to cost of mining, all of which statements, representations, or reports so required shall be upon oath, unless otherwise specified, and in such form and upon such blanks as the Secretary of the Interior may require; and any person making any false statement, representation, or report under oath shall be subject to punishment as for perjury.

Disposition of rentals and royalties.—All moneys received from royalties and rentals under the provisions of this section shall be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the reservation where the leased land is located, which moneys shall be at all times subject to appropriation by Congress for their benefit, unless otherwise provided by treaty or agreement ratified by Congress: *Provided,* That such moneys shall be subject to the laws authorizing the pro rata distribution of Indian tribal funds.

Protection of interests of Indians.—The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations not inconsistent with this section as may be necessary and proper for the protection of the interests of the Indians and for the purpose of carrying the provisions of this section into full force and effect: *Provided,* That nothing in this section shall be construed or held to affect the right of the States or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee.

Mining locations by and leases to Indians declared competent.—Mining locations, under the terms of this section, may be made on unallotted lands within Indian reservations by Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs; and the said Secretary is authorized and empowered to lease such lands to such Indians in accordance with the provisions of this section.

Mining locations by and leases to other Indians.—The Secretary of the Interior is authorized to permit other Indians to make locations and obtain leases under the provisions of this section, under such rules and regulations as he may prescribe in regard to the working, developing, disposition, and selling of the products, and the disposition of the proceeds thereof of any such mine by such Indians.

"Metalliferous" defined.—Wherever the term "metalliferous" is used in this section it shall be defined and construed by the Secretary of the Interior to include magnesite, gypsum, limestone, and asbestos. (June 30, 1919, ch. 4, § 26, 41 Stat. 31; Mar. 3, 1921, ch. 119, § 1, 41 Stat. 1231; Dec. 16, 1926, ch. 12, 44 Stat. 922.)

CODIFICATION

Act Mar. 3, 1921, defined the term "metalliferous".

AMENDMENTS

1926—Act Dec. 16, 1926, inserted "and nonmetalliferous minerals, not including oil and gas" following "metalliferous minerals" in the first and second paragraphs and reenacted the third, fourth, and fifth paragraphs without change.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Ute Indians, division of trust funds deposited in Treasury pursuant to this section, see section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 672 of this title.

§ 400. Leases for mining purposes of reserved and unallotted lands in Fort Peck and Blackfeet Indian Reservations.

Lands reserved for school and agency purposes and all other unallotted lands on the Fort Peck and Blackfeet Indian Reservations, in the State of Montana, reserved from allotment or other disposition, may be leased for mining purposes under regulations prescribed by the Secretary of the Interior. (Sept. 20, 1922, ch. 347, 42 Stat. 857.)

§ 400a. Lease for mining purposes of land reserved for agency or school; disposition of proceeds; royalty.

The Secretary of the Interior is authorized under such rules and regulations as he may prescribe, to lease at public auction upon not less than thirty days' public notice for mining purposes land on any Indian reservation reserved for Indian agency or school purposes, in accordance with existing law applicable to other lands in such reservation, and the proceeds arising therefrom shall be deposited in the Treasury of the United States to the credit of the Indians for whose benefit the lands are reserved subject to appropriation by Congress for educational work among the Indians or in paying expenses of administration of agencies: *Provided,* That a royalty of at least one-eighth shall be reserved in all leases. (Apr. 17, 1926, ch. 156, 44 Stat. 300.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 401. Leases for mining purposes of unallotted lands in Kaw Reservation.

The Secretary of the Interior is authorized to lease for mining purposes lands reserved from allotment

to be used as a cemetery and not needed for that purpose, and lands reserved for school and agency purposes in the Kaw Reservation in the State of Oklahoma, and for the use and benefit of the members of the Kansas or Kaw Tribe of Indians, at public auction, upon such terms and conditions and under such rules and regulations as he may prescribe: *Provided,* That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however,* That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner. (Apr. 28, 1924, ch. 135, 43 Stat. 111.)

§ 402. Leases of surplus lands.

The surplus lands of any tribe may be leased for farming purposes by the council of such tribe under the same rules and regulations and for the same term of years as was on August 15, 1894, allowed in the case of leases for grazing purposes. (Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305.)

CROSS REFERENCES

Lease on unallotted irrigable lands for farming purposes, see section 402a of this title.

§ 402a. Lease of unallotted irrigable lands for farming purposes.

The unallotted irrigable lands on any Indian reservation may be leased for farming purposes for not to exceed ten years with the consent of the tribal council, business committee, or other authorized body representative of the Indians, under such rules and regulations as the Secretary of the Interior may prescribe. (July 3, 1926, ch. 787, 44 Stat. 894.)

§ 403. Leases of lands held in trust.

Any Indian allotment held under a trust patent may be leased by the allottee for a period not to exceed five years, subject to and in conformity with such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds of any such lease shall be paid to the allottee or his heirs, or expended for his or their benefit, in the discretion of the Secretary of the Interior. (June 25, 1910, ch. 431, § 4, 36 Stat. 856.)

CROSS REFERENCES

Leases of restricted allotments and arid allotted lands, see sections 393, 394 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§ 403a. Lease of lands on Port Madison and Snohomish or Tulalip Indian Reservations in Washington.

Notwithstanding any other provision of law, any Indian lands on the Port Madison and Snohomish or Tulalip Indian Reservations in the State of Washington, may be leased by the Indians with the approval of the Secretary of the Interior, and upon such terms and conditions as he may prescribe, for a term not exceeding twenty-five years: *Provided, however,* That such leases may provide for renewal for an additional term not exceeding twenty-five years, and the Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this section. (Oct. 9, 1940, ch. 781, 54 Stat. 1057.)

§ 403a-1. Sale or partition by owners of interests in allotted lands in the Tulalip Reservation; termination of Federal title, trust, and restrictions.

Any owner of an interest in any tract of land in the Tulalip Reservation, Washington, in which any undivided interest is now or hereafter held in trust by the United States for an Indian, or is now or hereafter owned by an Indian subject to restrictions against alienation or taxation imposed by the United States, may commence in a State court of competent jurisdiction an action for the partition in kind or for the sale of such land in accordance with the laws of the State. For the purpose of any such action the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any partition or conveyance of the land pursuant to the proceedings shall divest the United States of title to the land, terminate the Federal trust, and terminate all restrictions against alienation or taxation of the land imposed by the United States. (June 18, 1956, ch. 400, § 1, 70 Stat. 290.)

§ 403a-2. Acquisition, management, and disposal of lands by Tulalip Tribe.

(a) Termination of Federal trust and restrictions on alienation.

Notwithstanding the provisions of the constitution and charter of the Tulalip Tribes of the Tulalip Reservation, any lands that are held by the United States in trust for the Tulalip Tribes, or that are subject to a restriction against alienation or taxation imposed by the United States, or that are on and after June 18, 1956, acquired by the Tulalip Tribes, may be sold by the Tulalip Tribes, with the consent of the Secretary of the Interior, on such terms and conditions as the Tulalip board of directors may prescribe, and such sale shall terminate the Federal trust or restrictions against alienation or taxation of the land; except that the trust or restricted status of said lands may be retained, upon approval of the Secretary of the Interior, in any sale thereof to any member of the Tulalip Tribes.

(b) Lands in trust.

The Secretary of the Interior may accept any transfer of title from the Tulalip Tribes for any land or fractional interest in land within the boundaries of the Tulalip Reservation, and take title to such land in the name of the United States in trust for the Tulalip Tribes, and such lands shall not be subject to taxation.

(c) Mortgages.

The Tulalip Tribes may, with the approval of the Secretary of the Interior, execute mortgages or deeds of trust to land, the title to which is held by the Tulalip Tribes or by the United States in trust for the Tulalip Tribes. Such lands shall be subject to foreclosure and sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State of Washington. For the purpose of any foreclosure or sale proceeding, the Tulalip

Tribes shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the foreclosure or sale proceeding, and any conveyance of the land pursuant to the foreclosure or sale proceeding shall divest the United States of title to the land. Title to any land redeemed or acquired by the Tulalip Tribes at such foreclosure or sale proceeding shall be taken in the name of the United States in trust for the tribes. Title to any land purchased by an individual Indian member of the Tulalip Tribes at such foreclosure sale or proceeding may, with the consent of the Secretary of the Interior, be taken in the name of the United States in trust for the individual Indian purchaser.

(d) Moneys or credits.

Any moneys or credits received or credited to the Tulalip Tribes from the sale, exchange, mortgage, or granting of any security interest in any tribal land may be used for any tribal purpose. (June 18, 1956, ch. 400, § 2, 70 Stat. 290; June 2, 1970, Pub. L. 91–274, § 1, 84 Stat. 301.)

AMENDMENTS

1970—Pub. L. 91–274 designated existing provisions as subsec. (a), in subsec. (a) as so designated substituted the Tulalip Tribes for the Tulalip Board of Directors as the agency authorized to sell tribal lands, provided for the continuance of the trust or restricted status of such lands where the purchaser thereof is any member of the Tulalip Tribes, and struck out proviso that the proceeds from the sale of tribal lands acquired otherwise than by purchase be deposited in the U.S. Treasury to the credit of the Tulalip Tribes, and added subsecs. (b) to (d).

§ 403b. Lease of restricted lands in State of Washington.

Notwithstanding any other provisions of law, with the consent in writing of the individual Indian, association of Indians, or Indian tribe concerned, any restricted Indian lands situated within the State of Washington may be leased for religious, educational, recreational, business, or public purposes, including, but not limited to, airports, experimental station, stockyards, warehouses, and grain elevators, for periods not to exceed twenty-five years under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That nothing in this section or section 403c of this title shall be deemed to authorize such leases for the exploitation of any natural resources. (Aug. 9, 1946, ch. 929, § 1, 60 Stat. 962.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403c of this title.

§ 403c. Same; identity of lessor; period of lease.

Such leases may be made only by the individual Indian owner of the land or by the authorized representatives of the tribe or group of Indians to whom the land belongs, subject to the approval of the Secretary of the Interior or his authorized representative. Restricted allotments of deceased Indians, when the heirs or devisees cannot agree on a lease, may be leased for them in the manner prescribed by section 380 of this title. No lease shall be made by or on behalf of any tribe for a longer period than is or may be authorized by the tribal constitution, charter, or ordinances. Nothing contained in this section or section 403b of this title shall be construed to repeal any authority to lease restricted lands which any Indian, Indian tribe, or official of the Department of the Interior would have in the absence of such sections. (Aug. 9, 1946, ch. 929, § 2, 60 Stat. 962.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403b of this title.

§ 404. Sale on petition of allottee or heirs.

The lands, or any part thereof, allotted to any Indian, or any inherited interest therein, which can be sold under existing law by authority of the Secretary of the Interior, except the lands in Oklahoma and the States of Minnesota and South Dakota, may be sold on the petition of the allottee, or his heirs, on such terms and conditions and under such regulations as the Secretary of the Interior may prescribe; and the lands of a minor, or of a person deemed incompetent by the Secretary of the Interior to petition for himself, may be sold in the same manner, on the petition of the natural guardian in the case of infants, and in the case of Indians deemed incompetent as aforesaid, and of orphans without a natural guardian, on petition of a person designated for the purpose by the Secretary of the Interior. When any Indian who has received an allotment of land dies before the expiration of the trust period, the Secretary of the Interior shall ascertain the legal heirs of such Indian, and if satisfied of their ability to manage their own affairs shall cause to be issued in their names a patent in fee simple for said lands; but if he finds them incapable of managing their own affairs, the land may be sold as hereinbefore provided: *Provided,* That the proceeds derived from all sales hereunder shall be used, during the trust period, for the benefit of the allottee, or heir, so disposing of his interest, under the supervision of the Commissioner of Indian Affairs: *And provided further,* That upon the approval of any sale hereunder by the Secretary of the Interior, he shall cause a patent in fee to issue in the name of the purchaser for the lands so sold: *And provided further,* That nothing in this section shall apply to the States of Minnesota and South Dakota. (May 29, 1908, ch. 216, § 1, 35 Stat. 444.)

YAKIMA INDIAN RESERVATION, WASHINGTON

Special provisions for sale of interests of Indian minors in lands of the Yakima Indian reservation, in the State of Washington, whether by direct allotment or by inheritance, were made by act Mar. 27, 1908, ch. 107, 35 Stat. 49.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Sale of land of deceased allottee, see section 372 of this title.

§ 405. Sale of allotment of noncompetent Indian.

Any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any

allotment by inheritance, may sell or convey all or any part of such allotment or such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; and any conveyance made hereunder and approved by the Secretary of the Interior shall convey full title to the land or interest so sold, the same as if fee-simple patent had been issued to the allottee. (Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 406. Sale of timber on lands held under trust.

(a) Deductions for administrative expenses; standards guiding sales.

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the owner or owners with the consent of the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses to the extent permissible under section 413 of this title, shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior. It is the intention of Congress that a deduction for administrative expenses may be made in any case unless the deduction would violate a treaty obligation or amount to a taking of private property for public use without just compensation in violation of the fifth amendment to the Constitution. Sales of timber under this subsection shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things, (1) the state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs, (2) the highest and best use of the land, including the advisability and practicality of devoting it to other uses for the benefit of the owner and his heirs, and (3) the present and future financial needs of the owner and his heirs.

(b) Undivided interests.

Upon the request of the owners of a majority Indian interest in land in which any undivided interest is held under a trust or other patent containing restrictions on alienations, the Secretary of the Interior is authorized to sell all undivided Indian trust or restricted interests in any part of the timber on such land.

(c) Unrestricted interests.

Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary of the Interior is authorized to include such unrestricted interest in a sale of the trust or restricted Indian interests in timber sold pursuant to this section, and to perform any functions required of him by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deduction from such payments of sums in lieu of administrative expenses.

(d) Representation of minors and others.

For the purposes of this Act, the Secretary of the Interior is authorized to represent any Indian owner (1) who is a minor, (2) who has been adjudicated non compos mentis, (3) whose ownership interest in a decedent's estate has not been determined, or (4) who cannot be located by the Secretary after a reasonable and diligent search and the giving of notice by publication.

(e) Emergency sales.

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the Secretary of the Interior without the consent of the owners when in his judgment such action is necessary to prevent loss of values resulting from fire, insects, disease, windthrow, or other natural catastrophes.

(f) Change in status without affecting contractual obligations.

A change from a trust or restricted status to an unrestricted status of any interest in timber that has been sold pursuant to this section shall not affect the obligations of the Secretary of the Interior under any contract of sale that is in effect at the time such change in status occurs. (June 25, 1910, ch. 431, § 8, 36 Stat. 857; Apr. 30, 1964, Pub. L. 88-301, 78 Stat. 187.)

REFERENCES IN TEXT

"This Act", referred to in subsection (d), means act June 25, 1910. For distribution of act June 25, 1910 in the Code, see tables volume.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-301 designated existing provisions as subsection (a), substituted therein "land" for "allotment", "owner or owners" for "allottee" in two instances, and "their benefit" for "his benefit", and provided for deductions for administrative expenses from proceeds of sales without violation of treaty obligations or Constitutional compensation provision, for consideration of needs and best interests of owners and heirs, and for standards guiding sales.

Subsecs. (b)—(f). Pub. L. 88-301 added subsecs. (b)—(f).

CROSS REFERENCES

Klamath Tribe timber sales, see section 564x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§ 407. Sale of timber on unallotted lands.

The timber on unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses pursuant to section 413 of this title, shall be used for the benefit of the Indians

who are members of the tribe or tribes concerned in such manner as he may direct. (June 25, 1910, ch. 431, § 7, 36 Stat. 857; Apr. 30, 1964, Pub. L. 88–301, 78 Stat. 186.)

AMENDMENTS

1964—Pub. L. 88–301 substituted "timber" for mature living and dead and down timber", provided for sale of timber in accordance with principles of sustained yield or in order to convert the land to a more desirable use, provided for deductions for administrative expenses from proceeds of sales, made the Indians who were tribal members the beneficiaries instead of the Indians of the reservation, and eliminated proviso which made the section inapplicable to Minnesota and Wisconsin.

CROSS REFERENCES

Klamath Tribe timber sales, see section 564x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§§ 407a to 407c. Omitted.

CODIFICATION

The authority granted by these sections to modify contracts of sale of tribal timber, acts Mar. 4, 1933, ch. 275, §§ 1—3, 47 Stat. 1568; June 16, 1933, ch. 104, 48 Stat. 311; Mar. 5, 1934, ch. 46, 48 Stat. 397; May 6, 1936, ch. 340, 49 Stat. 1266, expired on Sept. 4, 1936, by virtue of the amendment of May 6, 1936.

§ 407d. Charges for special services to purchasers of timber.

The Secretary of the Interior is authorized to charge purchasers of timber on Indian lands that are held by the United States in trust, or that are subject to restrictions against alienation or encumbrance imposed by the United States, for special services requested by the purchasers in connection with scaling, timber marking, or other activities under the contract of purchase that are in addition to the services otherwise provided by the Secretary, and the proceeds derived therefrom shall be deposited to the credit of the appropriation from which the special services were or will be provided. (July 30, 1956, ch. 781, 70 Stat. 721.)

§ 408. Surrender of allotments by relinquishment for benefit of children.

In any case where an Indian has an allotment of land, or any right, title, or interest in such an allotment, the Secretary of the Interior, in his discretion, may permit such Indian to surrender such allotment, or any right, title, or interest therein, by such formal relinquishment as may be prescribed by the Secretary of the Interior, for the benefit of any of his or her children to whom no allotment of land shall have been made; and thereupon the Secretary of the Interior shall cause the estate so relinquished to be allotted to such child or children subject to all conditions which attached to it before such relinquishment. (June 25, 1910, ch. 431, § 3, 36 Stat. 856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 797, 843 of this title.

§ 409. Sale of lands within reclamation projects.

Any Indian allotted lands under any law or treaty without the power of alienation, and within a reclamation project approved by the Secretary of the Interior, may sell and convey any part thereof, under rules and regulations prescribed by the Secretary of the Interior, but such conveyance shall be subject to his approval, and when so approved shall convey full title to the purchaser the same as if final patent without restrictions had been issued to the allottee: *Provided,* That the consideration shall be placed in the Treasury of the United States, and used by the Commissioner of Indian Affairs to pay the construction charges that may be assessed against the unsold part of the allotment, and to pay the maintenance charges thereon during the trust period, and any surplus shall be a benefit running with the water right to be paid to the holder thereof. (June 21, 1906, ch. 3504, 34 Stat. 327.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Fort Peck Project, acquisition of lands for, see sections 833*l*—833p of Title 16, Conservation.

§ 409a. Sale of restricted lands; reinvestment in other restricted lands.

Whenever any nontaxable land of a restricted Indian of the Five Civilized Tribes or of any other Indian tribe is sold to any State, county, or municipality for public-improvement purposes, or is acquired, under existing law, by any State, county, or municipality by condemnation or other proceedings for such public purposes, or is sold under existing law to any other person or corporation for other purposes, the money received for said land may, in the discretion and with the approval of the Secretary of the Interior, be reinvested in other lands selected by said Indian, and such land so selected and purchased shall be restricted as to alienation, lease, or incumbrance, and nontaxable in the same quantity and upon the same terms and conditions as the nontaxable lands from which the reinvested funds were derived, and such restrictions shall appear in the conveyance. (Mar. 2, 1931, ch. 374, 46 Stat. 1471; June 30, 1932, ch. 333, 47 Stat. 474.)

AMENDMENTS

1932—Act June 30, 1932, made the provisions of the section applicable to lands of any restricted Indian of any other Indian tribe, and provided for sale of lands to any State and acquisition by any State instead of only to and by the State of Oklahoma.

§ 410. Moneys from lease or sale of trust lands not liable for certain debts.

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior. (June 21, 1906, ch. 3504, 34 Stat. 327.)

§ 411. Interest on moneys from proceeds of sale.

The shares of money due minor Indians as their proportion of the proceeds from the sale of ceded or tribal Indian lands, whenever such shares have been withheld from their parents, legal guardians, or others, and retained in the United States Treasury by direction of the Secretary of the Interior, shall draw interest at the rate of 3 per centum per annum, unless otherwise provided for, from the period when such proceeds have been or shall be distributed per capita among the members of the tribe of which such minor is a member; and the Secretary of the Treasury is authorized and directed to allow interest on such unpaid amounts belonging to said minors as shall be certified by the Secretary of the Interior as entitled to draw interest under this section. (June 21, 1906, ch. 3504, 34 Stat. 327.)

§ 412. Payment of taxes from share of allottee in tribal funds.

In any case where the restrictions as to alienation have been removed with respect to any Indian allottee, or as to any portion of the lands of any Indian allottee, and such allottee as an individual, or as a member of any tribe, has an interest in any fund held by the United States beyond the amount by law chargeable to such Indian or tribe on account of advances, the Commissioner of Indian Affairs is authorized, prior to the date at which any penalties for the nonpayment of taxes would accrue under the laws of the State or Territory in which such land is situated, to pay such taxes and charge the amount thereof to such allottee, to be deducted from the share of such allottee in the final distribution or payment to him from such fund: *Provided,* That no such payment shall be made by said commissioner where it is in excess of the amount which will ultimately be due said allottee. (Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 412a. Exemption from taxation of lands subject to restrictions against alienation; determination of homestead.

All homesteads, heretofore purchased out of the trust or restricted funds of individuals Indians, are declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: *Provided,* That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: *And provided further,* That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost $5,000, to be designated as a homestead. (June 20, 1936, ch. 622, § 2, 49 Stat. 1542; May 19, 1937, ch. 227, 50 Stat. 188.)

AMENDMENTS

1937—Act May 19, 1937, substituted "All homesteads" and "individual Indians" for "All lands the title to which is now held by an Indian subject to restrictions against alienation or encumbrance except with the consent or approval of the Secretary of the Interior" and "said Indian" and added the two provisos.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 465a of this title.

§ 413. Fees to cover cost of work performed for Indians.

The Secretary of the Interior is authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: *Provided,* That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds. (Feb. 14, 1920, ch. 75, § 1, 41 Stat. 415; Mar. 1, 1933, ch. 158, 47 Stat. 1417.)

AMENDMENTS

1933—Act Mar. 1, 1933, substituted "to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or individual Indians" for "to charge a reasonable fee for the work incident to the sale, leasing, or assigning of such lands, or in the sale of the timber or in the administration of Indian forests" and "deducted from the proceeds of sale, leases, or other sources of revenue" for "from the proceeds of sales", deleted the introductory words "In the sale of all Indian allotments, or in leases, or assignment of leases covering tribal or allotted lands for minerals, farming, grazing, business or other purposes, or in the sale of timber thereon" and provided for the use of discretion and the crediting of Indian tribal funds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 406, 407 of this title.

§ 414. Reservation of minerals in sale of Choctaw-Chickasaw lands.

After August 25, 1937, in all sales of tribal lands of the Choctaw and Chickasaw Indians in Oklahoma provided for by existing law, the Secretary of the Interior is authorized to offer such lands for sale subject to a reservation of the mineral rights therein, including oil and gas, for the benefit of said Indians, whenever in his judgment the interests of the Indians will best be served thereby. (Aug. 25, 1937, ch. 778, 50 Stat. 810.)

§ 415. Leases of restricted lands for public, religious, educational, recreational, residential, business, and other purposes; approval by Secretary.

(a) Any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes

which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, Yavapai-Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Tulalip Indian Reservation, and the Navajo Reservation which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant of this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

(b) Any lease by the Tulalip Tribes under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, or (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior. (Aug. 9, 1955, ch. 615, § 1, 69 Stat. 539; Sept. 21, 1959, Pub. L. 86–326, 73 Stat. 597; June 11, 1960, Pub. L. 86–505, § 2, 74 Stat. 199; Oct. 4, 1961, Pub. L. 87–375, 75 Stat. 804; Oct. 10, 1962, Pub. L. 87–785, 76 Stat. 805; Nov. 4, 1963, Pub. L. 88–167, 77 Stat. 301; Apr. 27, 1966, Pub. L. 89–408, 80 Stat. 132, Dec. 8, 1967, Pub. L. 90–182, 81 Stat. 559; Dec. 10, 1967, Pub. L. 90–184, 81 Stat. 560; June 10, 1968, Pub. L. 90–335, § 1(f), 82 Stat. 175; June 20, 1968, Pub. L. 90–355, 82 Stat. 242; Sept. 28, 1968, Pub. L. 90–534, § 6, 32 Stat. 884; Oct. 12 1968, Pub. L. 90–570, 82 Stat. 1003; June 2, 1970, Pub. L. 91–274, §§ 2, 3, 84 Stat. 302; June 2, 1970, Pub. L. 91–275, §§ 1, 2, 84 Stat. 303; Dec. 17, 1970, Pub. L. 91–557, § 8, 84 Stat. 1468.)

AMENDMENTS

1970—Pub. L. 91–557 inserted "the Soboba Indian Reservation," following "Gila River Reservation,".

Pub. L. 91–275 inserted "Yavapai-Prescott Community Reservation," following "San Carlos Apache Reservation," and added the list of factors that the Secretary must consider before approving a lease or an extension of an existing lease.

Pub. L. 91–274, §§ 2, 3, designated existing provisions as subsec. (a), and, in subsec. (a) as so designated, inserted "the Tulalip Indian Reservation," following "the Gila River Reservation,".

Subsec. (b). Pub. L. 91–274, § 3, added subsec. (b).

1968—Pub. L. 90–570 inserted "the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni," following "Fort Mojava Reservation,".

Pub. L. 90–534 inserted "the Swinomish Indian Reservation," after "Dania Reservation,".

Pub. L. 90–355 inserted "the Hualapai Reservation," following "Fort Mojave Reservation,".

Pub. L. 90–335 inserted "the Spokane Reservation," following "the Fort Mojave Reservation".

1967—Pub. L. 90–184 inserted "the San Carlos Apache Reservation" following "Fort Mojave Reservation."

Pub. L. 90–182 added "the Gila Reservation," following "Pyramid Lake Reservation."

1966—Pub. L. 89–408 inserted "the Pyramid Lake Reservation" following "Fort Mojave Reservation,".

1963—Pub. L. 88–167 inserted "the Fort Mojave Reservation," following "Southern Ute Reservation."

1962—Pub. L. 87–785 authorized leases for not more than 99 years of lands on the Southern Ute Reservation.

1961—Pub. L. 87–375 authorized longer term leases of Indian lands on the Dania Reservation and excepted from renewal leases the initial term of which extends for more than 74 years.

1960—Pub. L. 86–505 authorized leases for not more than 99 years of lands on the Navajo Reservation.

1959—Pub. L. 86–326 substituted "except leases of land on the Agua Caliente (Palm Springs) Reservation which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may" for "excepting leases for grazing purposes, which shall", in second sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415b, 415c, 415d of this title.

§ 415a. Same; lease of lands of deceased Indians for benefit of heirs or devisees.

Restricted lands of deceased Indians may be leased under sections 396 and 415 to 415d of this title, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title: *Provided,* That if the authority of the Secretary under this section is delegated to any subordinate official, then any heir or devisee shall have the right to appeal the action of any such official to the Secretary under such rules and regulations as he may prescribe. (Aug. 9, 1955, ch. 615, § 2, 69 Stat. 539.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415b, 415c, 415d of this title.

§ 415b. Same; advance payment of rent or other consideration.

No rent or other consideration for the use of land leased under sections 396 and 415 to 415d of this title

shall be paid or collected more than one year in advance, unless so provided in the lease. (Aug. 9, 1955, ch. 615, § 4, 69 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415c, 415d of this title.

§ 415c. Same; approval of leases.

The Secretary of the Interior shall approve no lease pursuant to sections 396 and 415 to 415d of this title that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease. (Aug. 9, 1955, ch. 615, § 5, 69 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415b, 415d of this title.

§ 415d. Same; lease of restricted lands under other laws unaffected.

Nothing contained in sections 396 and 415 to 415d of this title shall be construed to repeal any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law. (Aug. 9, 1955, ch. 615, § 6, 69 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415b, 415c of this title.

§ 416. Leases of trust or restricted lands on San Xavier and Salt River Pima-Maricopa Indian Reservations for public, religious, educational, recreational, residential, business, farming or grazing purposes.

Any trust or restricted Indian lands, whether tribally or individually owned, located on the San Xavier Indian Reservation and the Salt River Pima-Maricopa Indian Reservation, in the State of Arizona, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, business, farming or grazing purposes, including the development or utilization of natural resources in connection with operations under such leases, but no lease shall be executed under sections 416 to 416j of this title for purposes that are subject to the laws governing mining leases on Indian lands. The term of a grazing lease shall not exceed ten years, the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed ten years, and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed forty years. The term of any other lease shall not exceed ninety-nine years. No lease shall contain an option to renew which, if exercised, will extend the total term beyond the maximum term permitted by sections 416 to 416j of this title. The Secretary of the Interior shall not approve any lease with a term that is longer than is necessary in his judgment to obtain maximum economic benefits for the Indian owners. (Pub. L. 89–715, § 1, Nov. 2, 1966, 80 Stat. 1112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416a, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416a. Same; covenant provision; Federal or State court jurisdiction of violations.

(a) Every lease entered into under section 416 of this title shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act which causes waste or a nuisance or which creates a hazard to health of persons or to property, wherever such persons or property may be.

(b) The State of Arizona, or any political subdivision thereof contiguous with the San Xavier or Salt River Pima-Maricopa Indian Reservation, may bring suit, without regard to the amount in controversy, in the United States District Court for the District of Arizona to abate or enjoin any violation of the covenant required under subsection (a) of this section: *Provided*, That if, by reason of the citizenship of the parties and the law applicable to the cause of action, the District Court finds it lacks jurisdiction to hear and determine such suit, it may be brought in any court of competent jurisdiction of the State of Arizona. (Pub. L. 89–715, § 2, Nov. 2, 1966, 80 Stat. 1112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416b. Same; notification of lease provisions; outline of major provisions; consideration of comments; non-Indian lessees.

(a) The Secretary of the Interior shall, before he approves any lease under sections 416 to 416j of this title for public, religious, educational, recreational, business, or residential purposes and if he determines that such lease will substantially affect the governmental interests of a municipality described hereunder, notify the appropriate authorities of any municipality contiguous to the San Xavier or Salt River Pima-Maricopa Reservation, as the case may be, of the pendency of the proposed lease and, in his discretion, furnish them with an outline of the major provisions of the lease which affect such governmental interests and shall consider any comments on the terms of the lease affecting the municipality, or on the absence of such terms from the lease, that such authorities may offer within such reasonable period, but not more than thirty days, as the Secretary may prescribe in his notice to them.

(b) It is the intent of the Congress that the terms under which lands located on the San Xavier and Salt River Pima-Maricopa Reservations are developed by non-Indian lessees shall, to the extent reasonably possible, be similar to those applicable under State or local law to the development of non-Indian lands in the municipalities contiguous thereto. (Pub. L. 89–715, § 3, Nov. 2, 1966, 80 Stat. 1112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416c. Same; lease of lands of deceased Indians for benefit of heirs or devisees.

Trust or restricted lands of deceased Indians located on the San Xavier and Salt River Pima-Maricopa Reservations may be leased under sections 416 to 416j of this title, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title: *Provided*,

That if the authority of the Secretary under this section is delegated to a subordinate official, then any heir or devisee shall have the right to appeal the action of any such official to the Secretary under such rules and regulations as he may prescribe. (Pub. L. 89–715, § 4, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416d, 416e, 416h, 416i, 416j of this title.

§ 416d. Same; advance payment of rent or other consideration.

No rent or other consideration for the use of land leased under sections 416 to 416j of this title shall be paid or collected more than one year in advance, unless so provided in the lease. (Pub. L. 89–715, § 5, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416e, 416h, 416i, 416j of this title.

§ 416e. Same; approval of leases.

The Secretary of the Interior shall approve no lease pursuant to sections 416 to 416j of this title that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease. (Pub. L. 89–715, § 6, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416h, 416i, 416j of this title.

§ 416f. Same; dedication of land for public purposes.

Individual or tribal owners of trust or restricted Indian land on the San Xavier and Salt River Pima-Maricopa Reservations may, with the approval of the Secretary, dedicate land to the public for streets, alleys, or other public purposes under those laws of the State of Arizona that are applicable to the dedication of land for public purposes. (Pub. L. 89–715, § 7, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416g. Same; contract for water, sewerage, law enforcement, or other public services.

The Papago Council and the Salt River Pima-Maricopa Community Council, with the approval of the Secretary of the Interior, may contract with the State of Arizona or its political subdivisions for the furnishing of water, sewerage, law enforcement, or other public services on terms and conditions deemed advantageous to the tribe and individual Indian landowners. (Pub. L. 89–715, § 8, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416h. Same; zoning, building, and sanitary regulations.

The Papago Council and the Salt River Pima-Maricopa Community Council, with the consent of the Secretary of the Interior, are hereby authorized, for their respective reservations, to enact zoning, building, and sanitary regulations covering the lands on their reservations for which leasing authority is granted by sections 416 to 416j of this title in the absence of State civil and criminal jurisdiction over such particular lands, and said councils may contract with local municipalities for assistance in preparing such regulations. (Pub. L. 89–715, § 9, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416e, 416i, 416j of this title.

§ 416i. Same; restrictions.

Nothing contained in sections 416 to 416j of this title shall—

(a) authorize the alienation, encumbrance, or taxation of any interest in real or personal property, including water rights, held in trust by the United States or held by an individual Indian, the Papago Tribe or the Salt River Pima-Maricopa Community subject to a restriction against alienation imposed by the United States, or any income therefrom: *Provided*, That the foregoing shall not affect the power to lease as provided in section 416 of this title or the power to dedicate as provided in section 416f of this title and shall not affect or abridge any right of the State of Arizona or its political subdivisions to tax non-Indian leasehold and possessory interests, buildings, improvements and personal property located on the San Xavier and Salt River Pima-Maricopa Reservations and not owned by Papago or Pima-Maricopa Indians residing thereon;

(b) confer jurisdiction on the State of Arizona to adjudicate in probate proceedings or otherwise the ownership or right to possession of trust or restricted property or any interests therein;

(c) alter or abridge in any way the authority of public school districts to include areas within the San Xavier and Salt River Pima-Maricopa Reservation;

(d) be construed to repeal any authority to lease or mortgage trust or restricted Indian lands conferred by or pursuant to any other provision of law.

(Pub. L. 89–715, § 10, Nov. 2, 1966, 80 Stat. 1113.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416e, 416h, 416j of this title.

§ 416j. Same; Mission San Xavier del Bac.

Nothing in sections 416 to 416j of this title shall authorize the Secretary to approve any development which would detract from the scenic, historic and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation. (Pub. L. 89–715, § 11, Nov. 2, 1966, 80 Stat. 1114.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 416b, 416c, 416d, 416e, 416h, 416i of this title.

Chapter 13.—CEDED INDIAN LANDS

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CODIFICATION

Sections are now set out as sections 179, 180, 187b, 731, and 1195—1197 of Title 43, Public Lands. They were derived as follows: § 421 from act May 17, 1900, ch. 479,

§ 1, 31 Stat. 179; § 422 from act Jan. 26, 1901, ch. 180, 31 Stat. 740; § 423 from act May 22, 1902, ch. 821, § 2, 32 Stat. 203; § 424 from act Mar. 3, 1901, ch. 832, § 1, 31 Stat. 1077; § 425 from act June 6, 1912, ch. 155, 37 Stat. 125; § 426 from act Mar. 3, 1891, ch. 561, § 10, 26 Stat. 1099; and § 427 from act Feb. 9, 1903, ch. 531, 32 Stat. 820.

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677aa. Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups.

RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA

681. Per capita payment to tribal members; rules and regulations.
682. Payment free of liens or claims.
683. Payments not "other income and resources".
684. Per capita payment to tribal members; installments; rules and regulations.
685. Payment free of liens or claims.
686. Payments not "other income and resources".
687. Per capita payment to tribal members; rules and regulations.
688. Payment free of liens or claims.
689. Payments not "other income and resources."
690. Distribution of judgment fund; tax exemption of per capita payments.

WESTERN OREGON INDIANS: TERMINATION OF FEDERAL SUPERVISION

691. Purpose.
692. Definitions.
693. Membership roll; preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication.
694. Personal property rights; restrictions.
695. Tribal property.
(a) Procedure for transfer.
(b) Property not transferred in accordance with recognized procedure; election to retain property.
(c) Compensation of agents or attorneys.
(d) Selection of trustees; approval by Secretary.
696. Individual property.
(a) Transfer of unrestricted control.
(b) Removal of restrictions on sales or encumbrances; fee simple title.
(c) Multiple land ownership; partition; sale; election to purchase; unlocated owners.
697. Property of deceased members; probate laws.
698. Transfer of Federally owned property.
699. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.
700. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.
701. Advances or expenditures from tribal funds.
702. Execution by Secretary of patents, deeds, etc.
703. Termination of Federal trust.
(a) Publication; termination of Federal services; application of Federal and State laws.
(b) Citizenship status unaffected.
(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.
704. Revocation of corporate charter; termination of Federal power over tribe.
705. Offset of individual indebtedness; credit.
706. Indian claims unaffected.
707. Valid leases, permits, liens, etc., unaffected.
708. Rules and regulations; tribal referenda.

ALABAMA AND COUSHATTA INDIANS OF TEXAS: TERMINATION OF FEDERAL SUPERVISION

721. Transfer of property to Texas.
722. Termination of Federal trust; publication; termination of Federal services; admission to hospitals and schools.
723. Termination of Federal powers over tribe.
724. Cancellation of indebtedness.
725. Revocation of corporate charter.
726. Applicability of Federal and State laws.
727. Citizenship status unaffected.
728. Applicability of sections 461 to 479 of this title.

PAIUTE INDIANS OF UTAH: TERMINATION OF FEDERAL SUPERVISION

741. Purpose.
742. Definitions.
743. Membership roll; preparation and inital publication; appeal from inclusion or omission from roll; finality of determination; final publication.
744. Personal property rights; restrictions.
745. Tribal property.
(a) Procedure for transfer; compensation of agents or attorneys.
(b) Property not transferred in accordance with recognized procedure.
(c) Selection of trustees; approval by Secretary; election to retain property.
(d) Reservation of subsurface rights.
746. Individual property.
(a) Transfer of unrestricted control.
(b) Removal of restrictions on sales or encumbrances; fee simple title.
(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner.
747. Property of deceased members; probate laws.
748. Transfer of Federally owned property.
749. Taxes; initial exemption; taxes following distribution; valuation for capital gains and losses.
750. Indian claims unaffected.
751. Valid leases, permits, liens, etc., unaffected.
752. Water rights.
753. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.
754. Advances or expenditures from tribal funds.
755. Execution by Secretary of patents, deeds, etc.
756. Cancellation of indebtedness.
757. Termination of Federal trust.
(a) Publication; termination of Federal services; application of Federal and State laws.
(b) Citizenship status unaffected.
758. Revocation of charter; termination of Federal powers over tribe.
759. Rules and regulations; tribal referenda.
760. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

INDIAN TRIBES OF OREGON

Sec.
771. Enrollment of descendants; determination of eligibility.
772. Per capita payments to tribal members; tax exemption.
773. Payments to enrollees, next of kin or legatees; minors and persons under legal disability; guardians; other appropriate action; payments not subject to debts; time limits.
774. Costs.
775. Rules and regulations.

CREEK NATION OF INDIANS

781. Distribution of funds; allotment equalization payments.
782. Payment to heirs or legatees; proof of death or heirship.
783. Payments to minors or persons under legal disability; liens, exception; tax exemption.
784. Appropriations.
785. Rules and regulations.
786. Credit of unclaimed and unpaid share of funds.
787. Advances or expenditures from tribal funds.
788. Federal trust upon escheat of estates of members dying intestate without heirs.
788a. Disposition of judgment funds; preparation of Indian roll; eligibility.
788b. Distribution of funds; tax exemption; equal shares.
788c. Heirs of deceased enrollees.
788d. Rules and regulations.
788e. Disposition of judgment funds; preparation of Indian roll; eligibility.
788f. Distribution of funds; tax exemption; equal shares.
788g. Heirs of deceased enrollees.
788h. Rules and regulations.

WYANDOTTE TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

791. Purpose.
792. Definitions.
793. Membership roll; preparation and initial publication; appeal from inclusion or omission from roll; finality of determination; final publication.
794. Personal property rights; restrictions.
795. Tribal property.
(a) Procedure for transfer.
(b) Property not transferred in accordance with recognized procedure.
(c) Sale or transfer of burial ground.
(d) Compensation of agents or attorneys.
(e) Selection of trustees; approval by Secretary.
796. Individual property.
(a) Transfer of unrestricted control.
(b) Removal of restrictions on sales or encumbrances; fee simple title.
(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner.
797. Property of deceased members; probate laws.
798. Taxes; initial exemption; taxes following distribution; valuation for capital gains and losses.
799. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.
800. Advances or expenditures from tribal funds.
801. Execution by Secretary of patents, deeds, etc.
802. Valid leases, permits, liens, etc., unaffected.
803. Termination of Federal trust.
(a) Publication; termination of Federal services; application of Federal and State laws.
(b) Citizenship status unaffected.
(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other educational programs.
804. Revocation of charter; termination of Federal powers over tribe.
805. Indian claims unaffected.
806. Water rights.
807. Rules and regulations; tribal referendums.

PEORIA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

Sec.
821. Purpose.
822. Removal of restrictions on sales or encumbrances; fee simple title.
823. Termination of Federal trust and services.
(a) Application of Federal and State laws.
(b) Citizenship status unaffected.
(c) Education and training program; purposes; subjects; transportation; contracts; other educational programs.
824. Revocation of charter; termination of Federal powers over tribe.
825. Indian claims unaffected.
826 Membership roll; preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication.

OTTAWA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

841. Purpose.
842. Individual property.
(a) Transfer of unrestricted control.
(b) Removal of restrictions on sales or encumbrances; fee simple title.
(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner.
843. Property of deceased members; probate laws.
844. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.
845. Advances or expenditures from tribal funds.
846. Execution by Secretary of patents, deeds, etc.
847. Valid leases, permits, liens, etc., unaffected.
848. Termination of Federal trust and services.
(a) Application of Federal and State laws.
(b) Citizenship status unaffected.
(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.
849. Revocation of charter; termination of Federal powers over tribe.
850. Indian claims unaffected.
851. Water rights.
852. Rules and regulations; tribal referendums.
853. Membership roll.
(a) Preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication.
(b) Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.

OTOE AND MISSOURIA INDIANS

871. Membership roll; preparation; eligibility for enrollment; finality of determination.
872. Per capita distribution to tribal members.
873. Per capita payments to enrollees, next of kin or legatees; minors and persons under legal disability; payments not subject to debts, exception; tax exemption.
874. Costs.
875. Rules and regulations.
876. Advances or expenditures from tribal funds; tax exemption.

INDIANS OF OKLAHOMA

881. Potawatomi Indians; disposition of judgment fund; deductions; advances or expenditures for authorized purposes; tax exemption.
881a. Same; trusts and other procedures for protection of minors and persons under legal disability.
882. Sac and Fox Tribes; disposition of judgment fund; deductions; advances, expenditures, investments, or reinvestments for authorized purposes.
882a. Same; tax exemption.

MENOMINEE TRIBE OF WISCONSIN: TERMINATION OF FEDERAL SUPERVISION

Sec.
891. Purpose.
892. Definitions.
893. Membership roll; closure; applications for enrollment; approval or disapproval of application; appeal; finality of determination; final publication; certificates of beneficial interest.
894. Per capita payments to tribal members.
895. Management specialists; studies and reports; availability of funds; reimbursement of expenditures.
896. Plan for control of tribal property and service functions; termination of Federal supervision and services; approval of plan; publication in Federal Register.
897. Transfer of property.
898. Taxes; initial exemption; taxes following distribution; valuation for income tax on gains or losses.
899. Publication of proclamation of transfer of property; termination of Federal services; application of Federal and State laws; citizenship status unaffected.
900. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.
901. Rules and regulations.
902. Contracts for completion of vocational or undergraduate college program.

QUAPAW TRIBE; DISTRIBUTION OF JUDGMENT FUND

911. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination.
912. Per capita payments to enrollees, heirs or legatees; tax exemption.
913. Payments to enrollees, next of kin or legatees; minors and persons under legal disability; parent or guardian.
914. Costs.

CATAWBA TRIBE OF SOUTH CAROLINA: DIVISION OF ASSETS

931. Publication of notice of agreement to division of assets; closure of roll; preparation of roll; protests against inclusion or omission from roll; finality of determination; final publication.
932. Personal property rights; restrictions.
933. Distribution of assets.
(a) Assets held in trust by State.
(b) Designation of land for church, park, playground, or cemetery.
(c) Appraisal of assets; improvements.
(d) Assignee's option of selection; approval of selection by Secretary; title to assignment.
(e) Selection by members having no assignment.
(f) Sale and distribution of proceeds of assets not selected; bidding; member purchases; disposition of unsold assets.
934. Land surveys and execution of conveyances by Secretary; title of grantee.
935. Revocation of tribal constitution; termination of Federal services; application of Federal and State laws; citizenship status unaffected.
936. Rights, privileges, and obligations under South Carolina laws unaffected.
937. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.
938. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

AGUA CALIENTE (PALM SPRINGS) RESERVATION OF CALIFORNIA: EQUALIZATION OF ALLOTMENTS

951. Authority to equalize allotments.
952. Members entitled to allotment; prohibition against further allotments.
953. Lands.
(a) Determination of value of unallotted and allotted lands; exclusion of deceased allottees' allotments.
(b) Lands not subject to allotment; distribution of revenues from mineral springs parcel.
(c) Equalization for living members by allotment without regard to acreage limitations; creation of right by selection and approval; allotments made subject to laws and regulations.
(d) Portions in airport subject to allotment unless sold; procedure for sale; payment of sale proceeds in lieu of allotment.
954. Powers and duties of guardians.
(a) Appointment and continuance in office; notice to Secretary of State of court proceedings; appearance.
(b) Management and disposition of trust property and property subject to restrictions against alienation by guardians, conservators, or fiduciaries; approved activities; approval of activities.
(c) Reports by guardians; failure or refusal to report; fraudulent, capricious, arbitrary or grossly erroneous reports; prosecution; appropriate relief.
(d) Delivery to Secretary of money or property at termination of fiduciary relationship.
(e) Use and disposition of money or property held in trust by United States by the Secretary; consent of competent Indian; determination of competency; applicability of Administrative Procedure Act; time and place of hearing; judicial review.
(f) Authority of the Secretary under other provisions unaffected.
955. Tax exemption.
956. Claims against allotments.
(a) Assignment, sale, hypothecation, attachment or levy void unless approved.
(b) Liens and lis pendens; legal services.
957. Allotments deemed full equalization.
958. Organization and transfer of title to legal entity.

OMAHA TRIBE: DISTRIBUTION OF JUDGMENT FUND

961. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination.
962. Membership roll; enrollment of children born after September 14, 1961.
963. Per capita distributions to tribal members; attorneys' fees and expenses; advances or expenditures from tribal funds; tax exemption.
964. Payments to enrollees, next of kin or legatees; protection of minors and persons under legal disability.
965. Payments not subject to liens, debts, or claims; exception.
966. Costs.
967. Rules and regulations.
967a. Per capita payments to enrolled tribal members; use of balance of funds.
967b. Payments to minors and persons under legal disability; shares under certain amount to revert to tribe.
967c. Tax exemption.
967d. Rules and regulations.

PONCA TRIBE OF NEBRASKA: TERMINATION OF FEDERAL SUPERVISION

971. Membership roll; preparation; eligibility for enrollment; protests against inclusion or omission from roll; finality of determination; publication of roll; publication of notice of agreement to division of assets; finality of roll.
972. Personal property rights; restrictions.

Sec.
973. Distribution of assets.
(a) Tribal assets; time limitation.
(b) Designation of property for church, park, playground, or cemetery.
(c) Homesites; market value; improvements.
(d) Sale of assets not selected; bidding.
(e) Proceeds and tribal funds for payment of tribal debts; distributive share; set off; member purchases of tribal property.
974. Sale of trust lands.
(a) Requisite owners' request; time limitation; bidding; member purchases; reservation of mineral rights; representation of minors, incompetents and missing owners.
(b) Removal of restrictions; title to lands.
975. Land surveys and execution of conveyances by Secretary; title of grantee.
976. Indian claims unaffected.
977. Rights, privileges, and obligations under Nebraska laws unaffected.
978. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.
979. Expenses; appropriation authorization.
980. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws; citizenship status unaffected.

CHEROKEE NATION: DISTRIBUTION OF JUDGMENT FUND

991. Per capita payments to tribal members; closure of rolls; appropriations; accrued interest; deductions.
992. Payments to adults, heirs or legatees; shares under certain amounts to revert to tribe; protection of minors and persons under legal disability.
993. Claims; time for filing; bar of unfiled claims; reversion to tribe; use of reverted funds.
994. Tax exemption.
995. Payments not subject to liens, debts, or claims; exception.
996. Payments not "other income and resources".
997. Costs.
998. Rules and regulations.

SNAKE OR PAIUTE INDIANS OF OREGON: DISTRIBUTION OF JUDGMENT FUND

1011. Membership roll; preparation; eligibility for enrollment; time for filing application; finality of Secretary's determination.
1012. Authorization to withdraw, prorate and distribute funds.
1013. Distribution; persons entitled; considerations; tax exemption.
1014. Costs.
1015. Rules and regulations.

SHAWNEE TRIBE OR NATION: DISTRIBUTION OF JUDGMENT FUND

1031. Disposition of funds.
1032. Absentee and Eastern Bands; authorization for use of funds by tribal governing bodies; approval of Secretary of Interior.
1033. Cherokee Band; preparation of roll; eligibility for enrollment; rules and regulations.
1034. Cherokee Band; per capita distribution.
1035. Manner of payment; living and deceased enrollees; minors and persons under legal disability.
1036. Taxes.
1037. Costs.
1038. Rules and regulations.

TILLAMOOK AND NEHALEM BANDS OF THE TILLAMOOK INDIANS: DISTRIBUTION OF JUDGMENT FUND

1051. Membership roll; preparation; eligibility for enrollment; filing of applications; finality of Secretary's decision.
1052. Distribution of funds; pro rata basis.
1053. Taxes.
1054. Costs.
1055. Rules and regulations.

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION: DISTRIBUTION OF JUDGMENT FUND

Sec.
1071. Per capita payments to enrolled tribal members; tax exemption.

QUILEUTE AND HOH TRIBES OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

1081. Division of funds on basis of tribual membership rolls; advances or expenditures from tribal funds.
1082. Membership rolls; preparation; eligibility for enrollment; relinquishment of membership with other tribes.
1083. Quileute base roll.
1084. Hoh base roll.
1085. Tribal organizational document: development and adoption.
1086. Advances or expenditures from tribal funds.
1087. Tax exemption.
1088. Rules and regulations.

NOOKSACK TRIBE OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

1101. Membership roll; preparation; eligibility for enrollment; filing of applications; finality of determination.
1102. Distribution of funds; persons entitled.
1103. Payments to enrollees, heirs or legatees; protection of minors and persons under legal disability; credits of shares under certain amounts; escheat.
1104. Tax exemption.
1105. Rules and regulations.

MIAMI INDIANS OF INDIANA AND OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

1111. Distribution and use of funds.
1112. Advances or expenditures from funds of Miami Tribe of Oklahoma; persons entitled.
1113. Miami Indians of Indiana; membership roll; preparation; eligibility for enrollment.
1114. Miami Indians of Oklahoma; membership roll; preparation; eligibility for enrollment.
1115. Applications; place for filing; finality of determination.
1116. Distribution of funds of Miami Indians of Indiana; persons entitled.
1117. Distribution of funds of Miami Indians of Oklahoma; persons entitled.
1118. Per capita payments to enrollees, heirs or legatees; protection of minors and persons under legal disability.
1119. Reserve funds for expenses.
1120. Tax exemption; costs.
1121. Rules and regulations.

DUWAMISH TRIBE OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

1131. Membership roll; preparation; eligibility for enrollment; applications; place for filing; finality of determination.
1132. Equal share distribution; persons entitled.
1133. Payments to enrollees, heirs, or legatees; protection of minors and persons under legal disability; escheats.
1134. Tax exemption.
1135. Rules and regulations.

EMIGRANT NEW YORK INDIANS: DISTRIBUTION OF JUDGMENT FUND

1141. Distribution of funds; attorney's fees and expenses.
1142. Membership rolls; Oneida Tribe of Wisconsin; Stockbridge-Munsee Indian Community of Wisconsin; Brotherton Indians of Wisconsin.
1143. Assistance of Secretary in preparing membership rolls; applications for enrollment.
1144. Apportionment; ratio of apportioned shares.
1145. Disposition of apportioned shares.
1146. Federal and State income taxes.
1147. Rules and regulations.

UPPER AND LOWER CHEHALIS TRIBES: DISTRIBUTION OF JUDGMENT FUND

Sec.
1151. Membership roll; preparation; eligibility for enrollment; applications; finality of determination.
1152. Distribution in equal shares.
1153. Payments to minors and persons under legal disabilities; escheats.
1154. Tax exemption.
1155. Rules and regulations.

CHEYENNE-ARAPAHO INDIANS OF OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

1161. Authorization for distribution of funds.
1162. Trust; education and scholarships; approval of agreement.
1163. Payments to enrollees, heirs or legatees; trust for minors and persons under legal disability; approval of agreement.
1164. Claims; time for filing; bar of unfiled claims; use of reverted funds.
1165. Tax exemption.
1166. Costs; use of reverted funds.
1167. Rules and regulations.

IOWA TRIBES OF KANSAS AND NEBRASKA AND OF OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

1171. Distribution of funds; authorized spending; per capita payment; tax exemption.

DELAWARE NATION OF INDIANS

1181. Distribution of judgment fund; preparation of Indian roll; eligibility.
1182. Division between Cherokee Delawares and the Delaware Tribe of Western Oklahoma.
1183. Equal share distribution.
1184. Heirs of deceased enrollees.
1185. Tax exemption.
1186. Rules and regulations.

CONFEDERATED TRIBES OF THE UMATILLA RESERVATION: DISTRIBUTION OF JUDGMENT FUND

1191. Per capita distribution; trusts for minors and incompetents; payments to heirs or legatees.
1192. Eligibility for per capita payments.
1193. Status of funds pending distribution.
1194. Per capita distributions as exempt from taxation.
1195. Disposition of funds withheld from per capita distribution.

SIOUX TRIBE OF MONTANA: DISTRIBUTION OF JUDGMENT FUND

1201. Per capita distributions to tribal members; attorney's fees, expenses, and other deductions; eligibility of members.
1202. Per capita shares; reversion to tribe; use of reverted funds.
1203. Protection of minors and persons under legal disability.
1204. Tax exemption.
1205. Amount of agreed contribution to joint account for expenditure for official salaries and expenses of Fort Peck Tribes; discretionary per capita distributions.

TLINGIT AND HAIDA INDIANS OF ALASKA: DISTRIBUTION OF JUDGMENT FUND

1211. Distribution of fund; authorized spending; tax exemption.

CONFEDERATED TRIBES OF WEAS, PIANKASHAWS, PEORIAS, AND KASKASKIAS: DISTRIBUTION OF JUDGMENT FUND

1221. Membership roll; preparation; eligibility for enrollment; applications; finality of determination.
1222. Disposition of funds: improvement and maintenance of Peoria Indian Cemetery; distribution of balance in equal shares.
1223. Disposition of apportioned shares; payments to minors and persons under legal disabilities.
1224. Subsequent judgment funds; distribution; preparation of current membership roll.
1225. Tax exemption.
1226. Shares not distributed within two years; unexpended funds; reversion; bar of claims.
1227. Rules and regulations.

CHEMEHUEVI TRIBE: DISTRIBUTION OF JUDGMENT FUND

1231. Persons eligible for equal share payments.
1232. Enrollment; preparation of roll; applications; finality of determination; dual awards.
1233. Payments to enrollees; per capita shares to heirs or legatees; trusts and other procedures for protection of minors and persons under legal disability.
1234. Tax exemption.
1235. Identity of eligibility roll and membership roll.
1236. Costs.

GENERAL PROVISIONS

§ 441. Indian employees of Government; entitlement to Indian benefits.

Nothing contained in sections 68 and 87 of this title shall be construed as preventing Indian employees of the United States Government, of whatever degree of Indian blood, during their term of employment or otherwise, from obtaining or receiving any benefit or benefits made available to the Indians generally or to the members of any particular tribe, under any Act of Congress, nor to prevent such employees having Indian blood from being members of or receiving benefits by reason of their membership in Indian tribes, corporations, or cooperative associations organized by the Indians, when authorized by the Secretary of the Interior under appropriate regulations to be promulgated by him. (June 19, 1939, ch. 210, 53 Stat. 840.)

REFERENCES IN TEXT

Section 87 of this title, referred to in text, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and is now covered by section 437 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section is comprised of final proviso of act June 19, 1939. Remaining provisions of that act are duplicated as sections 68a and 87a of this title.

§ 442. Livestock loans; cash settlements.

All acceptances of cash settlements by the Commissioner of Indian Affairs for livestock lent by the United States to any individual Indian, or to any tribe, association, corporation, or other group of Indians, and all sales and relending of livestock repaid in kind to the United States on account of such loans are authorized and ratified: *Provided,* That hereafter the value of such livestock for the purposes of any such cash settlement shall be based on prevailing market prices in the area and shall be ascertained by a committee composed of three members, one of whom shall be selected by the superintendent of the particular agency, one of whom shall be selected by the chairman of the tribal council, and one of whom shall be selected by the other two members. (May 24, 1950, ch. 197, § 1, 64 Stat. 190.)

§ 443. Same; disposition of cash settlements.

Any moneys received on and after May 24, 1950, in settlement of such debts or from the sale of livestock so repaid to the United States shall be deposited in

the revolving fund established pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, 479 and 501 to 509 of this title, as amended and supplemented. (May 24, 1950, ch. 197, § 2, 64 Stat. 190.)

§ 443a. Conveyance to Indian tribes of federally owned buildings, improvements, or facilities; disposition of property by Indians; forfeiture; definition.

The Secretary of the Interior at the request of any Indian tribe, band, or group is authorized to convey to such Indian tribe, band, or group, by such means as he may deem appropriate, title to any federally owned buildings, improvements, or facilities (including any personal property used in connection with such buildings, improvements, or facilities) that are situated on lands of such tribe, band, or group or on lands reserved for the administration of its affairs, and that are no longer required by the Secretary for the administration of Indian affairs. Any tribe, band, or group to which property is conveyed pursuant to this section may dispose of such property whenever its governing body determines that the property is no longer needed for its use. If, at any time while property conveyed pursuant to this section remains in the ownership of any Indian tribe, band, or group, the Secretary of the Interior determines that such property is not being adequately maintained or properly utilized by such tribe, band, or group or that the property creates a health or safety hazard or other undesirable condition, he may declare a forfeiture of the conveyance and the title to such property shall thereupon revert to the United States. Such determination by the Secretary shall be final.

For the purpose of this section, the term "Indian" shall include Eskimos and Aleuts. (Aug. 6, 1956, ch. 979, 70 Stat. 1057.)

§§ 444 to 449. Repealed. Aug. 5, 1954, ch. 658, § 5, 68 Stat. 675.

Sections, act Apr. 3, 1952, ch. 129, §§ 1—6, 66 Stat. 35, relating to Indian hospital services and facilities, are now covered by chapter 22 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective July 1, 1955, see note under section 2001 of Title 42, The Public Health and Welfare.

CONTRACTS WITH STATES

§ 451. Donations for Indians; use of gifts; annual report to Congress.

The Secretary of the Interior may accept donations of funds or other property for the advancement of the Indian race, and he may use the donated property in accordance with the terms of the donation in furtherance of any program authorized by other provision of law for the benefit of Indians. An annual report shall be made to the Congress on donations received and allocations made from such donations. This report shall include administrative costs and other pertinent data. (Feb. 14, 1931, ch. 171, 46 Stat. 1106; June 8, 1968, Pub. L. 90–333, 82 Stat. 171.)

AMENDMENTS

1968—Pub. L. 90–333 expanded the area of permissible uses to which the Secretary may put donated property by substituting provisions allowing the inclusion of programs otherwise authorized by law intended to benefit Indians for provisions limiting the permissible uses to programs otherwise authorized by law only if it could be shown that the property would benefit a particular Indian institution or individual, and added provisions for an annual report to Congress on donations received and allocations made from such donations.

CROSS REFERENCES

Deposit of funds received in Treasury as trust funds, see section 725s of Title 31, Money and Finance.

§ 452. Contracts for education, medical attention, relief and social welfare of Indians.

The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory. (Apr. 16, 1934, ch. 147, § 1, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

AMENDMENTS

1936—Act June 4, 1936, substituted "with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution", "through the agencies of the State or Territory or of the corporations and organizations hereinbefore named,", and "such State or Territory" for "any State or Territory having legal authority so to do,", "through the qualified agencies of such State or Territory,", and "such State", respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304a, 453, 454 of this title; title 20 section 237.

§ 453. Same; use of Government property by States and Territories.

The Secretary of the Interior, in making any contract authorized by sections 452 to 454 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance. (Apr. 16, 1934, ch. 147, § 2, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

AMENDMENTS

1936—Act June 4, 1936, substituted ", may permit such contracting party" for "with any State or Territory, may permit such State or Territory."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304a, 454 of this title.

§ 454. Same; rules and regulations; minimum standards of service.

The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the

purpose of carrying the provisions of sections 452 to 454 of this title into effect: *Provided,* That such minimum standards of service are not less than the highest maintened by the States or Territories within which said contract or contracts, as herein provided, are to be effective. (Apr. 16, 1934, ch. 147, § 3, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458.)

AMENDMENTS

1936—Act June 4, 1936, substituted "within which" for "with which".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304a, 453 of this title.

§ 455. Repealed. Pub. L. 86-533, § 1(15), June 29, 1960, 74 Stat. 248.

Section, acts Apr. 16, 1934, ch. 147, § 4, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458, required the Secretary of the Interior to report to the Congress any contracts made under the provisions of sections 452—454 of this title.

§ 456. Contract provisions inapplicable to Oklahoma.

CODIFICATION

Section, act Apr. 16, 1934, ch. 147, § 5, 48 Stat. 596, was omitted from amendatory re-enactment of that act by act June 4, 1936, ch. 490, 49 Stat. 1458.

PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 324, 396 of this title.

§ 461. Allotment of land on Indian reservations.

No land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian. (June 18, 1934, ch. 576, § 1, 48 Stat. 984.)

CROSS REFERENCES

Allotments on reservations, see section 331 of this title.

Choctaw Tribe and its members, provisions not to apply to after Aug. 25, 1959, see section 7 of Pub. L. 86-192. Aug. 25, 1959, 73 Stat. 421, set out as a note under section 355 of this title.

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies, or insular possessions of United States and certain Indian tribes, application to, see sections 473 and 473a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 462. Existing periods of trust and restrictions on alienation extended.

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are extended and continued until otherwise directed by Congress. (June 18, 1934, ch. 576, § 2, 48 Stat. 984.)

CROSS REFERENCES

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies, or insular possessions of United States and certain Indian tribes, application to, see section 473 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 462a. Reimposition and extension of trust period on lands of Crow Reservation.

CODIFICATION

Section, act Apr. 11, 1940, ch. 80, 54 Stat. 106, was omitted from the Code as executed.

§ 463. Restoration of lands to tribal ownership; protection of existing rights; Papago Indian Reservation.

(a) The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation opened before June 18, 1934, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title: *Provided further,* That this section shall not apply to lands within any reclamation project authorized before June 18, 1934, in any Indian reservation.

(b) (1), (2) Repealed. May 27, 1955, ch. 106, § 1, 69 Stat. 67.

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479, of this title, execpt under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided,* That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: *Provided further,* That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes. (June 18, 1934, ch. 576, § 3, 48 Stat. 984; Aug. 28, 1937, ch. 866, 50 Stat. 862; May 27, 1955, ch. 106, § 1, 69 Stat. 67.)

AMENDMENTS

1955—Subsec. (b)(1). Act May 27, 1955, repealed subsec. (b)(1) which restored the lands of the Papago Indian Reservation to exploration and location.

Subsec. (b)(2). Act May 27, 1955, repealed subsec. (b)(2) which required persons desiring a mineral patent to pay $1 per acre in lieu of annual rental.

Subsec. (b)(4). Act May 27, 1955, deleted provisions relating to authority to issue or promulgate rules or regulations in conflict with Executive Order of Feb. 1, 1917 or act of Feb. 21, 1931 (46 Stat. 1202).

1937—Subsec. (a). Act Aug. 28, 1937, designated existing provisions of first par. as subsec. (a).

Subsec. (b)(1). Act Aug. 28, 1937, designated existing provisions of first par. as subsec. (b)(1), substituted "damages shall be paid to the superintendent or other

officer in charge of the reservation for the credit of the owner thereof" for "damages shall be paid to the Papago Tribe" and "to be the fair and reasonable value of such improvement" for "but not to exceed the cost of said improvements" and eliminated following "mining operations," "and payments derived from damages or rentals shall be deposited in the Treasury of the United States to the credit of the Papago Tribe."

Subsec. (b)(2). Act Aug. 28, 1937, designated existing provisions of first par. as subsec. (b)(2), inserted "pay to the superintendent or other officer in charge of the reservation, for" preceding "deposit", substituted "*Provided,* That an applicant for patent shall also pay to the Secretary or other officer in charge of the said reservation for the credit of the owner" for "*Provided further,* That patentee shall also pay into the Treasury of the United States to the credit of the Papago Tribe" and inserted "but the sum thus deposited, except for a deduction of rental at the annual rate hereinbefore provided, shall be refunded to the applicant in the event that patent is not acquired" in place of "the payment of $1.00 per acre for surface use to be refunded to patentee in the event that patent is not acquired" following "determination by the Secretary of the Interior, but not to exceed the cost thereof."

Subsec. (b)(3). Act Aug. 28, 1937, added subsec. (b)(3).

Subsec. (b)(4). Act Aug. 28, 1937, designated second par. as subsec. (b)(4).

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

RESTORATION OF VACANT AND UNDISPOSED-OF CEDED LANDS IN CERTAIN INDIAN RESERVATIONS

Pub. L. 85-420, May 19, 1958, 72 Stat. 121, provided:

"That all lands now or hereafter classified as vacant and undisposed-of ceded lands (including townsite lots) on the following named Indian reservations are hereby restored to tribal ownership, subject to valid existing rights:

Reservation and State	*Approximate acreage*
Klamath River, California	159.57
Coeur d'Alene, Idaho	12,877.65
Crow, Montana	10,260.95
Fort Peck, Montana	41,450.13
Spokane, Washington	5,451.00

Provided, That such restoration shall not apply to any lands while they are within reclamation projects heretofore authorized.

"SEC. 2. Title to the lands restored to tribal ownership by this Act shall be held by the United States in trust for the respective tribe or tribes, and such lands are hereby added to and made a part of the existing reservations for such tribe or tribes.

"SEC. 3. The lands restored to tribal ownership by this Act may be sold or exchanged by the tribe, with the approval of the Secretary of the Interior."

PAPAGO INDIAN RESERVATION

Section 1 of act May 27, 1955, provided: "That the provisions with respect to subjection of mineral lands within the Papago Indian Reservation to exploration, location, and entry under the mining laws of the United States in the Executive order dated February 1, 1917, creating the Papago Indian Reservation, and in the third proviso in section 1 of the Act of February 21, 1931 (46 Stat. 1202), and the provisions of subsection (b) (1) and (2) and of the remainder, following the word 'purposes', of subsection (b) (4) of section 3 of the Act of June 18, 1934 (48 Stat. 984; 25 U. S. C. 461—479), as amended by the Act of August 26, 1937 (50 Stat. 862, 863; 25 U. S. C. 463) [this section], are hereby repealed, all tribal lands within the Papago Indian Reservation are hereby withdrawn from all forms of exploration, location, and entry under such laws, the minerals underlying such lands are hereby made a part of the reservation to be held in trust by the United States for the Papago Indian Tribe, and such minerals shall be subject to lease for mining purposes pursuant to the provisions of the Act of May 11, 1938 (52 Stat. 347) [sections 396a to 396g of this title]: *Provided,* That the provisions of this Act shall not be applicable to lands within the Papago Indian Reservation for which a mineral patent has heretofore been issued or to a claim that has been validly initiated before the date of this Act and thereafter maintained under the mining laws of the United States."

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies, or insular possessions of United States, application to, see section 473 of this title.

Umatilla Indian Reservation lands restored, see sections 463d—463g of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 463a. Extension of boundaries of Papago Indian Reservation.

Whenever all privately owned lands except mining claims within the following-described area have been purchased and acquired as authorized in sections 463b and 463c of this title, the boundary of the Papago Indian Reservation in Arizona shall be extended to include the west half of section 4; west half of section 9, township 17 south, range 8 east; all of township 18 south, range 2 west, all of fractional township 19 south, range 2 west; and all of fractional townships 18 and 19 south, range 3 west, except sections 6, 7, 18, 19, 30, and 31 in township 18 south, range 3 west, Gila and Salt River meridian. This extension shall not affect any valid rights initiated prior to July 28, 1937, nor the reservation of a strip of land sixty feet wide along the United States-Mexico boundary made by proclamation of the President dated May 27, 1907 (35 Stat. 2136). The lands herein described when added to the Papago Indian Reservation as provided in this section and sections 463b and 463c of this title shall become a part of said reservation in all respects and upon all the same terms as if said lands had been included in the Executive order issued by the President on February 1, 1917: *Provided,* That lands acquired under this section and sections 463b and 463c of this title shall remain tribal lands and shall not be subject to allotment to individual Indians. (July 28, 1937, ch. 527, § 1, 50 Stat. 536.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 463c of this title.

§ 463b. Same; purchase; limitations.

The Secretary of the Interior is authorized to purchase for the use and benefit of the Papago Indians with any available funds heretofore or hereafter appropriated, pursuant to authority contained in section 465 of this title, all privately owned lands, water rights, and reservoir site reserves within townships 18 and 19 south, ranges 2 and 3 west, together

with all grazing privileges and including improvements upon public lands appurtenant to the so-called Menager Dam property, at the appraised value of $40,016.37. (July 28, 1937, ch. 527, § 2, 50 Stat. 536.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 463a of this title.

§ 463c. Same; gift of lands by Arizona.

The State of Arizona may relinquish in favor of the Papago Indians such tracts within the townships referred to in section 463a of this title as it may see fit and shall have the right to select other unreserved and nonmineral public lands within the State of Arizona equal in area to those relinquished, said lieu selections to be made in the same manner as is provided for in the Enabling Act of June 20, 1910 (36 Stat. 558), or in the discretion of the State of Arizona under the provisions of section 315g of Title 43. The payment of fees or commissions is waived in all lieu selections made pursuant to this section. (July 28, 1937, ch. 527, § 3, 50 Stat. 536.)

REFERENCES IN TEXT

The Enabling Act of June 20, 1910 (36 Stat. 558), referred to in text, provides that, subject to certain limitations, lieu selections of land in Arizona are to be made pursuant to sections 851 and 852 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 463a of this title.

§ 463d. Restoration of lands in Umatilla Indian Reservation to tribal ownership.

The Secretary of the Interior is authorized in his discretion to restore to tribal ownership the undisposed of surplus lands of the Umatilla Indian Reservation, Oregon, heretofore opened to entry or other form of disposal under the public-land laws: *Provided,* That restoration shall be subject to any existing valid rights. (Aug. 10, 1939, ch. 662, § 1, 53 Stat. 1351.)

CONVEYANCE OF LANDS TO STIMULATE INDUSTRIAL DEVELOPMENT

Pub. L. 85-186, Aug. 28, 1957, 71 Stat. 468, provided:

"That, upon request of any Indian tribe, group, or corporate entity, and approval of the request by the Secretary of the Interior as provided in this Act, the Administrator of the General Services Administration is authorized to transfer, without cost to such Indian tribe, group, or corporate entity, title to any property of the United States at the McNary Dam townsite, Umatilla, Oregon, or at Pickstown, South Dakota, that is declared surplus pursuant to the Federal Property and Administrative Services Act of 1949 (Act of June 30, 1949; 63 Stat. 378), as amended [chapters 10 and 16 of Title 40, chapter 4 of Title 41, and chapters 21, 25, 27, 29, and 31 of Title 44]. Such property shall not be exempt from taxation because of the fact that title is held by the Indian tribe, group, or corporate entity.

"SEC. 2. The Secretary of the Interior shall approve a request for surplus property pursuant to this Act only if—

"(a) the Indian tribe, group, or corporate entity is organized under State or Federal law in a form satisfactory to the Secretary for the purpose of holding title to the property;

"(b) the surplus property is to be used to stimulate industrial development near the Indian tribe, band, group, or reservations;

"(c) the Indian tribe, group, or corporate entity has executed a contract with an industrial enterprise that is acceptable to the Secretary;

"(d) the contract between the Indian tribe, group, or corporate entity and the industrial enterprise contains such provisions as the Secretary deems desirable, including in substance the following:

"(1) Title to the property will remain in the Indian tribe, group, or corporate entity, and the property will be made available to the industrial enterprise at a rental fee commensurate with the purposes of this Act, which rental shall be paid to the United States Treasury.

"(2) The industrial enterprise will employ Indians in large enough numbers to justify, in the judgment of the Secretary, the purposes of this Act.

"(3) The industrial enterprise will agree to pay its employees fair and equitable wages commensurate with the general wage scale in the area.

"(4) The industrial enterprise will maintain the property in good repair, pay all taxes properly assessed against the property, and be responsible for the payment of all charges for utility services to the property.

"(5) At the end of the contract period the industry will have an option to purchase the property at its appraised price, as determined by the Secretary, the proceeds of such sale will revert to the United States Treasury.

"SEC. 3. Any transfer of title to surplus property pursuant to this Act shall provide for a reversion of title to the United States if the Secretary of the Interior finds that the property is not being used in accordance with the provisions of the Act.

"SEC. 4. The United States shall not be responsible for providing to the Indians who are employed in an industrial development pursuant to this Act community services that are normally furnished by State and local governments, such as school, health, welfare, and law-enforcement services.

"SEC. 5. The transfer of McNary Dam townsite shall be upon the express condition that persons or families occupying residential property on the date of the enactment of this Act [August 28, 1957] shall be entitled to at least one hundred and eighty days' notice of termination of their occupancy."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 463f, 463g of this title.

§ 463e. Exchanges of land.

For the purpose of effecting land consolidations between Indians and non-Indians within the reservation, the Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to acquire through purchase, exchange, or relinquishment, any interest in lands, water rights, or surface rights to lands within said reservation. Exchanges of lands hereunder shall be made on the basis of equal value and the value of improvements on lands to be relinquished to the Indians or by Indians to non-Indians shall be given due consideration and allowance made therefor in the valuation of lieu lands. This section shall apply to tribal, trust, or otherwise restricted Indian allotments whether the allottee be living or deceased. (Aug. 10, 1939, ch. 662, § 2, 53 Stat. 1351.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 463f, 463g of this title.

§ 463f. Title to lands.

Title to lands or any interest therein acquired pursuant to sections 463d to 463g of this title for Indian use shall be taken in the name of the United States of America in trust for the tribe or individual Indian for which acquired. (Aug. 10, 1939, ch. 662, § 3, 53 Stat. 1351.)

§ 463g. Use of funds appropriated under section 465.

For the purpose of carrying into effect the land-purchase provision of sections 463d to 463g of this title, the Secretary of the Interior is authorized to use so much as may be necessary of any funds heretofore or hereafter appropriated pursuant to section 465 of this title. (Aug. 10, 1939, ch. 662, § 4, 53 Stat. 1351.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 463 of this title.

§ 464. Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands.

Except as provided in sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however,* That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs of such member: *Provided further,* That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations. (June 18, 1934, ch. 576, § 4, 48 Stat. 985.)

CROSS REFERENCES

Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles, see sections 484—486 of this title.

Exchanges of land on Umatilla Indian Reservation, see section 463e of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies, or insular possessions of United States, and certain Indian tribes, application to, see section 473 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption.

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided,* That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation. (June 18, 1934, ch. 576, § 5, 48 Stat. 985.)

ROCKY BOY'S INDIAN RESERVATION

Pub. L. 85-773, Aug. 27, 1958, 72 Stat. 931, provided: "That the land acquired by the United States pursuant to section 5 of the Act of June 18, 1934 (48 Stat. 984) [this section], title to which was conveyed to the United States of America in trust for the Chippewa, Cree, and other Indians of Montana, and thereafter added to the Rocky Boy's Indian Reservation, Montana, by proclamation signed by the Assistant Secretary of the Interior on November 26, 1947, is hereby designated for the exclusive use of the members of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana."

SEMINOLE INDIAN RESERVATION

Act July 20, 1956, ch. 645, 70 Stat. 581, provided:

"That the equitable title to the lands and interests in lands together with the improvements thereon, acquired by the United States under authority of title II of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (49 Stat. 115), and section 55 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (49 Stat. 750, 781), administrative jurisdiction over which was transferred from the Secretary of Agriculture to the Secretary of the Interior by Executive Order Numbered 7868, dated April 15, 1938, for the use of the Seminole Tribe, is hereby conveyed to the Seminole Tribe of Indians in the State of Florida, and such lands and interests are hereby declared to be held by the United States in trust for the Seminole Tribe of Indians in the State of Florida in the same manner and to the same extent as other land held in trust for such tribe.

"SEC. 2. The lands declared to be held in trust for the Seminole Tribe of Indians in the State of Florida under the first section of this Act and all lands which have been acquired by the United States for the Seminole Tribe of Indians in the State of Florida under authority of the Act entitled 'An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes' approved June 18, 1934 (48 Stat. 984) [sections 461, 462, 463, 464, 465, 466—470, 471—473, 474, 475, 476—478 and 479 of this title], are hereby declared to be a reservation for the use and benefit of such Seminole Tribe in Florida.

"SEC. 3. Nothing in this Act shall deprive any Indian of any individual right, ownership, right of possession, or contract right he may have in any land or interest in land referred to in this Act."

CROSS REFERENCES

Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles, see sections 484—486 of this title.

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies, or insular possessions of United States and certain Indian tribes, application to, see sections 473 and 473a of this title.

Umatilla Indian Reservation lands, application to, see section 463g of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 463b, 464, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 465a. Receipt and purchase in trust by United States of land for Klamath Tribe Indians.

The Secretary of the Interior is authorized to receive on behalf of the United States from individual members of the Klamath Tribe of Indians voluntarily executed deeds to such lands as said Indians may own in fee simple free from all encumbrances, said lands to be held in trust by the United States for said Indians and their heirs; and, whenever restricted funds are used for the purchase of lands for individual members of the Klamath Tribe of Indians, the Secretary of the Interior is authorized, in his discretion, to take title to said lands in the United States, the same to be held in trust for said individual Indians: *Provided, however,* That while any of the foregoing lands are held in trust by the United States for said Indians, the same shall be subject to the same restrictions, immunities, and exemptions as homesteads purchased out of trust or restricted funds of individual Indians pursuant to section 412a of this title, except the restrictions, immunities, or exemptions of the second proviso of said section. (Feb. 24, 1942, ch. 113, § 1, 56 Stat. 121.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 465h of this title.

§ 465b. Same; definition of Klamath Tribe.

As used in this section and section 465a of this title the term "Klamath Tribe of Indians" includes the Klamath and Modoc Tribes, and the Yahooskin Band of Snake Indians. (Feb. 24, 1942, ch. 113, § 2, 56 Stat. 121.)

§ 466. Indian forestry units; rules and regulations.

The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes. (June 18, 1934, ch. 576, § 6, 48 Stat. 986.)

CROSS REFERENCES

Reservations wherein a majority of the adult Indians vote against application of act of which this section is a part, see section 478 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies or insular possessions of United States and certain Indian tribes, application to, see section 473 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478h, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 832 of this title.

§ 467. New Indian reservations.

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by sections 461, 462, 463, 464, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, or to add such lands to existing reservations: *Provided,* That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations. (June 18, 1934, ch. 576, § 7, 48 Stat. 986.)

CROSS REFERENCES

Reservations in New Mexico and Arizona, creation and extension, see sections 211 and 463a—463c of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Territories, colonies, or insular possessions of United States, and certain Indian tribes, application to, see sections 473 and 473a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 468. Allotments or holdings outside of reservations.

Nothing contained in sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter. (June 18, 1934, ch. 576, § 8, 48 Stat. 986.)

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 469. Indian corporations; appropriation for organizing.

There is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title. (June 18, 1934, ch. 576, § 9, 48 Stat. 986.)

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 470. Same; revolving fund; appropriation for loans.

There is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $20,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. (June 18, 1934, ch. 576, § 10, 48 Stat. 986; June 29, 1960, Pub. L. 86–533, § 1(16), 74 Stat. 248; Sept. 15, 1961, Pub. L. 87–250, 75 Stat. 520.)

AMENDMENTS

1961—Pub. L. 87–250 increased the authorized appropriation from $10,000,000 to $20,000,000.

1960—Pub. L. 86–533 repealed provisions which required a report to be made annually to the Congress of transactions under the authorization.

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Use of Revolving Loan Fund for Indians to assist Klamath Indians during period for terminating Federal supervision, see note set out under section 564 of this title.

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Ute Indians, use of tribal funds, regulations for making loans from revolving fund authorized by this section to govern funds advanced for loans, see sections 671, 674, and 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 671, 674, 676, 704, 723, 725, 728, 758, 823 of this title.

§ 470a. Interest charges covered into revolving fund.

Interest or other charges heretofore or hereafter collected on loans shall be credited to the revolving fund created by section 470 of this title and shall be available for the establishment of a revolving fund for the purpose of making and administering loans to Indian-chartered corporations in accordance with sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, 479 of this title, and of making and administering loans to individual Indians and to associations or corporate groups of Indians of Oklahoma in accordance with sections 501 to 509 of this title. (June 28, 1941, ch. 259, § 1, 55 Stat. 316.)

§ 471. Vocational and trade schools; appropriation for tuition.

There is authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided,* That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs. (June 18, 1934, ch. 576, § 11, 48 Stat. 986.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 472. Standards for Indians appointed to Indian Office.

The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions. (June 18, 1934, ch. 576, § 12, 48 Stat. 986.)

REFERENCE IN TEXT

The civil-service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Employment of Indians, see sections 44, 45, 46, 47 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 473. Application of sections.

The provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478 and 479 of this title shall not apply to any of the Territories, colonies, or insular possessions of the United States,

except that sections 469, 470, 471, 472, and 476 of this title shall apply to the Territory of Alaska: *Provided,* That sections 462, 464, 467, 476, 477, and 478 of this title shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 464 of this title shall not apply to the Indians of the Klamath Reservation in Oregon. (June 18, 1934, ch. 576, § 13, 48 Stat. 986.)

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Oklahoma Indians as having rights secured to organized Indian tribes under sections to which reference is made in text, see section 503 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

Tribes authorized to be organized with charter allowing participation in revolving credit fund and other rights secured to organized tribes under sections to which reference is made in text, see section 503 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 473a. Same; application to Alaska.

Sections 461, 465, 467, 468, 475, 477 and 479 of this title shall after May 1, 1936, apply to the Territory of Alaska: *Provided,* That groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 470, 476 and 477 of this title. (May 1, 1936, ch. 254, § 1, 49 Stat. 1250.)

CODIFICATION

This section is also set out as section 362 of Title 48, Territories and Insular Possessions.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

§ 474. Continuation of allowances.

The Secretary of the Interior is directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894),[1] or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478 and 479 of this title, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat. L. 451),[2] or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such such time as the lands available therein for allotment on June 18, 1934, would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land. (June 18, 1934, ch. 576, § 14, 48 Stat. 987.)

REFERENCES IN TEXT

Section 17 of the act of March 2, 1889, referred to in text, contains a proviso that each head of family or single person over the age of eighteen years of the Sioux Nation of Indians, "who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxen, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barters or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court."

Act of June 10, 1896, referred to in text, contains a provision directing the Secretary of the Interior to ascertain the number of Sioux and Ponca Indians in South Dakota and Nebraska who would not be benefited by the fulfillment of the proviso quoted above from the act of March 2, 1889, and who desire to have the articles of personal property therein mentioned converted into money, and in lieu of such articles of personal property, or any part thereof he may think proper, to convert or commute the same, or so much thereof as he may think proper, into money, and to pay the amount thereof to such Indians.

Section 19 of the act of May 29, 1908, referred to in text, authorizes the Secretary of the Interior to cause allotments to be made under the provisions of act Mar. 2, 1889, ch. 405, 25 Stat. 888, to any living children of the Sioux tribe of Indians belonging on any of the Great Sioux reservations affected thereby and who had not prior to May 29, 1908, been allotted, so long as the tribe to which such Indian children belong is possessed of any unallotted tribal or reservation lands. The section further provides that where, for any reason, an Indian did not receive the quantity of land to which he was entitled under the provisions of said act March 2, 1889, the Secretary of the Interior shall cause to be allotted to him

[1] So in original. Probably should read "(25 Stat. L. 894)."

[2] So in original. Probably should read "(35 Stat. L. 451)."

sufficient additional lands on the reservation to which he belongs to make, together with the quantity of land theretofore allotted to him, the acreage to which he is entitled under said act March 2, 1889; and in case of the death of any such Indian, the additional lands to which he is of right entitled may be allotted to his heirs: *Provided,* the tribe to which he belonged is possessed of any unallotted tribal or reservation lands.

CROSS REFERENCES

Appropriation for civilization of the Sioux repealed, see section 725a of Title 31, Money and Finance.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 475. Claims or suits of Indian tribes against United States; rights unimpaired.

Nothing in sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by said sections of this title shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States. (June 18, 1934, ch. 576, § 15, 48 Stat. 987.)

CROSS REFERENCES

Offsets against awards of Indian Claims Commission, see section 70a of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475a, 478, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 475a. Same; offsets of gratuities.

In all suits now pending in the Court of Claims by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the Court of Claims by any such tribe or band, the Court of Claims is directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band; and in all cases now pending or hereafter filed in the Court of Claims in which an Indian tribe or band is party plaintiff, wherein the duty of the court is merely to report its findings of fact and conclusions to Congress, the said Court of Claims is directed to include in its report a statement of the amount of money which has been expended by the United States gratuitously for the benefit of the said tribe or band: *Provided,* That expenditures made prior to the date of the law, treaty, agreement, or Executive order under which the claims arise shall not be offset against the claims or claim asserted; and expenditures under sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall not be charged as offsets against any claim on behalf of an Indian tribe or tribes now pending in the Court of Claims or hereafter filed: *Provided further,* That funds appropriated and expended from tribal funds shall not be construed as gratuities; and this section shall not be deemed to amend or affect the various Acts granting jurisdiction to the Court of Claims to hear and determine the claims listed on page 678 of the hearings before the subcommittee of the House Committee on Appropriations on the second deficiency appropriation bill for the fiscal year 1935: *And provided further,* That no expenditure under any emergency appropriation or allotment made subsequently to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public works and public projects for the relief of unemployment or to increase employment, and for work relief (including the civil-works program) shall be considered in connection with the operation of this section. (Aug. 12, 1935, ch. 508, § 2, 49 Stat. 596.)

CROSS REFERENCES

Offsets against awards of Indian Claims Commission, see section 70a of this title.

§ 476. Organization of Indian tribes; constitution and bylaws; special election.

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress. (June 18, 1934, ch. 576, § 16, 48 Stat. 987.)

CHANGE OF NAME

The Bureau of the Budget was designated the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively, by Reorg.

Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which also transferred all records, property, personnel, and funds of the Bureau to the Office of Management and Budget.

CROSS REFERENCES

Application to certain tribes, see sections 473, 473a and 478 of this title.

Charges to licensees under Federal Power Act, see section 803 of Title 16, Conservation.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 70n, 390, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 503, 507, 704, 723, 725, 728, 758, 823 of this title; title 16 section 803.

§ 477. Incorporation of Indian tribes; charter; ratification by election.

The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress. (June 18, 1934, ch. 576, § 17, 48 Stat. 988.)

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 503, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 478. Acceptance of sections 461 to 479 optional.

Sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice. (June 18, 1934, ch. 576, § 18, 48 Stat. 988.)

EXTENSIONS OF TIME

The time for holding an election under this section was extended to June 18, 1936, by act June 15, 1935, ch. 260, § 2, 49 Stat. 378.

Act June 15, 1935, ch. 260, § 3, 49 Stat. 378 provided that the periods of trust or the restrictions on alienation of Indian lands should be extended to Dec. 31, 1936, in case of a vote against the application of sections 461, 462, 463, 464, 465, 466—470, 471—473, 474, 475, 476—478, and 479 of this title.

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 474, 475, 475a, 478a, 478b, 479, 480, 482, 483, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 478a. Procedure.

In any election heretofore or hereafter held under sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, on the question of excluding a reservation from the application of the said sections or on the question of adopting a constitution and bylaws or amendments thereto or on the question of ratifying a charter, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate such exclusion, adoption, or ratification, as the case may be: *Provided, however*, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote. (June 15, 1935, ch. 260, § 1, 49 Stat. 378.)

§ 478b. Laws, treaties and rights unaffected by passage of sections 461 to 479.

All laws, general and special, and all treaty provisions affecting any Indian reservation which has voted or may vote to exclude itself from the application of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall be deemed to have been continuously effective as to such reservation, notwithstanding the passage of said sections. Nothing in said sections shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe, where such tribe voted not to exclude itself from the application of said sections. (June 15, 1935, ch. 260, § 4, 49 Stat. 378.)

§ 479. Definitions.

The term "Indian" as used in sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of said sections, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in said sections shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in said sections shall be construed to refer to Indians who have attained the age of twenty-one years. (June 18, 1934, ch. 576 § 19, 48 Stat. 988.)

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 504, 507, 704, 723, 725, 728, 758, 823 of this title.

§ 480. Indians eligible for loans.

On and after May 10, 1939 no individual of less than one-quarter degree of Indian blood shall be eligible for a loan from funds made available in accordance with the provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, 479, and 501 to 509 of this title. (May 10, 1939, ch. 119, § 1, 53 Stat. 689.)

§ 481. Tribal organizing work; allowance to Indians traveling away from home.

CODIFICATION

Section, act July 2, 1942, ch. 473, § 1, 56 Stat. 513, was from the Interior Department Appropriation Act, 1943, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

1941—June 28, 1941, ch. 259, § 1, 55 Stat. 311.
1940—June 18, 1940, ch. 395, § 1, 54 Stat. 413.
1939—May 10, 1939, ch. 119, § 1, 53 Stat. 693.

§ 482. Revolving fund; loans; regulations.

The Secretary of the Interior, or his designated representative, is authorized, under such regulations as the Secretary may prescribe, to make loans from the revolving fund established pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title and sections 501 to 509 of this title, to tribes, bands, groups, and individual Indians, not otherwise eligible for loans under said sections: *Provided,* That no portion of these funds shall be loaned to Indians of less than one-quarter Indian blood. (May 7, 1948, ch. 266, 62 Stat. 211.)

§ 483. Sale of land by individual Indian owners.

The Secretary of the Interior, or his duly authorized representative, is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, or sections 501 to 509 of this title. (May 14, 1948, ch. 293, 62 Stat. 236.)

§ 483a. Mortgages and deeds of trust by individual Indian owners.

The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed. (Mar. 29, 1956, ch. 107, 70 Stat. 62.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 1166.

§ 484. Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemption.

From and after July 14, 1954, each grant of exchange assignment of tribal lands on the Cheyenne River Sioux Reservation and the Standing Rock Sioux Reservation shall have the same force and effect, and shall confer the same rights, including all timber, mineral, and water rights now vested in or held by the Cheyenne River Sioux Tribe or the Standing Rock Sioux Tribe, upon the holder or holders thereof, that are conveyed by a trust patent issued pursuant to section 348 of this title, as supplemented, except that the period of trust and tax exemption shall continue until otherwise directed by Congress. (July 14, 1954, ch. 472, § 1, 68 Stat. 467.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 486 of this title.

§ 485. Same; payment to assignment holders of moneys collected for use of subsurface rights.

The Cheyenne River Sioux Tribe and the Standing Rock Sioux Tribe are authorized to pay to each holder of an exchange assignment of tribal lands all moneys collected by the tribe for the lease or use of subsurface rights in such lands. (July 14, 1954, ch. 472, § 2, 68 Stat. 468.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 486 of this title.

§ 486. Same; regulations.

The Secretary of the Interior is authorized to prescribe such regulations as may be necessary to carry out the provisions of sections 484 to 486 of this title. (July 14, 1954, ch. 472, § 3, 68 Stat. 468.)

§ 487. Spokane Indian Reservation; consolidations of land.

(a) Purchase, sale, and exchange.

For the purpose of effecting consolidations of land situated within the Spokane Indian Reservation in the State of Washington into the ownership of the tribe and of individual tribal members and for the purpose of attaining and preserving an economic land base for Indian use, alleviating problems of Indian heirship and assisting in the productive leasing, disposition, and other use of tribal lands, the Secretary of the Interior is authorized in his discretion to:

(1) Purchase for the Spokane Tribe of Indians with any funds of such tribe and to otherwise acquire by gift, exchange, or relinquishment any lands or interest in lands or improvements thereon within the Spokane Indian Reservation.

(2) Sell or approve sales of any tribal trust lands, any interest therein or improvements thereon

(3) Exchange any tribal trust lands, including interests therein or improvements thereon, for any lands situated within such reservation.

(b) Individual Indian trust lands.

The Secretary of the Interior is authorized to sell and exchange individual Indian trust lands held in multiple ownership to the Spokane Tribe or to individual members thereof if the sale or exchange is authorized in writing by owners of at least a majority interest in such lands; except that no greater percentage of approval of individual Indians shall be required under this section than in any other statute of general application approved by Congress.

(c) Nontaxability; value limitation.

Title to lands, or any interests therein, acquired pursuant to this section by the Spokane Tribe or individual enrolled members thereof, shall be taken in the name of the United States of America in trust for the tribe or individual Indian, and shall be nontaxable as other tribal and allotted Indian trust lands of the Spokane Reservation: *Provided, however,* That the value on nontrust lands, or nontrust interests in land, acquired under this section by the Spokane Tribe during any twelve-month period shall not exceed the value of lands, or interests in land, that passed in any manner from a nontaxable trust status to a taxable fee status within the boundaries of the Spokane Reservation in Stevens County, Washington, during the twelve-month period preceding acquisition by the tribe.

(d) Lands held by mortgage or deed of trust.

That any tribal land that may be sold pursuant to this section may, with the approval of the Secretary of the Interior, be encumbered by a mortgage or deed of trust and shall be subject to foreclosure or sale pursuant to the terms of such a mortgage or deed of trust in accordance with the laws of the State of Washington. The United States shall be an indispensable party to any such proceeding with the right of removal of the clause to the United States district court for the district in which the land is located, following the procedure in section 1446 of Title 28: *Provided,* That the United States shall have the right to appeal from any order of remand in the case.

(e) Acquisition and sale procedures; land purchase and consolidation program.

The acquisition and sale of lands for the Spokane Tribe pursuant to this section shall be upon request of the business council of the Spokane Tribe, evidenced by a resolution adopted in accordance with the constitution and bylaws of the tribe, and shall be in accordance with a land purchase and consolidation plan approved by the Secretary of the Interior, and except as it may otherwise be authorized or prescribed by the Secretary, shall be limited to lands situated within the boundary of the Spokane Reservation. Such acquisition by the Spokane Tribe, or individual members thereof, may be achieved by exchange of lands with Indians or non-Indians as well as outright purchase, with adjusting payments to approximate equal value. Moneys or credits received by the tribe in the sale of lands shall be used for the purchase of other lands, or for such other purpose as may be consistent with the land purchase and consolidation program, approved by the Secretary of the Interior. (Pub. L. 90–335, § 1(a)—(e), June 10, 1968, 82 Stat. 174.)

§ 488. Agricultural loans to acquire land within reservations.

The Secretary of Agriculture is authorized to make loans from the Farmers Home Administration Direct Loan Account created by section 1988(c) of Title 7, and to make and insure loans as provided in sections 1928 and 1929 of Title 7, to any Indian tribe recognized by the Secretary of the Interior or tribal corporation established pursuant to the Indian Reorganization Act (section 477 of this title), which does not have adequate uncommitted funds, to acquire lands or interests therein within the tribe's reservation as determined by the Secretary of the Interior, or within a community in Alaska incorporated by the Secretary pursuant to the Indian Reorganization Act, for use of the tribe or the corporation or the members of either. Such loans shall be limited to such Indian tribes or tribal corporations as have reasonable prospects of success in their proposed operations and as are unable to obtain sufficient credit elsewhere at reasonable rates and terms to finance the purposes authorized in sections 488 to 492 of this title. (Pub. L. 91–229, § 1, Apr. 11, 1970, 84 Stat. 120.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in text, is act June 18, 1934, ch. 576, 48 Stat. 984, which is classified to section 461 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 489, 490, 491, 492 of this title.

§ 489. Same; title in trust to United States.

Title to land acquired by a tribe or tribal corporation with a loan made or insured pursuant to sections 488 to 492 of this title may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation. (Pub. L. 91–229, § 2, Apr. 11, 1970, 84 Stat. 120.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 488, 490, 491, 492 of this title.

§ 490. Same; tribal rights and privileges in connection with loans.

A tribe or tribal corporation to which a loan is made or insured pursuant to sections 488 to 492 of this title (1) may waive in writing any immunity from suit or liability which it may possess, (2) may mortgage or otherwise hypothecate trust or restricted property if (a) authorized by its constitution or charter or by a tribal referendum, and (b) approved by the Secretary of the Interior, and (3) shall comply with rules and regulations prescribed by the Secretary of Agriculture in connection with such loans. (Pub. L. 91–229, § 3, Apr. 11, 1970, 84 Stat. 120.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 488, 489, 491, 492 of this title.

§ 491. Same; mortgaged property governed by state law.

Trust or restricted tribal or tribal corporation property mortgaged pursuant to sections 488 to 492 of this title shall be subject to foreclosure and sale

or conveyance in lieu of foreclosure, free of such trust or restrictions, in accordance with the laws of the State in which the property is located. (Pub. L. 91–229, § 4, Apr. 11, 1970, 84 Stat. 120.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 488, 489, 490, 492 of this title.

§ 492. Same; interest rates and taxes.

Loans made or insured pursuant to sections 488 to 492 of this title will be subject to the interest rate provisions of section 307(a) of the Consolidated Farmers Home Administration Act of 1961, as amended, and to the provisions of subtitle D of the Act except sections 340, 341, 342, and 343 thereof: *Provided,* That section 334 thereof shall not be construed to subject to taxation any lands or interests therein while they are held by an Indian tribe or tribal corporation or by the United States in trust for such tribe or tribal corporation pursuant to sections 488 to 492 of this title. (Pub. L. 91–229, § 5, Apr. 11, 1970, 84 Stat. 120.)

REFERENCES IN TEXT

The Consolidated Farmers Home Administration Act of 1961, referred to in text, is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307. Section 307(a) of that act is set out as section 1927(a) of Title 7, Agriculture. Subtitle D of that act consists of sections 331 to 343 thereof which sections are classified as follows: sections 331 to 340 are set out, respectively, as sections 1981 to 1990 of Title 7; section 341 is set out as a note under section 1921 of Title 7; section 342 is classified to section 1013a of Title 7; section 343 is set out as section 1991 of Title 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 488, 489, 490, 491 of this title.

INDIANS OF ALASKA

§ 495. Annette Islands reserved for Metlakahtla Indians.

Until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska on the north side of Dixon's entrance, is set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who, on March 3, 1891, had recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior. (Mar. 3, 1891, ch. 561, § 15, 26 Stat. 1101.)

CROSS REFERENCES

Annette Islands excepted from the operation of provisions of act May 14, 1898, ch. 299, see section 687a–5 of Title 43, Public Lands.

Lands in Annette Islands excepted from homestead settlement and entry, see section 270–15 of Title 43, Public Lands.

§ 496. Designation of land for Indian reservation.

The Secretary of the Interior is authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 280a of this title, or by section 14 of the Act of March 3, 1891 (26 Stat. 1101), or section 495 of this title, or which was reserved prior to May 1, 1936, under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: *Provided,* That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: *Provided, however,* That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote: *Provided further,* That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied. (May 1, 1936, ch. 254, § 2, 49 Stat. 1250.)

REFERENCES IN TEXT

Section 14 of the Act of March 3, 1891 (26 Stat. 1101), referred to in the text, was not classified to the Code.

CROSS REFERENCES

Right-of-way grant, consent of tribal officials, see section 324 of this title.

§ 497. Reservation of tracts for schools, hospitals, etc.

The Secretary of the Interior is authorized, in his discretion, to withdraw and permanently reserve small tracts of not to exceed six hundred and forty acres each of the public domain in Alaska for schools, hospitals, and such other purposes as may be necessary in administering the affairs of the Indians, Eskimos, and Aleuts of Alaska: *Provided,* That such withdrawals shall be subject to any valid existing rights. (May 31, 1938, ch. 304, 52 Stat. 593.)

INDIANS IN OKLAHOMA: PROMOTION OF WELFARE

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 324 of this title.

§ 501. Acquisition of agricultural and grazing lands for Indians; title to lands; tax exemption.

The Secretary of the Interior is authorized, in his discretion, to acquire by purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing Indian reservations, including trust or otherwise restricted lands now in Indian ownership: *Provided,* That such lands shall be agricultural and grazing lands of good character and quality in proportion to the respective needs of the particular Indian or Indians for whom such purchases are made. Title to all lands so acquired shall be taken in the name of the United States, in trust for the tribe, band, group, or individual Indian for whose benefit such land is so acquired, and while the title thereto is held by the United States said lands shall be free from any and all taxes, save that the

State of Oklahoma is authorized to levy and collect a gross-production tax, not in excess of the rate applied to production from lands in private ownership, upon all oil and gas produced from said lands, which said tax the Secretary of the Interior is authorized and directed to cause to be paid. (June 26, 1936, ch. 831, § 1, 49 Stat. 1967.)

CROSS REFERENCES

Choctaw Tribe and its members, sections 501—509 of this title not to apply after Aug. 25, 1959, see section 7 of Pub. L. 86—192, Aug. 25, 1959, 73 Stat. 421, set out as a note under section 355 of this title.

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

Right-of-way grant, consent of tribal officials, see section 324 of this title.

§ 502. Purchase of restricted Indian lands; preference to Secretary of Interior; waiver of preference.

Whenever any restricted Indian land or interests in land, other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of any Act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor.

The preference right of the Secretary to purchase shall be considered as waived where notice of the pendency of sale is given in writing to the Superintendent of the Five Civilized Tribes for at least ten days prior to the date of sale and the Secretary does not within that time exercise the preferential right to purchase. (June 26, 1936, ch. 831, § 2, 49 Stat. 1967; Aug. 4, 1947, ch. 458, § 10, 61 Stat. 734.)

AMENDMENTS

1947—Act Aug. 4, 1947, provided for waiver of preference by failure to purchase after notice.

CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 503. Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund.

Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: *Provided, however,* That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under sections 476 and 477 of this title: *Provided,* That the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter. (June 26, 1936, ch. 831, § 3, 49 Stat. 1967.)

CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 506, 507, 508, 509, 804, 823, 849 of this title.

§ 504. Cooperative associations; charter; purposes; voting rights.

Any ten or more Indians, as determined by the official tribal rolls, or Indian descendants of such enrolled members, or Indians as defined in section 479 of this title, who reside within the State of Oklahoma in convenient proximity to each other may receive from the Secretary of the Interior a charter as a local cooperative association for any one or more of the following purposes: Credit administration, production, marketing, consumers' protection, or land management. The provisions of sections 501 to 509 of this title, the regulations of the Secretary of the Interior, and the charters of the cooperative associations issued pursuant thereto shall govern such cooperative associations: *Provided,* That in those matters not covered by said sections, regulations, or charters, the laws of the State of Oklahoma, if applicable, shall govern. In any stock or nonstock cooperative association no one member shall have more than one vote, and membership therein shall be open to all Indians residing within the prescribed district. (June 26, 1936, ch. 831, § 4, 49 Stat. 1967.)

CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 505, 506, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 505. Same; amendment or revocation of charters; suits by and against associations.

The charters of any cooperative association organized pursuant to section 504 of this title shall not be amended or revoked by the Secretary except after a majority vote of the membership. Such cooperative associations may sue and be sued in any court of the State of Oklahoma or of the United States having jurisdiction of the cause of action, but a certified copy of all papers filed in any action against a cooperative association in a court of Oklahoma shall be served upon the Secretary of the Interior, or upon an employee duly authorized by him to receive such service. Within thirty days after such service or within such extended time as the trial court may permit, the Secretary of the Interior may intervene in such action or may remove such

action to the United States district court. (June 26, 1936, ch. 831, § 5, 49 Stat. 1968; June 25, 1948, ch. 646, § 29, 62 Stat. 991.)

AMENDMENTS

1948—Act June 25, 1948, omitted provisions relating to procedure for removal, which are now covered by sections 1441—1450 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment of this section shall be effective Sept. 1, 1948.

CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 506. Loans to individuals and groups; appropriation.

The Secretary is authorized to make loans to individual Indians and to associations or corporate groups organized pursuant to sections 503 and 504 of this title. For the making of such loans and for expenses of the cooperative associations organized pursuant to said sections there shall be appropriated, out of the Treasury of the United States, the sum of $2,000,000. (June 26, 1936, ch. 831, § 6, 49 Stat. 1968.)

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Use of Revolving Loan Fund for Indians to assist Klamath Indians during period for terminating Federal supervision, see note set out under section 564 of this title.

CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

Indians eligible for loans, see section 480 of this title.

Interest charges to be covered into revolving fund, see section 470a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 507. Availability and allocation of funds; royalties from mineral deposits.

All funds appropriated under the several grants of authority contained in sections 465 and 469 to 471 of this title, are made available for use under the provisions of sections 501 to 509 of this title, and Oklahoma Indians shall be accorded and allocated a fair and just share of any and all funds appropriated after June 26, 1936, under the authorization herein set forth: *Provided,* That any royalties, bonuses, or other revenues derived from mineral deposits underlying lands purchased in Oklahoma under the authority granted by sections 501 to 509 of this title, or by sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, shall be deposited in the Treasury of the United States, and such revenues are made available for expenditure by the Secretary of the Interior for the acquisition of lands and for loans to Indians in Oklahoma as authorized by sections 470 and 506 of this title. (June 26, 1936, ch. 831, § 7, 49 Stat. 1968.)

CROSS REFERENCES

Inapplicability of section to Osage County, Oklahoma, see section 508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 508. Application of provisions to Osage County.

Sections 501 to 509 of this title shall not relate to or affect Osage County, Oklahoma. (June 26, 1936, ch. 831, § 8, 49 Stat. 1968.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 509. Rules and regulations; repeals.

The Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of sections 501 to 509 of this title. All Acts or parts of Acts inconsistent with such sections are repealed. (June 26, 1936, ch. 831, § 9, 49 Stat. 1968.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 480, 482, 483, 504, 507, 508, 509, 804, 823, 824, 849 of this title.

§ 510. Payment of gross production taxes; method.

Whenever restricted Indian lands in the State of Oklahoma are subject to gross production tax on minerals, including oil and gas, the Secretary of the Interior, in his discretion, may cause such tax or taxes due the State of Oklahoma to be paid in the manner provided for by the statutes of the State of Oklahoma. (Aug. 25, 1937, ch. 772, 50 Stat. 806.)

KLAMATH TRIBE: CAPITAL RESERVE FUND

§ 530. Capital reserve fund; interest for administrative expenses.

The Secretary of the Interior shall cause to be established on the books of the Treasury, out of any unobligated tribal funds of the Indians of the Klamath Reservation in Oregon (hereinafter referred to as the "Klamath Indians") on deposit in the Treasury of the United States, a capital reserve fund for said Klamath Indians. Such fund shall be created by setting aside the sum of $50,000 for the fiscal year 1937, and shall be augmented by additions of $50,000 for each fiscal year thereafter. Such fund shall be held in the Treasury of the United States and shall bear interest as provided by law. The interest upon such fund shall be used, insofar as it is sufficient, for the payment of the expenses of administration of the Klamath Indian Reservation in Oregon. (Aug. 28, 1937, ch. 874, § 1, 50 Stat. 872.)

CROSS REFERENCES

Transfer of certain judgment funds to capital reserve fund, see section 542 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 544 of this title.

§§ 531 to 535. Repealed. Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.

Sections 531—535, act Aug. 28, 1937, ch. 874, §§ 2—6, 50 Stat. 872, 873, related to revolving loan fund. See section 564 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 12 of act Aug. 13, 1954, provided in part that the repeal of these sections should become effective on the date of the transfer of title to tribal property to a trustee, corporation, or other legal entity pursuant to section 564e of this title.

KLAMATH TRIBE: DISPOSITION OF CERTAIN TRIBAL FUNDS

§ 541. Creation of individual credits; authorized purchases.

The Secretary of the Interior is authorized and directed from the judgment fund of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians created as the result of the passage of the Act of June 25, 1938, and accrued interest thereon, to credit the sum of $2,000 upon the books of the Office of Indian Affairs, to each person determined by the Secretary of the Interior to be entitled to enrollment upon the annuity roll of said tribes of the Klamath Reservation, Oregon, living on August 7, 1939. The share of each adult member and not to exceed $1,500 of the share of any minor shall be available for expenditure, under such rules and regulations as the Secretary of the Interior may prescribe, for the following purposes:

Purchase of land; improvement of lands acquired or already held by the Indian; erection and improvement of suitable homes; repayment of any loans received from the United States or from the Klamath tribal funds; purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education, as will enable them to become self-supporting; and health purposes: *Provided, however,* That the funds of the aged, infirm, decrepit, and incapacitated members, and of minors, may be used for their proper maintenance and support. The remainder of the share of each minor Indian shall be held intact until such Indian reaches his majority, when it, together with interest at the rate of 4 per centum per annum, shall be available for expenditure for the purposes specified herein. As herein used, the term "minor" shall include all members of the tribe less than twenty-one years of age, except that minors eighteen years of age or over and who are married or have families of their own to support, shall be regarded as adults. On the death of any enrolled member, adult, or minor, the sum on deposit to his credit shall be distributed as personal property, and shall be available for expenditure by the distributees only for the purposes herein authorized: *Provided, however,* That of the aforesaid $2,000 to be prorated to each person, $100 shall be paid to each member of said tribes as a per capita payment, free from the aforesaid restrictions, under rules and regulations prescribed by the Secretary of the Interior. (Aug. 7, 1939, ch. 552, § 1, 53 Stat. 1252.)

References in Text

Reference in text to "Act of June 25, 1938," was probably intended to be to the Second Deficiency Appropriation Act, fiscal year 1938, act June 25, 1938, ch. 681, § 203 (a), 52 Stat. 1156. Section 203 (a) of that act provided for an appropriation for payment of judgments rendered by the court of claims and reported to the 75th Congress in Senate Document Numbered 191, and House Documents Numbered 661 and 686. House Document No. 681 listed a judgment in favor of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians in the sum of $5,313,347.32, with interest on a part thereof to date of payment, for the taking of land.

Transfer of Functions

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 542, 543, 544 of this title.

§ 542. Limitations on remainder of fund.

After the segregation provided for in section 541 of this title shall have been made, the remainder of such judgment fund, including interest, shall be available for expenditure subject to the following limitations and conditions:

(a) Repealed. Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.

(b) Three hundred and seventy-five thousand dollars for immediate payment in a lump sum of $1,500 to each adult unallotted Indian found to be entitled to payment in lieu of allotment, as authorized in sections 551 to 556 of this title: *Provided,* That the amount due any minor under the provisions of said sections shall be withheld until he becomes an adult, as herein defined, when it shall be paid to him in a lump sum from any funds, principal, or interest, on deposit to the credit of the Klamath Tribe, and section 552 of this title, is amended accordingly.

(c) Such moneys as shall remain in the principal fund shall be transferred to and become a part of the capital reserve fund created by section 530 of this title. (Aug. 7, 1939, ch. 552, § 2, 53 Stat. 1253; Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.)

References in Text

Section 555, included within the reference in subsec. (b) to sections 551—556 of this title, was repealed by act Aug. 13, 1954, ch. 732, § 9(c), 68 Stat. 721, and is now covered by section 564h of this title.

Amendments

1954—Subsec. (a). Act Aug. 13, 1954, repealed subsec. (a) which related to transfer of funds.

Effective Date of 1954 Amendment

Section 12 of act Aug. 13, 1954, provided in part that the repeal of subsec. (a) of this section shall be effective on the date of the transfer of tribal property to a trustee, corporation, or other legal entity pursuant to section 564e of this title.

Section Referred to in Other Sections

This section is referred to in section 544 of this title.

§ 543. Liability of judgment funds for debts.

In no event shall any portion of the judgment fund to which reference is made in section 541 of this title become liable, payable, or subject to any debt or debts contracted prior to the passage of this subchapter by any Indian of the Klamath Tribe except debts to the United States or to the tribe. (Aug. 7, 1939, ch. 552, § 3, 53 Stat. 1253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 544 of this title.

§ 544. Creation of individual credits; authorized purchases.

The Secretary of the Interior be, and he is, authorized and directed, from the capital reserve fund deposited in the Treasury of the United States to the credit of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians (hereinafter referred to as the "Klamath Tribes"), said fund being established pursuant to sections 530 to 535 of this title, as augmented by the proceeds of the judgment fund of the Klamath Indians as provided in sections 541 to 543 of this title, to credit the sum of $500 upon the books of the Office of Indian Affairs, to each person determined by the Secretary of the Interior to be entitled to enrollment upon the annuity roll of said tribes of the Klamath Reservation, Oregon, living upon March 29, 1948. The share of each adult member of the credit so estabished shall be available for expenditure, under such rules and regulations as the Secretary of the Interior may prescribe, for the following purposes:

Purchase of land or interests in land; improvement of lands acquired or already held by the Indian; erection and improvement of suitable homes including household equipment and furnishings; repayment of any loans received from the United States or from the Klamath tribal funds; purchase of building material, feed, seed, and grain; purchase or rehabilitation and repair of farming equipment, tools, trucks, tractors, machinery, and implements; and purchase of any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education and adult education, as will enable them to become self-supporting; and health, including dental work: *Provided, however,* That the funds of the aged, infirm, decrepit, and incapacitated members may be used for their proper maintenance and support: *Provided further,* That during minority the share of each minor Indian shall be available for expenditure only for his education and for health purposes, including dental work, except that in an emergency expenditure of a minor Indian's share may be made for any of the purposes specified in this section and section 545 of this title. As used in this section, the term "minor" shall include all members of the tribe who have not attained the age of twenty-one years, except that minors eighteen years of age or over and who are married or have families of their own to support, shall be regarded as adults. On the death of any enrolled member, adult or minor, the sum on deposit to his credit shall be distributed as personal property, and shall be available for expenditure by the distributees only for the purposes authorized in this section and section 545 of this title: *And provided further,* That each member of the Klamath Tribes honorably discharged from service to the United States in its armed forces shall, upon application to the Commissioner of Indian Affairs, be paid $200 in cash, free from the aforesaid restrictions and in addition to the $500 to be credited to such member as provided in this section. (Mar. 29, 1948, ch. 160, § 2, 62 Stat. 92.)

REFERENCES IN TEXT

Sections 531—535, included within the reference in text to sections 530—535 of this title, were repealed by act Aug. 13, 1954, ch. 732 § 12, 68 Stat. 721.

SHORT TITLE

Congress in enacting sections 544 and 545 of this title provided by section 1 of act Mar. 29, 1948, that they should be popularly known as the "Klamath Welfare Act."

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

§ 545. Liability of judgment funds for debts.

In no event shall any portion of the funds directed to be credited and paid become liable, payable, or subject to any debt or debts contracted prior to the passage of this section and section 544 of this title by any Indian of the Klamath Tribe, except debts to the United States or to the tribe. (Mar. 29, 1948, ch. 160, § 3, 62 Stat. 93.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 544 of this title.

KLAMATH TRIBE: PAYMENTS IN LIEU OF ALLOTMENTS; INHERITANCE OF RESTRICTED PROPERTY

§ 551. Definition of "Klamath Tribe."

As used in sections 551 to 556 of this title the term "Klamath Tribe" includes the members of the Klamath and Modoc Tribes and the Yahooskin Band of Snakes and all other Indians having rights on the Klamath Indian Reservation in the State of Oregon. (June 1, 1938, ch. 310, § 1, 52 Stat. 605.)

REFERENCES IN TEXT

Section 555, included within the reference to sections 551—556 of this title, was repealed by act Aug. 13, 1954, ch. 732, § 9 (c), 68 Stat. 721, and is now covered by section 564h of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 553 of this title.

§ 552. Payments in lieu of allotments.

Each enrolled member of the Klamath Tribe living on June 1, 1938, who has not received an allotment of land shall be paid the sum of $1,500 from unobligated Klamath tribal funds on deposit in the Treasury of the United States, under such rules and regulations as the Secretary of the Interior shall prescribe, in installments of not to exceed $300 per annum: *Provided,* That no member of the Klamath Tribe who shall not be enrolled within one year from June 1, 1938, shall receive a payment in lieu of allotment. No member of the Klamath Tribe born after

June 1, 1938, shall be entitled to receive any allotment of land or money payment in lieu thereof. (June 1, 1938, ch. 310, § 2, 52 Stat. 605.)

CROSS REFERENCES

Minor's funds withheld until he becomes an adult, see section 542 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 551, 553 of this title.

§ 553. Same; deposit and expenditure of payments.

The payments authorized by sections 551 to 556 of this title shall be deposited to the credit of the individual Indian money accounts of such Indians subject to expenditure by such Indians, under such rules and regulations as the Secretary of the Interior may prescribe for (1) industrial and agricultural assistance, and the construction and improvement of homes, including the purchase of land and interests in land, building material, farming equipment, industrial equipment, trucks, livestock, feed, food, seed, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in the farming, livestock industry, or such other industrial or agricultural pursuits or avocations as will enable them to become self-supporting; (2) the educational advancement of such Indians; (3) financial assistance in cases of illness, death, or other emergency; (4) the repayment of reimbursable debts previously contracted; or (5) security for or the repayment of loans made to such Indians from any Klamath revolving loan fund now existent or which shall hereafter be created. (June 1, 1938, ch. 310, § 3, 52 Stat. 605.)

REFERENCES IN TEXT

Section 555, included within the reference in text to sections 551—556 of this title, was repealed by act Aug. 13, 1954, ch. 732, § 9(c), 68 Stat. 721, and is now covered by section 564h of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 551 of this title.

§ 554. Same; disposition of payment on death of Indian.

In the event of the death of any such Indian entitled to receive a payment in lieu of allotment after June 1, 1938, any unexpended balance of said $1,500 still due the decedent shall first be applied to the repayment of any loans received by such Indian from the United States or from the Klamath Tribal funds, and the balance thereafter shall be distributed as personal property. (June 1, 1938, ch. 310, § 4, 52 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 551, 553 of this title.

§ 555. Repealed. Aug. 13, 1954, ch. 732, § 9 (c), 68 Stat. 721.

Section, act June 1, 1938, ch. 310, § 5, 52 Stat. 606, related to devise of restricted or trust property and is now covered by section 564h of this title.

§ 556. Reversion of interest in property on death without heirs or devisees.

If any enrolled member of the Klamath Tribe dies without lawful heirs or devises,[1] all interest which such member has in any restricted or trust property within the Klamath Reservation shall revert to and become part of the common tribal property. (June 1, 1938, ch. 310, § 6, 52 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 551, 553 of this title.

FEES AND CHARGES

§§ 561, 562. Omitted.

CODIFICATION

Sections which related to fees for general services and medical services were from the Interior Department Appropriation Act, 1946, July 3, 1945, ch. 262, § 1, 59 Stat. 334, and were not repeated in the Interior Department Appropriation Act of 1947, July 1, 1946, ch. 529, 60 Stat. 348.

SIMILAR PROVISIONS

Provisions similar to those of the Interior Department Appropriation Act, 1946, were contained in the following acts:

1944—June 28, 1944, ch. 298, § 1, 58 Stat. 480.
1943—July 12, 1943, ch. 219, § 1, 57 Stat. 468.
1942—July 2, 1942, ch. 473, § 1, 56 Stat. 525.
1941—June 28, 1941, ch. 259, § 1, 55 Stat. 325.
1940—June 18, 1940, ch. 395, § 1, 54 Stat. 427.
1939—May 10, 1939, ch. 119, § 1, 53 Stat. 707, 708.
1938—May 9, 1938, ch. 187, § 1, 52 Stat. 312, 313.

§ 563. Salaries and expenses for Klamath Tribe Officials.

The Secretary of the Interior, or such official as may be designated by him, is authorized, until otherwise directed by Congress, to advance to the tribe or to pay out of any unobligated tribal funds of the Klamath Indians in the Treasury of the United States salaries and expenses of tribal officials or representatives (except the Klamath Loan Fund Board) at rates and/or limitations designated in advance by the Klamath General Council, or any governing body to which it may delegate such authority, and approved by the Secretary of the Interior: *Provided,* That the length of stay of representatives serving the tribe at the seat of government shall be determined by the Secretary of the Interior. (May 29, 1953, ch. 86, § 1, 67 Stat. 40.)

REPEALS

Section 2 of act May 29, 1953, repealed acts June 25, 1938, ch. 710, 52 Stat. 1207; Aug. 7, 1939, ch. 519, 53 Stat. 1244; May 15, 1945, ch. 123, 59 Stat. 167, which provided for payment of salaries and expenses of Klamath Tribe officials out of tribal funds but limited the amount of such expenditures to $15,000 per annum.

KLAMATH TRIBE: TERMINATION OF FEDERAL SUPERVISION

§ 564. Purpose.

The purpose of sections 564 to 564w–1 of this title is to provide for the termination of Federal supervision over the trust and restricted property of the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians, and of the individual members thereof, for the disposition of federally owned property

[1] So in original.

acquired or withdrawn for the administration of the affairs of said Indians, and for a termination of Federal services furnished such Indians because of their status as Indians. (Aug. 13, 1954, ch. 732, § 1, 68 Stat. 718.)

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Pub. L. 86–40, June 11, 1959, 73 Stat. 70, provided: "That the Secretary of the Interior is authorized to make loans, without interest, from the revolving fund authorized by the Acts of June 18, 1934 (48 Stat. 986; 25 U.S.C. 470), and June 26, 1936 (49 Stat. 1968; 25 U.S.C. 506), as amended and supplemented, to members of the Klamath Tribe of Indians who elected to withdraw from the tribe pursuant to the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564), as amended, regardless of the degree of Indian blood of the borrower, and to collect such loans by setoff against funds payable to the borrower pursuant to said Act of August 13, 1954, as amended [sections 564 to 564w–1 of this title]. The Secretary is also authorized to refinance from such revolving fund any loan made by a lending agency to a withdrawing Klamath Indian that is secured by encumbrance of his beneficial interest in tribal property with the approval of the Secretary as required by section 4 of said 1954 Act [section 564c of this title], and to include therein a nonreimbursable grant equal to the interest charges incurred by the borrower prior to such refinancing. In the event adequate funds are not available from the revolving fund to refinance a loan by such lending agency, the Secretary is authorized to pay from the revolving fund, without reimbursement, the interest charged on such loan."

REPEALS; RECOUPMENT OF FUNDS EXPENDED FOR KLAMATH COUNTY SCHOOL BOARD

Section 24 of act Aug. 13, 1954, as amended by Pub. L. 85–72, June 29, 1957, 71 Stat. 243, provided that: "All Acts or parts of Acts inconsistent with this Act [sections 564 to 564w–1 of this title] are hereby repealed insofar as they affect the tribe or its members. Effective on July 1, 1957, section 2 of the Act of August 19, 1949 (63 Stat. 621, ch. 488) shall become inapplicable to the unrecouped balance of funds expended in cooperation with the school board of Klamath County, Oregon, pursuant to said Act."

SEPARABILITY OF PROVISIONS

Section 25 of act Aug. 13, 1954, provided that: "If any provision of this Act [sections 564 to 564w–1 of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564a. Definitions.

For the purposes of sections 564 to 564w–1 of this title:

(a) "Tribe" means the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians.

(b) "Secretary" means the Secretary of the Interior.

(c) "Lands" means real property, interests therein, or improvements thereon, and include water rights.

(d) "Tribal property" means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States.

(e) "Adult" means a person who is an adult according to the law of the place of his residence. (Aug. 13, 1954, ch. 732, § 2, 68 Stat. 718; Aug. 14, 1957, Pub. L. 85–132, § 1 (f), 71 Stat. 348.)

AMENDMENTS

1957—Subsec. (e). Pub. L. 85–132 substituted provision defining adult as a "person who is an adult according to the law of the place of his residence", for provision defining adult as a "member of the tribe who has attained the age of twenty-one years".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564b. Membership roll; closure; preparation and initial publication; appeal from inclusion or omission from roll; finality of determination; final publication.

At midnight of August 13, 1954, the roll of the tribe shall be closed and no child born thereafter shall be eligible for enrollment: *Provided,* That the tribe shall have a period of six months from August 13, 1954, in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on August 13, 1954, which shall be published in the Federal Register. If the tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within ninety days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of sections 564 to 564w–1 of this title. (Aug. 13, 1954, ch. 732, § 3, 68 Stat. 718.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564c, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564c. Personal property rights; restrictions; tax exemption.

Upon publication in the Federal Register of the final roll as provided in section 564b of this title, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 564e of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void. Property which this section is inherited or bequeathed after August 13, 1954, and prior to the transfer of title to tribal property makes subject to inheritance or bequest and which as provided in section 564e of this title shall not be subject to State or Federal inheritance, estate,

legacy, or succession taxes. (Aug. 13, 1954, ch. 732, § 4, 68 Stat. 718; Aug. 23, 1958, Pub. L. 85–731, § 2, 72 Stat. 818.)

AMENDMENTS

1958—Pub. L. 85–731 provided that property which is inherited or bequeathed after Aug. 13, 1954, and prior to transfer of title to tribal property should not be subject to taxes.

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Use of Revolving Loan Fund for Indians to assist Klamath Indians during period for terminating Federal supervision, see note set out under section 564 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564d. Management specialists; employment; duties; authorization of expenditures.

(a) The Secretary is authorized and directed to select and retain by contract, at the earliest practicable time after August 13, 1954 and after consultation with the tribe at a general meeting called for that purpose, the services of qualified management specialists who shall—

(1) cause an appraisal to be made, within not more than twelve months after their employment, or as soon thereafter as practicable, of all tribal property showing its fair market value by practicable logging or other appropriate economic units;

(2) immediately after the appraisal of the tribal property and approval of the appraisal by the Secretary, give to each member whose name appears on the final roll of the tribe an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in the tribal management plan to be prepared pursuant to paragraph (5) of this subsection; in the case of members who are minors, persons declared incompetent by judicial proceedings, or deceased, the opportunity to make such election on their behalf shall be given to the person designated by the Secretary as the person best able to represent the interests of such member: *Provided, however,* That any member, or any heir or any devisee of any deceased member, for whom the Secretary has so designated a representative may (on his own behalf, through his natural guardian, or next friend) within one hundred and twenty days after receipt of written notice of such secretarial designation, contest the secretarial designation in any naturalization court for the area in which such member resides, by filing of a petition therein requesting designation of a named person other than the secretarial designee, and the burden shall thereupon devolve upon the Secretary to show cause why the member-designated representative should not represent the interests of such member, and the decision of such court shall be final and conclusive;

(3) determine and select the portion of the tribal property which if sold at the appraised value would provide sufficient funds to pay the members who elect to have their interests converted into money, arrange for the sale of such property, and distribute the proceeds of sale among the members entitled thereto: *Provided,* That any person whose name appears on the final roll of the tribe, or a guardian on behalf of any such person who is a minor or an incompetent, shall have the right to purchase, for his or its own account but not as an agent for others, any of such property in lots as offered for sale for not less than the highest offer received by competitive bid; any individual Indian purchaser who has elected to withdraw from the tribe may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh lands pursuant to subsection (b), (d), and (f) of section 564w–1 of this title, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property; and if more than one right is exercised to purchase the same property pursuant to this proviso the property shall be sold to one of such persons on the basis of competitive bids: *Provided further,* That when determining and selecting the portion of the tribal property to be sold, due consideration shall be given to the use of such property for grazing purposes by the members of both groups of the tribe;

(4) cause such studies and reports to be made as may be deemed necessary or desirable by the tribe or by the Secretary in connection with the termination of Federal supervision as provided for in sections 564 to 564w–1 of this title; and

(5) cause a plan to be prepared in form and content satisfactory to the members who elect to remain in the tribe and to the Secretary for the management of tribal property through a trustee, corporation, or other legal entity. If no plan that is satisfactory both to the members who elect to remain in the tribe and to the Secretary has been prepared six months before the time limit provided in section 564e (b) of this title the Secretary shall adopt a plan for managing the tribal property, subject to the provisions of section 564n of this title.

(b) Such amounts of Klamath tribal funds as may be required for the purposes of this section shall be available for expenditure by the Secretary. In order to reimburse the tribe, in part, for expenditure of such tribal funds as the Secretary deems necessary for the purposes of carrying out the requirements of this section, there is authorized to be appropriated out of any money in the Treasury not otherwise appropriated, an amount equal to one-half of such expenditures from tribal funds, or the sum of $550,000, whichever is the lesser amount. (Aug. 13, 1954, ch. 732, § 5, 68 Stat. 718; Aug. 14, 1957, Pub. L. 85–132, § 1 (b), (d), (e), (g), 71 Stat. 347, 348; Aug. 23, 1958, Pub. L. 85–731, §§ 6—8, 73 Stat. 819.)

AMENDMENTS

1958—Subsec. (a) (3). Pub. L. 85–731, §§ 6, 7, eliminated first proviso requiring that funds payable to the withdrawing members be distributed as each $200,000 accumulates, and substituted "who has elected to withdraw from the tribe may apply toward the purchase price up

to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh lands pursuant to subsections (b), (d), and (f) of section 564w-1 of this title, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property" for the words "may apply toward the purchase price all or any part of the sum due him from the conversion of his interest in tribal property" in the second proviso.

Subsec. (a) (5). Pub. L. 85-731, § 8, added sentence to provide that if no plan is satisfactory both to the members who elect to remain in the tribe and to the Secretary, the Secretary shall adopt a management plan.

1957—Subsec. (a) (2). Pub. L. 85-132, § 1 (d), provided that the time of election to withdraw be given after the appraisal is approved by the Secretary, and provided for election on behalf of minors, incompetents, or deceased persons by designee of Secretary.

Subsec. (a) (3). Pub. L. 85-132, § 1 (e), in the second proviso provided that any person whose name appears on the final roll of the tribe, may purchase for his own account, but not as an agent for others, any such property in lots as offered for sale, and provided that if more than one right is exercised to purchase the same property, it be sold on the basis of competitive bids.

Subsec. (a) (5). Pub. L. 85-132, § 1 (g), substituted "members who elect to remain in the tribe" for "tribe".

Subsec. (b). Pub. L. 85-132, § 1 (b), provided for partial reimbursement of the tribe for expenditures of tribal funds under this section, authorization of appropriation of the lesser of amount equal to one-half of such expenditures, or $550,000, in lieu of former provisions which charged expenses incident to par. (3) to members who withdraw from tribe, charged expenses under pars. (4) and (5) to members who remain in tribe, and charged all other expenses under this section to interests of both groups of members.

COMPENSATION FOR SERVICES PERTAINING TO ENACTMENT PROHIBITED

Section 3 of Pub. L. 85-731 provided that: "No funds distributed pursuant to section 5 of the Act of August 13, 1954, as amended [this section], to members who withdraw from the tribe shall be paid to any person as compensation for services pertaining to the enactment of said Act or amendments thereto [sections 564 to 564w-1 of this title] and any person making or receiving such payments shall be guilty of a misdemeanor and shall be imprisoned for not more than six months and fined not more than $500."

TERMINATION OF CONTRACT WITH MANAGEMENT SPECIALISTS BY SECRETARY OF INTERIOR

Section 4 of Pub. L. 85-731 provided that: "The Secretary of the Interior is directed to terminate the contract between him and the management specialists by giving immediately the sixty-day notice required by paragraph 18 of such contract. When the contract is terminated, all of the functions of the management specialists under section 5 of the Act of August 13, 1954, as amended [this section], shall be performed by the Secretary."

PROVISIONS REQUIRING ELECTION TO WITHDRAW OR REMAIN IN TRIBE FOLLOWING APPRAISAL AS UNAFFECTED

Section 5 of Pub. L. 85-731 provided that: "Nothing in this Act shall in any way modify or repeal the provisions of subsection 5 (a) of the Act of August 13, 1954, 68 Stat. 718), as amended [subsec. (a) of this section], providing for and requiring members of the Klamath Tribe to elect to withdraw from or remain in the tribe, following the appraisal of the tribal property."

CEMETERIES WITHIN RESERVATION

Section 9 of Pub. L. 85-731 provided that: "Except as provided below the provisions of the Act of August 13, 1954 (68 Stat. 718), as amended [sections 564 to 564w-1 of this title], shall not apply to cemeteries within the reservation. The Secretary is hereby authorized and directed to transfer title to such properties to any organization authorized by the tribe and approved by him. In the event such an organization is not formed by the tribe within eighteen months following enactment of this Act [August 23, 1958], the Secretary is directed to perfect the organization of a nonprofit entity empowered to accept title and maintain said cemeteries, any costs involved to be subject to the provisions of section 5 (b) of said Act of August 13, 1954, as amended [subsec. (b) of this section]."

DEFERRAL OF TIME FOR SALES OF TRIBAL PROPERTY

Sales of tribal property made pursuant to subsec. (a) (3) of this section or section 564e of this title as deferred until the adjournment of the second session of the Eighty-fifth Congress, see note set out under section 564e of this title.

CROSS REFERENCES

Minors' and incompetents' rights, protection, see section 564n of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564e, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w-1, 564x of this title.

§ 564e. Sale of tribal property; transfer procedure; time limitation; effect on tribal members selling interests.

(a) The Secretary is authorized and directed to execute any conveyancing instrument that is necessary or appropriate to convey title to tribal property to be sold in accordance with the provisions of paragraph (3) of subsection (a) of section 564d of this title, and to transfer title to all other tribal property to a trustee, corporation, or other legal entity in accordance with the plan prepared pursuant to paragraph (5) of subsection (a) of section 564d of this title.

(b) It is the intention of the Congress that all of the actions required by section 564d of this title and this section shall be completed at the earliest practicable time and in no event later than seven years from August 13, 1954.

(c) Members of the tribe who receive the money value of their interests in tribal property shall thereupon cease to be members of the tribe: *Provided,* That nothing shall prevent them from sharing in the proceeds of tribal claims against the United States. (Aug. 13, 1954, ch. 732, § 6, 68 Stat. 719; Aug. 14, 1957, Pub. L. 85-132, § 1 (c), 71 Stat. 347; Aug. 23, 1958, Pub. L. 85-731, § 10, 72 Stat. 819.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-731 substituted "seven years" for "six years".

1957—Subsec. (b). Pub. L. 85-132 substituted "six years" for "four years".

DEFERRAL OF TIME FOR SALES OF TRIBAL PROPERTY

Section 27 of act Aug. 13, 1954, ch. 732, as added by Pub. L. 85-132, § 1 (a), provided that: "Notwithstanding any other provisions of this Act [sections 564 to 564w-1 of this title], no sales of tribal property shall be made pursuant to paragraph (3) of subsection (a) of section 5, or section 6 of this Act [section 564d (a) (3) of this title or this section] prior to the adjournment of the second session of the Eighty-fifth Congress."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564c, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564vv, 564w-1, 564x of this title.

§ 564f. Per capita payments to tribal members.

The Secretary is authorized and directed, as soon as practicable after the passage of sections 564 to 564w-1 of this title, to pay from such funds as are deposited to the credit of the tribe in the Treasury of the United States, $250 to each member of the tribe on the rolls of the tribe on August 13, 1954.

Any other person whose application for enrollment on the rolls of the tribe is subsequently approved, pursuant to the terms of section 564b of this title, shall, after enrollment, be paid a like sum of $250: *Provided,* That such payments shall be made first from the capital reserve fund created by section 530 of this title. (Aug. 13, 1954, ch. 732, § 7, 68 Stat. 720.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564g. Individual property.

(a) Transfer of unrestricted control.

The Secretary is authorized and directed to transfer within four years from August 13, 1954, to each member of the tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title.

All restrictions on the sale or encumbrance of trust or restricted interests in land, wherever located, owned by members of the tribe (including allottees, purchasers, heirs, and devisees, either adult or minor), and on trust or restricted interests in land within the Klamath Indian Reservation, regardless of ownership, are removed four years after August 13, 1954, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrances. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance four years or more after August 13, 1954, shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owners.

Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by one or by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted four years from August 13, 1954;

(2) upon request of any of the owners, and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided,* That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(d) Approval of exchanges or sales by Secretary.

The Secretary is authorized to approve—

(1) the exchange of trust or restricted land between the tribe and any of its members;

(2) the sale by the tribe of tribal property to individual members of the tribe; and

(3) the exchange of tribal property for real property in fee status. Title to all real property included in any sale or exchange as provided in this subsection shall be conveyed in fee simple. (Aug. 13, 1954, ch. 732, § 8, 68 Stat. 720; Aug. 14, 1957, Pub. L. 85–132, § 1 (h), (i), 71 Stat. 348; Aug. 23, 1958, Pub. L. 85–731, § 11, 72 Stat. 819.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–731 eliminated provision making subsection inapplicable to subsurface rights and directing Secretary to transfer subsurface rights to trustees for management for a period not less than ten years.

1957—Subsec. (b). Pub. L. 85–132, § 1 (i), substituted "interests in land, wherever located" for "land", and inserted "purchasers" and "and on trust or restricted interests in land within the Klamath Reservation regardless of ownership" preceding the proviso.

Subsec. (c). Pub. L. 85–132, § 1 (h), inserted the words "one or by" following the words "on land owned by".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564h. Property of deceased members; probate laws.

(a) Sections 47, 151, 202, 312, 331, 333, 336, 337, 344a, 351, 352, 353, 372, 373, 403, 406, 407, and 408 of this title, and section 148 of title 43, and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the tribe who die six months or more after August 13, 1954.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months or more after August 13, 1954. (Aug. 13, 1954, ch. 732, § 9 (a), (b), 68 Stat. 720.)

CODIFICATION

Section is composed of subsecs. (a) and (b) of section 9 of act Aug. 13, 1954. Subsection (c) of section 9 repealed section 555 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564i. Transfer of Federally owned property.

The Secretary is authorized, in his discretion, to transfer to the tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary for public use and from which members of the tribe will derive benefit. (Aug. 13, 1954, ch. 732, § 10, 68 Stat. 721.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564j. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.

No property distributed under the provisions of sections 564 to 564w–1 of this title shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of said sections, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That, for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation or other legal entity. (Aug. 13, 1954, ch. 732, § 11, 68 Stat. 721.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564k. Loan transfers; collection by tribe.

All loans made from the reimbursable loan fund established by section 2 of the Act of August 28, 1937, and all other loans made from Klamath tribal funds, including loans of livestock made by the tribe repayable in kind, shall be transferred to the tribe for collection in accordance with the terms thereof. (Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.)

REFERENCES IN TEXT

Section 2 of act of August 28, 1937, referred to in text, was formerly classified to section 531 of this title and was repealed by section 12 of act Aug. 13, 1954.

CODIFICATION

Section is composed of second sentence of section 12 of act Aug. 13, 1954. The first sentence of said section 12 repealed sections 531—535 and 542 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564*l*. Klamath irrigation works.

(a) Transfer of operation and maintenance.

That part of section 499 of Title 43, which relates to the transfer of the care, operation, and maintenance of reclamation works to water users associations or irrigation districts shall be applicable to the irrigation works on the Klamath Reservation.

(b) Termination of construction costs deferment; recordation of lien.

Effective on the first day of the calendar year beginning after the date of the proclamation provided for in section 564q of this title, the deferment of the assessment and collection of construction costs provided for in the first proviso of section 386a of this title, shall terminate with respect to any lands within irrigation projects on the Klamath Reservation. The Secretary shall cause the first lien against such lands created by section 387 of this title, to be filed of record in the appropriate county office.

(c) Appropriation authorization.

There is authorized to be appropriated out of any funds in the Treasury not otherwise appropriated the sum of $89,212 for payment to the Klamath Tribe with interest at 4 per centum annually as reimbursement for tribal funds used for irrigation construction operation and maintenance benefiting nontribal lands on the Klamath Reservation, such interest being computed from the dates of disbursement of such funds from the United States Treasury.

(d) Adjustment of reimbursable irrigation costs.

The Secretary is authorized to adjust, eliminate, or cancel all or any part of reimbursable irrigation operation and maintenance costs and reimbursable irrigation construction costs chargeable against Indian owned lands that are subject to the provisions of sections 564 to 564w–1 of this title, and all or any part of assessments heretofore or hereafter imposed on account of such costs, when he determines that the collection thereof would be inequitable or would result in undue hardship on the Indian owner of the land, or that the administrative costs of collection would probably equal or exceed the amount collected.

(e) Applicable irrigation laws.

Nothing contained in sections 564 to 564k and 564m to 564w–1 of this title shall affect in any way the laws applicable to irrigation projects on the Klamath Reservation. (Aug. 13, 1954, ch. 732, § 13, 68 Stat. 721.)

REFERENCES IN TEXT

Section 387 of this title, referred to in subsection (b), was omitted after not being repeated in the Interior Department Appropriation Act of 1947, July 1, 1946, ch. 529, 60 Stat. 348.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564m. Water and fishing rights.

(a) Nothing in sections 564 to 564w–1 of this title shall abrogate any water rights of the tribe and its members, and the laws of the State of Oregon with respect to the abandonment of water rights by nonuse shall not apply to the tribe and its members until fifteen years after the date of the proclamation issued pursuant to section 564q of this title.

(b) Nothing in sections 564 to 564w–1 of this title shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty. (Aug. 13, 1954, ch. 732, § 14, 68 Stat. 722.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w–1, 564x of this title.

§ 564n. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means; trusts; annuities; assistance factors; contests.

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of sections 564 to 564w–1 of this title, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from

the member, including but not limited to the creation of a trust of such member's property with a trustee selected by the Secretary, or the purchase by the Secretary of an annuity for such member: *Provided, however,* That no member shall be declared to be in need of assistance in conducting his affairs unless the Secretary determines that such member does not have sufficient ability, knowledge, experience, and judgment to enable him to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to such member and the income and proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof: *Provided further,* That any member determined by the Secretary to be in need of assistance in conducting his affairs may, within one hundred and twenty days after receipt of written notice of such secretarial determination, contest the secretarial determination in any naturalization court for the area in which said member resides by filing therein a petition having that purpose; the burden shall thereupon devolve upon the Secretary to show cause why such member should not conduct his own affairs, and the decision of such court shall be final and conclusive with respect to the affected member's conduct of his affairs. (Aug. 13, 1954, ch. 732, § 15, 68 Stat. 722; Aug. 14, 1957, Pub. L. 85-132, § 1 (j), 71 Stat. 348.)

AMENDMENTS

1957—Pub. L. 85-132 added provisions allowing Secretary to act without application from member to create a trust or purchase an annuity for such member, by setting out factors for determination by Secretary before he declares a member to be in need of assistance, and by providing for contest of such secretarial determination by member.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w-1, 564x, 565a of this title.

§ 564*o*. Advances or expenditures from tribal funds.

Pending the completion of the property dispositions provided for in sections 564 to 564w-1 of this title, the funds now on deposit, or hereafter deposited, in the United States Treasury to the credit of the tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary. (Aug. 13, 1954, ch. 732, § 16, 68 Stat. 722.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564w-1, 564x of this title.

§ 564p. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of sections 564 to 564w-1 of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections. (Aug. 13, 1954, ch. 732, § 17, 68 Stat. 722.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564q, 564r, 564s, 564t, 564u, 564vv, 564w-1, 564x of this title.

§ 564q. Termination of Federal trust.

(a) Publication; termination of Federal services; application of Federal and State laws.

Upon removal of Federal restrictions on the property of the tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians and, except as otherwise provided in sections 564 to 564w-1 of this title, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected.

(b) Nothing in sections 564 to 564w-1 of this title shall affect the status of the members of the tribe as citizens of the United States. (Aug. 13, 1954, ch. 732, § 18, 68 Stat. 722.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564r, 564s, 564t, 564u, 564v, 564w, 564w-1, 564x of this title.

§ 564r. Termination of Federal powers over tribe.

Effective on the date of the proclamation provided for in section 564q of this title, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of sections 564 to 564w-1 of this title are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with said sections without the participation of the Secretary or other officer of the United States. (Aug. 13, 1954. ch. 732, § 19, 68 Stat. 722.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564s, 564t, 564u, 564v, 564w-1, 564x of this title.

§ 564s. Offset of individual indebtedness; credit.

The Secretary is authorized to set off against any indebtedness payable to the tribe or to the United States by an individual member of the tribe or payable to the United States by the tribe, any funds payable to such individual or tribe under sections 564 to 564w-1 of this title and to deposit the amounts set off to the credit of the tribe or the United States as the case may be. (Aug. 13, 1954, ch. 732, § 20, 68 Stat. 723.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564t, 564u, 564v, 564w-1, 564x of this title.

§ 564t. Indian claims unaffected.

Nothing in sections 564 to 564w-1 of this title shall deprive the tribe or its constituent parts of any right, privilege, or benefit granted by sections 70 to 70v of this title. (Aug. 13, 1954, ch. 732, § 21, 68 Stat. 723.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564u, 564v, 564w-1, 564x of this title.

§ 564u. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 564 to 564w-1 of this title, shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency and may transfer such functions, in whole or in part to a State agency with the consent of such agency and the other party or parties to such instrument. (Aug. 13, 1954, ch. 732, § 22, 68 Stat. 723.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564u, 564v, 564w-1, 564x of this title.

§ 564v. Rules and regulations; tribal referenda.

The Secretary is authorized to issue rules or regulations necessary to effectuate the purposes of sections 564 to 564w-1 of this title, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets. (Aug. 13, 1954, ch. 732, § 23, 68 Stat. 723.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564v, 564w-1, 564x of this title.

§ 564w. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

Prior to the issuance of a proclamation in accordance with the provisions of section 564q of this title, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Aug. 13, 1954, ch. 732, § 26, 68 Stat. 723.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564*o*, 564p, 564q, 564r, 564s, 564t, 564u, 564w-1, 564x of this title.

§ 564w-1. Klamath Indian Forest and Klamath Marsh.

Notwithstanding the provisions of sections 564d and 564e of this title, and all Acts amendatory thereof—

(a) Designation of boundaries.

The tribal lands that comprise the Klamath Indian Forest, and the tribal lands that comprise the Klamath Marsh, shall be designated by the Secretary of the Interior and the Secretary of Agriculture, jointly.

(b) Sales; terms and conditions.

The portion of the Klamath Indian Forest that is selected for sale pursuant to section 564d (a) (3) of this title to pay members who withdraw from the tribe shall be offered for sale by the Secretary of the Interior in appropriate units, on the basis of competitive bids, to any purchaser or purchasers who agree to manage the forest lands as far as practicable according to sustained yield procedures so as to furnish a continuous supply of timber according to plans to be prepared and submitted by them for approval and inclusion in the conveyancing instruments in accordance with specifications and requirements referred to in the invitations for bids: *Provided,* That no sale shall be for a price that is less than the realization value of the units involved determined as provided in subsection (c) of this section. The terms and conditions of the sales shall be prescribed by the Secretary. The specifications and minimum requirements to be included in the invitations for bids, and the determination of appropriate units for sale, shall be developed and made jointly by the Secretary of the Interior and the Secretary of Agriculture. Such plans when prepared by the purchaser shall include provisions for the conservation of soil and water resources as well as for the management of the timber resources as hereinbefore set forth in this section. Such plans shall be satisfactory to and have the approval of the Secretary of Agriculture as complying with the minimum standards included in said specifications and requirements before the prospective purchaser shall be entitled to have his bid considered by the Secretary of the Interior and the failure on the part of the purchaser to prepare and submit a satisfactory plan to the Secretary of Agriculture shall constitute grounds for rejection of such bid. Such plans shall be incorporated as conditions in the conveyancing instruments executed by the Secretary and shall be binding on the grantee and all successors in interest. The conveyancing instruments shall provide for a forfeiture and a reversion of title to the lands to the United States, not in trust for or subject to Indian use, in the event of a breach of such conditions. The purchase price paid by the grantee shall be deemed to represent the full appraised fair market value of the lands, undiminished by the right of

reversion retained by the United States in a non-trust status, and the retention of such right of reversion shall not be the basis for any claim against the United States. The Secretary of Agriculture shall be responsible for enforcing such conditions. Upon any reversion of title pursuant to this subsection, the lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16.

(c) Appraisals; notice to Congressional committees; appropriation; realization value; report to Congressional committees.

Within sixty days after August 23, 1958 the Secretary of the Interior shall contract by negotiation with three qualified appraisers or three qualified appraisal organizations for a review of the appraisal approved by the Secretary pursuant to section 564d (a) (2) of this title. In such review full consideration shall be given to all reasonably ascertainable elements of land, forest, and mineral values. Not less than thirty days before executing such contracts the Secretary shall notify the chairman of the House Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Interior and Insular Affairs of the names and addresses of the appraisers selected. The cost of the appraisal review shall be paid from tribal funds which are made available for such purpose, subject to full reimbursement by the United States, and the appropriation of funds for that purpose is authorized. Upon the basis of a review of the appraisal heretofore made of the forest units and marsh lands involved and such other materials as may be readily available, including additional market data since the date of the prior appraisal, but without making any new and independent appraisal, each appraiser shall estimate the fair market value of such forest units and marsh lands as if they had been offered for sale on a competitive market without limitation on use during the interval between the adjournment of the Eighty-fifth Congress and the termination date specified in section 564e (b) of this section. This value shall be known as the realization value. If the three appraisers are not able to agree on the realization value of such forest units and marsh lands, then such realization values shall be determined by averaging the values estimated by each appraiser. The Secretary shall report such realization values to the chairman of the House Committee on Interior and Insular Affairs and to the chairman of the Senate Committee on Interior and Insular Affairs not later than January 15, 1959. No sale of forest units that comprise the Klamath Indian forest designated pursuant to subsection (a) of this section shall be made under the provisions of sections 564 to 564w-1 of this title prior to April 1, 1959.

(d) Unsold forest units and marsh lands; title after publication in Federal Register; aggregate realization value; appropriation.

If all of the forest units offered for sale in accordance with subsection (b) of this section are not sold before April 1, 1961, the Secretary of Agriculture shall publish in the Federal Register a proclamation taking title in the name of the United States to as many of the unsold units or parts thereof as have, together with the Klamath Marsh lands acquired pursuant to subsection (f) of the section, an aggregate realization value of not to exceed $90,000,000, which shall be the maximum amount payable for lands acquired by the United States pursuant to sections 564 to 564w-1 of this title. Compensation for the forest lands so taken shall be the realization value of the lands determined as provided in subsection (c) of this section, unless a different amount is provided by law enacted prior to the proclamation of the Secretary of Agriculture. Appropriation of funds for that purpose is authorized. Payment shall be made as soon as possible after the proclamation of the Secretary of Agriculture. Such lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16. Any of the forest units that are offered for sale and that are not sold or taken pursuant to subsection (b) or (d) of this section shall be subject to sale without limitation on use in accordance with the provisions of section 564d of this title.

(e) Sale of retained lands to Secretary of Agriculture.

If at any time any of the tribal lands that comprise the Klamath Indian Forest and that are retained by the tribe are offered for sale other than to members of the tribe, such lands shall first be offered for sale to the Secretary of Agriculture, who shall be given a period of twelve months after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary of Agriculture, and if such lands are reoffered for sale they shall first be reoffered to the Secretary of Agriculture. The Secretary of Agriculture is authorized to purchase such lands subject to such terms and conditions as to the use thereof as he may deem appropriate, and any lands so acquired shall thereupon become national forest lands subject to the laws that are applicable to lands acquired pursuant to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16.

(f) Klamath Forest National Wildlife Refuge; appropriation.

The lands that comprise the Klamath Marsh shall be a part of the property selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe. Title to such lands is taken in the name of the United States, effective the earliest date after September 30, 1959, when the Secretary of the Interior determines that funds for the payment of the purchase price are available from the sale of stamps under the Migratory Bird Hunting Stamp Act of March 16, 1934, as amended. Such lands are designated as the Klamath Forest National Wildlife Refuge, which shall be administered in accordance with

the law applicable to areas acquired pursuant to section 718d of Title 16, as amended or supplemented. Compensation for said taking shall be the realization value of the lands determined in accordance with subsection (c) of this section, and shall be paid out of funds in the Treasury of the United States, which are authorized to be appropriated for that purpose.

(g) Homesites.

Any person whose name appears on the final role of the tribe, and who has since December 31, 1956, continuously resided on any lands taken by the United States by subsections (d) and (f) of this section, shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands, as determined by the Secretary of Agriculture, subject to such regulations as the Secretary of Agriculture may issue to safeguard the administration of the national forest and as the Secretary of the Interior may issue to safeguard the administration of the Klamath Forest National Wildlife Refuge.

(h) Administration of outstanding timber sales contracts.

If title to any of the lands comprising the Klamath Indian Forest is taken by the United States, the administration of any outstanding timber sales contracts thereon entered into by the Secretary of the Interior as trustee for the Klamath Indians shall be administered by the Secretary of Agriculture.

(i) Right of United States to use roads.

All sales of tribal lands pursuant to subsection (b) of this section or pursuant to section 564d of this title on which roads are located shall be made subject to the right of the United States and its assigns to maintain and use such roads.

(Aug. 13, 1954, ch. 732, § 8, as added Aug. 23, 1958, Pub L. 85–731, § 1, 72 Stat. 816, and amended Sept. 9, 1959, Pub. L. 86–247, 73 Stat. 477.)

REFERENCES IN TEXT

The adjournment of the Eighty-fifth Congress, referred to in subsec. (c) of this section, took place on Aug. 24, 1958.

Migratory Bird Hunting Stamp Act of March 16, 1934, as amended, referred to in subsec. (f), is classified to sections 718—718b, 718c—718h of Title 16, Conservation.

AMENDMENTS

1959—Subsec. (f). Pub. L. 86–247 changed the date for the Federal acquisition of the Klamath Indian Marsh from April 1, 1961, to the earliest date after September 30, 1959, that funds are available to pay for the property from the sale of stamps.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 564a, 564b, 564d, 564f, 564j, 564*l*, 564m, 564n, 564o, 564p, 564q, 564r, 564s, 564t, 564u, 564v, 564x of this title.

§ 564x. Timber sales.

Nothing in sections 564 to 564w–1 of this title, shall affect the authority to make timber sales otherwise authorized by law prior to the termination of Federal control over such timber. (Pub. L. 85–132, § 2, Aug. 14, 1957, 71 Stat. 348.)

KLAMATH TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 565. Authorization to distribute funds.

That the Secretary of the Interior is authorized and directed to distribute in accordance with the provisions of sections 565 to 565g of this title the funds appropriated in satisfaction of a judgment obtained by the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, hereinafter called the Klamath Tribe for the purposes of the administration of sections 565 to 565g of this title, from the Indian Claims Commission against the United States in docket numbered 100, and all other funds heretofore or hereafter deposited in the United States Treasury to the credit of the Klamath Tribe or any of its constituent parts or groups, except the funds heretofore or hereafter set aside for the purpose of paying the usual and necessary expenses of prosecuting claims against the United States. (Pub. L. 89–224, § 1, Oct. 1, 1965, 79 Stat. 897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565f, 565g of this title.

§ 565a. Distribution to persons on final roll; payment of shares due living adults, deceased enrollees, adults under legal disabilities, persons in need of assistance, and minors.

(a) A distribution shall be made of the funds resulting from docket numbered 100, including interest, after deducting litigation expenses and estimated costs of distribution to all persons whose names appear on the final roll of the Klamath Tribe, which roll was closed and made final as of August 13, 1954 (68 Stat. 718). Except as provided in subsections (b), (c), (d), and (e) of this section, a share or portion of a share payable to a living adult shall be paid directly to such adult; (b) a share payable to a deceased enrollee shall be paid to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the Interior, whose findings and determinations upon such proof shall be final and conclusive: *Provided,* That amounts payable to deceased heirs amounting to $5 or less shall not be paid, and such amounts shall remain in the United States Treasury to the credit of the Klamath Tribe; (c) a share payable to an adult under legal disability shall be paid to his legal representative; (d) a share payable to a person previously found to be in need of assistance under the provisions of section 564n of this title, may be paid directly to the individual or, if the Secretary deems it in the best interest of the individual, it may be added to the trust now in force on behalf of the said individual, with concurrence of the trustee; and (e) a share or portion of a share payable to a person under age of majority as determined by the laws of the State of residence shall be paid to a parent, legal guardian, or trustee of such minor. (Pub. L. 89–224, § 2, Oct. 1, 1965, 79 Stat. 897.)

REFERENCES IN TEXT

68 Stat. 718, referred to in subsec. (a) of this section, is a reference to section 3 of act Aug. 13, 1954, which is classified to section 564b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565c, 565d, 565e, 565f, 565g of this title.

§ 565b. Time of payment; claims for shares of deceased enrollees.

Within sixty days of October 1, 1965, the Secretary of the Interior shall commence to pay the share due to each living person whose name appears on the final roll of August 13, 1954. As to members who have died since promulgation of the final roll of August 13, 1954, the Secretary shall mail a notice of distribution of funds and a form for presentation of a claim thereunder to all known heirs or legatees of such deceased enrollees. All such claims shall be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, within two years following October 1, 1965. From and after that date, all claims and the right to file claims for any distribution from the judgment in docket numbered 100 shall be forever barred. (Pub. L. 89–224, § 3, Oct. 1, 1965, 79 Stat. 897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565c, 565d, 565f, 565g of this title.

§ 565c. Disposition of funds remaining after distribution.

Funds remaining in the United States Treasury to the credit of the said Klamath Tribe, or any of its constituent parts or groups, after the distribution of funds resulting from Indian Claims commission docket numbered 100 as provided by sections 565a and 565b of this title, together with any other funds which may be deposited in the United States Treasury, including without limitation funds accruing from other judgments against the United States (after payment of expenses, including attorney fees, payments for rights-of-way, trespass damages, or other revenues, together with any interest accrued thereon, shall, after deduction of the estimated cost of distribution, be distributed from time to time as determined by the Secretary to the members of the Klamath Tribe or to the members of any of its constituent parts or groups in the same manner as provided in sections 565a and 565b of this title. (Pub. L. 89–224, § 4, Oct. 1, 1965, 79 Stat. 897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565d, 565e, 565f, 565g of this title.

§ 565d. Disposition of funds insufficient to justify further distribution.

After all claims of the Klamath Tribe or any of its constituent parts or groups against the United States have been finally determined, appropriated, and distributed, as provided in sections 565a, 565b, and 565c of this title; and after all litigation expenses (including attorney fees) and costs of distributions have been paid, any funds remaining in the United States Treasury to the credit of the Klamath Tribe or any of its constituent parts or groups which, in the discretion of the Secretary of the Interior are insufficient to justify a further distribution, shall be deposited in the miscellaneous receipts of the Treasury of the United States. (Pub. L. 89–224, § 5, Oct. 1, 1965, 79 Stat. 898.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565f, 565g of this title.

§ 565e. Costs.

The costs of distribution may be paid out of the deductions authorized by sections 565a and 565c of this title. Any unused portion of such amounts shall remain in the United States Treasury to the credit of the Klamath Tribe. (Pub. L. 89–224, § 6, Oct. 1, 1965, 79 Stat. 898.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565f, 565g of this title.

§ 565f. Taxes.

None of the funds distributed pursuant to sections 565 to 565g of this title shall be subject to Federal or State income tax. (Pub. L. 89–224, § 7, Oct 1, 1965, 79 Stat. 898.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565g of this title.

§ 565g. Rules and regulations.

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of sections 565 to 565g of this title. (Pub. L. 89–224, § 8, Oct. 1, 1965, 79 Stat. 898.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 565f of this title.

SHOSHONE TRIBE; DISTRIBUTION OF JUDGMENT FUND

§ 571. Membership roll; preparation.

The Secretary of the Interior is authorized and directed, with the advice and consent of the business council of the Shoshone Tribe of the Wind River Reservation in Wyoming, to prepare a roll showing the members of said tribe living on the date of the approval of this Act, and such roll shall form the basis for the distribution of the judgment fund of said tribe created as the result of the passage of the Act of June 25, 1938 (52 Stat. 1114–1156), and accrued interest thereon. (July 27, 1939, ch. 387, § 1, 53 Stat. 1128.)

REFERENCES IN TEXT

The date of the approval of this Act, referred to in text, means the date of the approval of act July 27, 1939, which was enacted into law on July 27, 1939.

Section 203 (a) of act of June 25, 1938, referred to in text, provided for an appropriation for payment of judgments rendered by the court of claims and reported to the 75th Congress in Senate Document Numbered 191, and House Documents Numbered 661 and 686. House Document No. 661 listed a judgment in favor of the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming, in the sum of $4,408,444.23, with interest on a part thereof to the date of payment, for the taking of land.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 572, 573, 575 of this title.

§ 572. Payments to individuals; expenditure of payments.

There shall be credited on the books of the Office of Indian Affairs the sum of $2,450 to each member of said tribe whose name appears on the roll provided for in section 571 of this title, and out of such sum so credited the Secretary of the Interior is

authorized to make available immediately to each individual member of the tribe the sum of $100; and, under such rules and regulations as he may prescribe, the sum of $1,350 to each adult and the sum of $500 to each minor for the following purposes: Purchase of land, improvement of lands to be acquired or already held by the Indian, for the erection and improvement of suitable homes, the purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education, as will enable them to become self-supporting: *Provided, however,* That the funds of the aged, infirm, decrepit, and incapacitated members may be used for their proper maintenance and support in the discretion of the Secretary of the Interior. The remainder of the share of each adult individual Indian, including accrued interest, shall be made available under such rules and regulations as the Secretary of the Interior may prescribe, and the remainder of the share of each minor Indian shall, with accrued interest, be held intact until such Indian reaches the age of eighteen years, when it shall be available under the same conditions as herein provided for adults. As herein used the term "adult" shall include the members of the tribe eighteen years of age or over, and the term "minor" shall include all members less than eighteen years of age. On the death of any enrolled member, adult or minor, the sum on deposit to his credit shall be available for expenditure for the benefit of his heirs for the purposes herein authorized. (July 27, 1939, ch. 387, § 2, 53 Stat. 1128.)

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of the Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 575 of this title.

§ 573. Purchase of lands; loan fund; productive enterprises.

(a) Not to exceed $1,000,000 of the judgment fund to which reference is made in section 571 of this title, or interest thereon, shall be available for expenditure upon the request of the tribe and with the approval of the Secretary of the Interior, for the purchase of lands in the manner prescribed in section 576 of this title.

(b) The sum of $125,000 of said judgment fund, or interest thereon, shall, at the request of the tribe and with the approval of the Secretary of the Interior, be set aside as a loan fund for making loans to individual members, or groups of members, of said tribe under such rules and regulations as may be prescribed by the Secretary of the Interior.

(c) The remainder of said judgment fund, including interest thereon, after making the segregation provided for in section 572 of this title, and after setting aside the respective amounts authorized by this section, shall be available for appropriation, upon the recommendation of the Secretary of the Interior, and with the consent of the tribe, for purposes of benefit to the tribe, including the establishment and administration of productive enterprises for the benefit of said tribe, and any income derived from such enterprises shall be credited to the Shoshone tribal judgment fund: *Provided,* That should such enterprises also benefit the Arapaho Tribe repayment proportionate to the benefit to the Arapaho Tribe shall be made into the Shoshone judgment fund by the Arapaho Tribe out of such tribal income as the Arapaho Tribe may enjoy. (July 27, 1939, ch. 387, § 3, 53 Stat. 1129.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 575, 576 of this title.

§ 574. Consolidation of lands.

The Secretary of the Interior is authorized and directed to establish land-use districts within the diminished and ceded portions of the Wind River Indian Reservation, Wyoming, and, under such rules and regulations as he may prescribe, to effect the consolidation of Indian and privately owned lands within said districts through exchange, relinquishment, donation, assignment, or purchase of lands or interests therein, including water rights or surface rights to lands, improvements thereon and improvements on undisposed-of ceded lands, to the end that the respective Indian and non-Indian land holdings may be consolidated for more beneficial use. Exchanges of lands hereunder shall be made on the basis of equal value, and the value of improvements on lands to be relinquished to the Indians or by Indians to non-Indians shall be given due consideration, and allowance made therefor in the valuation of lieu lands. This section shall apply to tribal land, and trust or otherwise restricted Indian allotments, whether the allottees be living or deceased. In all transactions involving tribal Indian land, the consent of the Shoshone and Arapaho Tribes shall first be obtained. Title to all lands or interests therein acquired by the Government through exchange of tribal land shall be taken in the name of the United States in trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation, Wyoming. Title to lands exchanged for individual Indian allotments, or purchased for individual Indians with restricted funds shall be taken by the United States in trust for the individual Indian allottee or heir. The right herein granted individual Indians to acquire lands by purchase with restricted funds or by exchange shall not extend to lands on the ceded or opened portion of the reservation. (July 27, 1939, ch. 387, § 4, 53 Stat. 1129.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 575 of this title.

§ 575. Restoration of lands.

The Secretary of the Interior is directed to restore to tribal ownership all undisposed-of surplus or ceded lands within the land use districts which

are not at present under lease or permit to non-Indians; and, further, to restore to tribal ownership the balance of said lands progressively as and when the non-Indian owned lands within a given land use district are acquired by the Government for Indian use pursuant to the provisions of sections 571 to 577 of this title. All such restorations shall be subject to valid existing rights and claims: *Provided,* That no restoration to tribal ownership shall be made of any lands within any reclamation project heretofore authorized within the diminished or ceded portions of the reservation. (July 27, 1939, ch. 387, § 5, 53 Stat. 1129.)

LANDS CEDED FOR RIVERTON PROJECT

Act Aug. 15, 1953, ch. 509, § 4, 67 Stat. 613, set out as a note under section 611 of this title, provided that all lands of the Wind River Indian Reservation ceded for the Riverton reclamation project in Wyoming and not used for such project were restored to the ownership of the Arapaho and Shoshone Tribes.

§ 576. Purchase of lands; reimbursement of expenditures.

The sum of $1,000,000 authorized in section 573 of this title for use in carrying out the land purchase and consolidation program hereinbefore authorized shall remain available until expended and any amount expended shall be reimbursed with interest at 4 per centum per annum to the Shoshone Tribe of Indians of the Wind River Reservation from joint funds to the credit of the Shoshone and Arapaho Tribes of the Wind River Reservation or from future accruals to said joint fund, as and when said funds accrue. Title to all land purchases made hereunder shall be taken in the name of the United States in trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation, Wyoming. All purchases of lands or interests therein made pursuant to this section shall receive the approval of the Shoshone and Arapaho Tribal Councils or of the business committees thereof. (July 27, 1939, ch. 387, § 6, 53 Stat. 1130.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 575 of this title.

§ 577. Liability of judgment funds for debts.

In no event shall any portion of the Shoshone judgment fund become liable, payable, or subject to any debt or debts contracted prior to the passage of this Act by any Indian of the Shoshone Tribe except debts to the United States or to the tribe. (July 27, 1939, ch. 387, § 7, 53 Stat. 1130.)

REFERENCES IN TEXT

Prior to the passage of this act, referred to in text, means prior to the enactment into law of act July 27, 1939, which was approved July 27, 1939.

CROSS REFERENCES

Shoshone judgment fund, see section 571 of this title and note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 575 of this title.

CHIPPEWA TRIBE OF MINNESOTA

§ 591. Reservation of Chippewa National Forest lands for Minnesota Chippewa Tribe.

Subject to the payments prescribed by section 592 of this title the following-described lands are eliminated from the Chippewa National Forest and permanently reserved for the use of the Minnesota Chippewa Tribe without in any manner affecting existing reserves for church, cemetery, and other purposes, or individual rights or interest in said lands: South half northwest quarter southwest quarter, southeast quarter southwest quarter, section 12; northwest quarter northwest quarter, west half northeast quarter northwest quarter, south half northwest quarter, west half southwest quarter, lots 2, 4, 5, and 6, section 13; northeast quarter southeast quarter, section 14; lots 11, 12, 13, 3, 4, 6, 7, 8, and 9, section 24, township 142 north, range 31 west, fifth principal meridian, Minnesota, excepting a tract containing approximately one and ninety one-hundredths acres, being that portion of lot 4, section 13, township 142 north, range 31 west, beginning at angle point 1, lot 5, section 13, township 142 north, range 31 west; thence north thirty-three degrees forty-two minutes east one hundred and twenty-nine and five-tenths feet; thence south eighty-nine degrees forty-eight minutes east two hundred and thirty-one and four-tenths feet; thence south one degree fifty-four minutes west eighty-five and two-tenths feet; thence south nine degrees thirty-one minutes east two hundred and five and two-tenths feet; thence south nine degrees no minutes west eighty and four-tenths feet; thence south forty-one degrees nineteen minutes west one hundred and nineteen and four-tenths feet to angle point 4, lot 5; thence along the boundary of lot 5, north fifty-one degrees no minutes west one hundred and twenty and one-tenth feet to angle point 5, lot 5, north thirty-seven degrees forty-five minutes east one hundred and twenty and one-tenth feet to angle point 6, lot 5, north fifty-one degrees no minutes west two hundred and eighty-seven and one-tenth feet to angle point 1, lot 5, and point of beginning. (June 8, 1940, ch. 285, § 1, 54 Stat. 254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 592 of this title.

§ 592. Withdrawal of tribal funds to reimburse United States; consent of Minnesota Chippewa Tribe; disposition of receipts.

The Secretary of the Interior is authorized to withdraw from the Minnesota Chippewa tribal fund now held in trust in the Treasury of the United States a sufficient sum to reimburse the United States for the land and timber thereon, the value of the land to be calculated at $1.25 per acre, and the value of the timber to be ascertained by the Secretary of Agriculture after the same has been examined and appraised under his supervision: *Provided, however,* That the transaction contemplated in this section and section 591 of this title shall be effected only with the consent of the Minnesota Chippewa Tribe expressed through the body authorized to represent it: *And provided further,* That all money received by the United States under the authority of sections 591 to 593 of this title shall be deposited in the Treasury of the United States, and the same is appropriated for the acquisition of forest land within the Chippewa National Forest under the provisions of sections 513 to 517, 518, 519, and 521 of Title 16. (June 8, 1940, ch. 285, § 2, 54 Stat. 254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 591 of this title.

§ 593. Exchanges of allotted, restricted, and tribal lands for Chippewa National Forest lands.

Exchanges of Indian allotted, restricted, and tribal lands for lands in the Chippewa National Forest are authorized. In order to consummate exchanges involving allotted and restricted Indian lands, the Secretary of the Interior is authorized to accept relinquishments or conveyances of Indian lands, which lands shall thereupon become a part of the Chippewa National Forest, and to issue trust patents to the Indians for the lands received by them in exchange: *Provided,* That with the consent of the Indians involved title to the lands received in any such exchange may be taken in the name of the tribe, in which case the transfer of title shall be evidenced by an order of the Secretary of Agriculture transferring the lands to the Secretary of the Interior in trust for the Minnesota Chippewa Tribe: *Provided further,* That exchanges involving tribal lands shall be made only with the consent of the Indians and shall be evidenced by appropriate orders of transfer executed by the Secretary of Agriculture and the Secretary of the Interior: *And provided further,* That the land exchanges authorized herein shall be made on the basis of lands of equal value, and no exchange shall be made unless it is first approved by the Secretary of Agriculture. (June 8, 1940, ch. 285, § 3, 54 Stat. 255.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 592 of this title.

§ 594. Distribution of judgment funds; Mississippi bands; Pillager and Lake Winnibigoshish bands.

The funds on deposit in the Treasury of the United States to the credit of the Minnesota Chippewa Tribe of Indians on behalf of the Mississippi Bands and the Pillager and Lake Winnibigoshish Bands of Chippewa Indians that were appropriated by the Act of October 31, 1965, to pay a judgment by the Indian Claims Commission in docket 18–B, and the interest thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing bodies of the Minnesota Chippewa Tribe and the White Earth, Leech Lake, and Mille Lacs Reservations with whom the members of the Mississippi Bands and Pillager and Lake Winnibigoshish Bands of Chippewa Indians are affiliated, and approved by the Secretary of the Interior. Only those persons who are descendants of the Mississippi Bands and the Pillager and Lake Winnibigoshish Bands of Chippewa Indians who were born on or prior to and living on September 27, 1967 and who meet the requirements for membership in the Minnesota Chippewa Tribe shall be entitled to share in the use or distribution of the funds. Any part of such funds that may be distributed per capita to the members of the tribe shall not be subject to the Federal or State income tax. (Pub. L. 90–94, § 1, Sept. 27, 1967, 81 Stat. 230.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 594a of this title.

§ 594a. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this section and section 594 of this title. (Pub. L. 90–94, § 2, Sept. 27, 1967, 81 Stat. 230.)

YAKIMA TRIBES

§ 601. Membership roll; preparation; persons entitled to enrollment.

The Secretary of the Interior is authorized and directed, with the advice and consent of the Yakima Tribal Council, to prepare a roll showing the members of the Yakima Tribes living on August 9, 1946, which roll shall be kept current and shall constitute the official membership roll of the Yakima Tribes for all purposes. No person who is enrolled with any other tribe of Indians or who has received an allotment of land on any other reservation shall be enrolled under the provisions of sections 601 to 607 of this title. The following shall be placed on the roll:

(a) All living persons who received allotments on the Yakima Reservation, except by fraud.

(b) All living persons who are of the blood of the fourteen original Yakima Tribes, parties to the treaty of June 9, 1855 (12 Stat. 951), and who have received allotments on the public domain within the area ceded to the United States by the Yakima Tribes by the treaty of 1855.

(c) All living persons who have maintained a domicile continuously from January 1, 1941, until August 9, 1946, on the Yakima Reservation or within the area ceded by the treaty of June 9, 1855 (12 Stat. 951), and who are (1) descendants of persons who received allotments on the Yakima Reservation, except by fraud, or (2) descendants of persons of the blood of the fourteen original Yakima Tribes who received allotments on the public domain within the area ceded by the said treaty of 1855. All living children born after January 1, 1941, but prior to August 9, 1946, to a person entitled to enrollment under this subsection shall likewise be entitled to enrollment under this subsection.

(d) All children of one-fourth or more blood of the Yakima Tribes born after August 9, 1946, to a parent who is an enrolled member and maintains a domicile on the Yakima Reservation or within the area ceded by the treaty of June 9, 1855, at the time of the birth of the child. (Aug. 9, 1946, ch. 933, § 1, 60 Stat. 968.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 604 of this title.

§ 602. Application to Tribal Council on exclusion from roll; minors and incompetent persons.

Any person of one-fourth or more of the blood of the Yakima Tribes who may be excluded from enrollment under the provisions of section 601 of this title may apply for membership at any time and be enrolled upon the approval of the application by a two-thirds vote of the Yakima Tribal Council. Applications for enrollment under this section on behalf of minors and persons mentally incompetent may be filed by any enrolled member of the Yakima Tribes. (Aug. 9, 1946, ch. 933, § 2, 60 Stat. 969.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 604 of this title.

§ 603. Correction of membership roll.

Corrections in the roll prepared under sections 601 to 607 of this title, by striking therefrom the name of any person erroneously placed on the roll or by

adding to the roll the name of any person erroneously omitted therefrom, may be made at any time by the Yakima Tribal Council. (Aug. 9, 1946, ch. 933, § 3, 60 Stat. 969.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 604 of this title.

§ 604. Loss of membership and removal from roll.

Every person whose name appears on the roll prepared under sections 601 to 607 of this title who holds no vested right, title, or interest in or to any restricted or trust land on the Yakima Reservation or within the area ceded by the treaty of June 9, 1855, and who has failed to maintain any tribal affiliations or a residence on the reservation or within the ceded area for a period of five consecutive years, shall no longer be considered a member of the Yakima Tribes, and his name shall be removed from the rolls. It shall be the duty of the Yakima Tribal Council to determine, subject to review by the Secretary of the Interior, loss of membership in each case. (Aug. 9, 1946, ch. 933, § 4, 60 Stat. 969.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603 of this title.

§ 605. Expulsion of members; review by Secretary.

The Yakima Tribal Council may adopt and enforce ordinances, subject to review by the Secretary of the Interior, governing the expulsion of members for any cause deemed by the council to be sufficient. (Aug. 9, 1946, ch. 933, § 5, 60 Stat. 969.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 604 of this title.

§ 606. Back pay and annuities on enrollment of new members.

No person whose name shall after August 9, 1946, be placed on the roll of the Yakima Tribes shall be entitled to any back annuities or per capita payments made to the members of the tribes out of tribal funds which were authorized to be paid to the members of the tribes before such person's name shall have been placed upon such roll. (Aug. 9, 1946, ch. 933, § 6, 60 Stat. 969.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 604 of this title.

§ 607. Divestment of inheritance of non-members.

(a) Procedure.

A person who is not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes shall not be entitled to receive by devise or inheritance any interest in trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951), if, while the decedent's estate is pending before the Examiner of Inheritance, the Yakima Tribes pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal. The interest for which payment is made shall be held by the Secretary in Trust for the Yakima Tribes.

(b) Time of election.

On request of the Yakima Tribes the Examiner of Inheritance shall keep an estate pending for not less than two years from the date of decedent's death.

(c) Interest of surviving spouse.

When a person who is prohibited by subsection (a) of this section from acquiring any interest by devise or inheritance is a surviving spouse of the decedent, a life estate in one-half of the interest acquired by the Yakima Tribes shall, on the request of such spouse, be reserved for that spouse and the value of such life estate so reserved shall be reflected in the Secretary's apraisal under subsection (a) of this section. (Aug. 9, 1946, ch. 933, § 7, 60 Stat. 969; Dec. 31, 1970, Pub. L. 91-627, § 1, 84 Stat. 1874.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-627 designated existing provisions as subsec. (a), and, as so designated, substituted provisions authorizing the Yakima Tribes to pay to the Secretary of the Interior the fair market value, as determined by the Secretary after appraisal, of any interest in trust or restricted land within the specified areas which a person not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes was to receive by devise or inheritance, for provisions limiting the inheritance of trust land on the Yakima Reservation to enrolled members of the Yakima Tribes of one-fourth or more blood of such tribes and to surviving spouses who are enrolled members but possess less than one-fourth degree of Yakima blood, with such surviving spouses authorized to inherit a life estate in not more than one-half the property.

Subsecs. (b), (c). Pub. L. 91-627 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91-627 provided that: "The provisions of section 7 of the Act of August 9, 1946, as amended by this Act [this section], shall apply to all estates pending before the Examiner of Inheritance on the date of this Act [Dec. 31, 1970], and to all future estates, but shall not apply to any estate heretofore closed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 604 of this title.

§ 608. Purchase, sale, and exchange; multiple ownership of land; status of acquisitions in fee or trust; terms and conditions.

(a) The Secretary of the Interior is authorized, in his discretion, to—

(1) purchase for the Yakima Tribes, with any funds of such tribes, and to otherwise acquired by gift, exchange, or relinquishment, any lands or interest in lands or improvements thereon within the Yakima Indian Reservation or within the area ceded to the United States by the treaty of June 9, 1855;

(2) sell or approve sales of any tribal trust lands, any interest therein or improvements thereon, such sales being limited to agencies of the Federal, State, or local governments for recreational, educational, civic, or other public purposes, and to individual members of the tribes;

(3) exchange any tribal trust lands, including interests therein or improvements thereon, for any lands situated within such reservation or the area ceded to the United States by the treaty of June 9, 1855; and

(b) Where lands are held in multiple ownership, the Secretary is authorized to sell and exchange such lands to other Indians or the Yakima Tribes only if the sale or exchange is authorized in writing by the owners of at least a majority interest in such lands; except that no greater percentage of approval of individual Indians shall be required under sections 608 to 608c of this title than in any other statute of general application approved by Congress.

(c) In all cases in which the Secretary is acquiring for the Yakima Tribes lands or interests in lands presently held in trust or under restrictions for the benefit of an individual Indian, title shall be taken in the name of the United States in trust for the Yakima Tribes. In all cases in which land being purchased is presently held by the grantor in fee simple, title shall be taken for and held by the Yakima Tribes in fee and such land shall not, by reason of its being owned by the tribes, be exempt from taxation in accordance with the laws of the State of Washington.

(d) The Secretary shall obtain the advice and consent of the Yakima tribal council before entering into any of the above transactions involving the acquisition or disposition of tribal land. The terms and conditions of any such transaction, including the price at which any land is so purchased or sold and the valuation of any lands so exchanged, shall be mutually agreed upon by the Secretary, the Yakima tribal council, and the individual Indian or Indians concerned. Any such exchange of lands shall be effected on the basis of approximately equal consideratidon with due allowance for the value of improvements in determining the value of such lands. (July 28, 1955, ch. 423, § 1, 69 Stat. 392; Aug. 31, 1964, Pub. L. 88-540, § 1, 78 Stat. 747.)

AMENDMENTS

1964—Pub. L. 88-540 amended section generally, and among other changes, permits acquisitions by gift or relinquishment, acquisition of any land within the reservation or area ceded to the United States by the treaty of June 9, 1855, sale of tribal land not only to tribe members, but also to Federal, State, or local government for recreational, educational, civic, or other public purposes, exchange of tribal land for any land within the reservation or the ceded area, lands held in multiple ownership to be sold or exchanged upon the written authorization of owners of at least a majority interest in the lands or any lesser percentage that may be provided in a statute of general application, and title to land in fee status acquired by the tribes to be taken in fee status.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608b, 608c of this title.

§ 608a. Title to lands, interests, improvements or rights; credit of proceeds of sale to tribal funds.

(a) Title to tribal trust lands, interests, improvements, or rights sold by the Secretary to individual members of the Yakima Tribes or exchanged by the Secretary for lands held under trust patent or other restrictions against alienation by individual members of the tribes and other Indians or for lands in heirship status shall be held by the United States in trust for the individual Indian or Indians concerned.

(b) Sums derived from the sale of tribal trust lands interests, improvements, and rights shall be credited to the tribal funds of the Yakima Tribes. (July 28, 1955, ch. 423, § 2, 69 Stat. 393; Aug. 31, 1964, Pub. L. 88-540, § 2, 78 Stat. 748.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-540 eliminated provisions that title to lands, interests, improvements, or rights acquired under section 608 of this title by the Secretary for the Yakima Tribes through purchase or exchange shall be held by the United States in trust for the Yakima Tribes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608, 608b, 608c of this title.

§ 608b. Rights of lessee.

(a) No transaction entered into under sections 608 to 608c of this title shall affect, without the consent of the lessee, any lease of lands, interests, improvements, or rights involved in such transaction, or any right of the lessee with respect to extension or renewal of such lease, which is in existence at the time such transaction is entered into.

(b) Repealed, Pub. Law 88-540, § 3, Aug. 31, 1964, 78 Stat. 748.

(July 28, 1955, ch. 432, § 3, 69 Stat. 393; Aug. 31, 1964, Pub. L. 88-540, § 3, 78 Stat. 748.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88-540 repealed subsection (b) which provided: "Nothing in sections 608—608c of this title shall affect the existing status of any lands, interests, improvements, or rights with respect to taxation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608, 608c of this title.

§ 608c. Regulations.

The Secretary is authorized to prescribe such regulations as may be necessary to carry out the purposes of sections 608 to 608c of this title. (July 28, 1955, ch. 423, § 4, 69 Stat. 393.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 608, 608b, 608c of this title.

§ 609. Action to determine title to judgment fund; claim of Confederated Tribes of the Colville Reservation; jurisdiction of Court of Claims.

The Confederated Tribes of the Colville Reservation, acting through the chairman of its business council, and the Yakima Tribes of Indians of the Yakima Reservation, acting through the chairman of its tribal council, for and on behalf of said tribes and each and all their constituent tribal groups, are each hereby authorized to commence or defend in the United States Court of Claims an action against each other making claims to a share in the funds that are on deposit in the Treasury of the United States to pay a judgment of the Indian Claims Commission dated April 5, 1965, in dockets numbered 161, 222, and 224, and the interest on said funds; and jurisdiction is hereby conferred upon said court to hear such claims and to render judgment and decree thereon making such division of such funds and the interest on such funds, as may be just and fair in law and equity, between the Confederated

Tribes of the Colville Reservation and its constituent tribal groups on the one hand, and the Yakima Tribes of Indians of the Yakima Reservation and its constituent tribal groups on the other hand. (Pub. L. 90–278, § 1, Mar. 30, 1968, 82 Stat. 69.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 609a, 609b–1 of this title.

§ 609a. Tax exemption.

Any part of the funds divided under section 609 of this title may be distributed per capita to the members of the tribes shall not be subject to Federal or State income tax. (Pub. L. 90–278, § 2, Mar. 30, 1968, 82 Stat. 69.)

§ 609b. Disposition of judgment fund; deductions; advances, expenditures, investments, or reinvestments for authorized purposes.

The funds appropriated by the Act of October 31, 1965 (79 Stat. 1133, 1152), to pay judgments to the Yakima Tribes of the Yakima Reservation in Indian Claims Commission docket numbered 47–A and 162, and by the Act of July 22, 1969 (83 Stat. 49), in consolidated dockets 47 and 164, together with interests thereon, after payment of attorney fees and litigation expenses, may be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. (Pub. L. 91–413, § 1, Sept. 25, 1970, 84 Stat. 865.)

§ 609b–1. Tax exemption; trusts and other procedures for protection of minors and persons under legal disability.

Any part of such funds that may be distributed per capita under the provisions of section 609b of this title and this section shall not be subject to Federal or State income tax; and any per capita share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will adequately protect the best interest of such persons. (Pub. L. 91–413, § 2, Sept. 25, 1970, 84 Stat. 865.)

SWINOMISH TRIBE

§ 610. Purchase of lands within, adjacent to, or in close proximity to boundaries of Swinomish Indian Reservation.

The Secretary of the Interior is authorized to purchase with funds made available by the Swinomish Indian Tribal Community any land or interest in land within, adjacent to, or in close proximity to the boundaries of the Swinomish Indian Reservation. (Pub. L. 90–534, § 1, Sept. 28, 1968, 82 Stat. 884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 610b of this title.

§ 610a. Sale or exchange of lands; money equalization payments.

Any land or interest in land now owned or hereafter acquired by or in trust for the Swinomish Indian Tribal Community may be sold or exchanged for other land or interest in land within, adjacent to, or in close proximity to the boundaries of the Swinomish Indian Reservation, and the land values involved in an exchange must be equal or be equalized by the payment of money. (Pub. L. 90–534, § 2, Sept. 28, 1968, 82 Stat. 884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 610b of this title.

§ 610b. Title to lands; tax exemption; prohibition of restrictions.

Title to any land acquired pursuant to sections 610 to 610e of this title shall be taken in the name of the United States in trust for the Swinomish Indian Tribal Community and shall be nontaxable if the land is within the boundaries of the Swinomish Indian Reservation, and title shall be taken in the name of the Community subject to no restrictions on alienation, taxation, management, or use if the land is outside such boundaries. (Pub. L. 90–534, § 3, Sept. 28, 1968, 82 Stat. 884.)

§ 610c. Mortgages or deeds in trust; law governing mortgage foreclosure or sale; United States as party; removal of cases: appeals.

The Swinomish Indian Tribal Community may, with the approval of the Secretary of the Interior, execute mortgages or deeds of trust to land the title to which is held by the community, or by the United States in trust for the community. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State of Washington. The United States shall be an indispensable party to, and may be joined in, any such proceeding involving trust land with the right to remove the action to the United States district court for the district in which the land is situated, according to the procedure in section 1446 of Title 28, and the United States shall have the right to appeal from any order of remand entered in such action. (Pub. L. 90–534, § 4, Sept. 28, 1968, 82 Stat. 884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 610b of this title.

§ 610d. Moneys or credits for tribal purposes.

Any moneys or credits received or credited to the Swinomish Indian Tribal Community from the sale, exchange, mortgage, or granting of any security interest in any tribal land may be used for tribal purposes. (Pub. L. 90–534, § 5, Sept. 28, 1968, 82 Stat. 884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 610b of this title.

§ 610e. Assignment of income.

The Swinomish Indian Tribal Community may assign any income due it, subject to approval of the Secretary of the Interior. Such approval may be given in general terms or may be limited to specified assignments. (Pub. L. 90–534, § 7, Sept. 28, 1968, 82 Stat. 884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 610b of this title.

SHOSHONE AND ARAPAHO TRIBES OF WYOMING

§ 611. Division of trust fund on deposit in United States Treasury to joint credit of both tribes.

The Secretary of the Interior is authorized and directed to divide the trust funds on deposit in the Treasury of the United States to the joint credit of the Shoshone and Arapaho Tribes of the Wind River Reservation, Wyoming, including the unexpended balance of the treaty funds arising under section 12 of the Act of June 7, 1897 (30 Stat. 93), between the Shoshone Tribe and the Arapaho Tribe, crediting one-half of the total amount in the principal account to a principal trust fund account and one-half of the total amount in the interest account to an interest trust fund account for each tribe: *Provided,* That in dividing the funds there shall be taken into consideration in determining the amount to be credited to each tribe the outstanding loans made from joint trust funds to the Indians of each tribe. (May 19, 1947, ch. 80, § 1, 61 Stat. 102.)

WIND RIVER INDIAN RESERVATION; MINERAL RIGHTS

Pub. L. 85-780, Aug. 27, 1958, 72 Stat. 935, provided: "[Section 1. Return of right, title, and interest in all minerals; crediting of gross receipts]. That, from and after the effective date of this Act [August 27, 1958], all of the right, title, and interest of the United States in all minerals, including oil and gas, the Indian title, to which was extinguished by the Act of August 15, 1953 (67 Stat. 592; Public Law 284, Eighty-third Congress, first session [set out as a note under this section]), entitled 'An Act to provide compensation to the Shoshone and Arapahoe Tribes of Indians for certain lands of the Riverton reclamation project within the ceded portion of the Wind River Indian Reservation, and for other purposes', is hereby declared to be held by the United States in trust for the Shoshone and Arapahoe Tribes and, notwithstanding any other provision of law, said minerals, including oil and gas, subject to the provisions of section 2 of this Act, shall be administered and leased in accordance with the provisions of the Act of May 11, 1938 (ch. 198, 52 Stat. 347 [sections 396a—396f of this title]). The gross proceeds received by the United States from such minerals either before or after the date of this Act shall be deposited to the credit of the Shoshone and Arapahoe Tribes in accordance with the provisions of the Act of May 19, 1947 (61 Stat. 102), as amended [sections 611—613 of this title], and any of such gross proceeds that have been credited to miscellaneous receipts in the Treasury of the United States in accordance with the provisions of section 5 of the Act of August 15, 1953 (67 Stat. 592 [set out as a note under this section]), shall be transferred on the books of the Treasury to the credit of such tribes.

"Sec. 2. [Leases; renewal and extension; term].

"Notwithstanding any other provision of law, (1) all mineral leases, including oil and gas leases, covering any of the minerals referred to in section 1 hereof, which have heretofore been issued by the Secretary of the Interior on a noncompetitive basis, shall be subject to renewal at the end of the primary five-year term thereof for a term that extends to a date that is five years from the date of this Act [August 27, 1958] and shall not be subject to renewal or further extension except in any case where, at the expiration of said extended term, oil or gas is being produced under the lease in paying quantities, and (2) the Secretary of the Interior shall process in accordance with the Mineral Leasing Act of February 25, 1920 (ch. 85, 41 Stat. 437), as amended [chapter 7 of Title 30], and the regulations issued thereunder, all oil and gas lease offers covering any of the oil and gas referred to in section 1 hereof which were filed on or before December 31, 1957: *Provided,* That any oil and gas lease issued pursuant to such lease offers shall be for a single term of five years commencing with the effective date of the lease and shall not be subject to renewal or extension except in any case where at the expiration of said five-year term, oil or gas is being produced under the lease in paying quantities.

"Any oil or gas lease referred to in subparagraph (1) of this section and any oil or gas lease which may hereafter be issued pursuant to the lease offers referred to in subparagraph (2) of this section shall be subject to the provisions of section 1 (1) of the Act of July 29, 1954 (ch. 644, 68 Stat. 583), amendatory of the second paragraph of section 17 of the Mineral Leasing Act of February 25, 1920 (ch. 85, 41 Stat. 443), as amended [section 226 of Title 30]."

WIND RIVER INDIAN RESERVATION; COMPENSATION FOR LANDS OF THE RIVERTON RECLAMATION PROJECT

Act Aug. 15, 1953, ch. 509, 67 Stat. 592, provided that: "[SECTION 1. *Compensation for ceded lands.*] There is hereby authorized to be transferred in the Treasury of the United States from funds now or hereafter made available for carrying on the functions of the Bureau of Reclamation and to be placed to the credit of the Shoshone and Arapahoe Tribes of Indians of the Wind River Indian Reservation in Wyoming, the sum of $1,009,500, said sum shall be credited to and expended for the benefit of said tribes and their members as provided by the Act of May 19, 1947 (61 Stat. 102), as amended by the Act of August 30, 1951 (65 Stat. 208), and by the Act of July 17, 1953 (Public Law 132, Eighty-third Congress) [sections 611—613 of this title], and as may be hereinafter amended, and shall be deemed to constitute full, complete, and final compensation, except as provided in section 5 of this Act, for terminating and extinguishing all of the right, title, estate, and interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands, and any and all past and future damages arising out of the cession to the United States, pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation lying within * * * the proposed exterior boundaries of the Riverton reclamation project, Fremont County, Wyoming * * *".

* * * * *

"* * * *Provided,* That any member, or the heirs or assignees of any member, of either of said tribes, who on the 24th day of July 1952, had an existing and valid assignment on any part of the above-described land, shall have the right, at his or her option, within one year after the date of enactment of this Act [Aug. 15, 1953] to enter into a contract with the United States, by and through the Bureau of Reclamation, for the purchase, at a price and on terms satisfactory to the Secretary of the Interior, of all or any contiguous part of such assignment, and upon final payment of the purchase price therefor, a fee patent accordingly shall be issued to such assignee, subject to reservations of all oil, gas, and minerals to the United States, and subject to section 5 of this Act, and if any part of the land so selected shall contain land irrigable under the Riverton reclamation project, then said patented land shall be subject to all irrigation charges, taxes, and liens imposed by Federal or State law, to the same extent and in like manner as other lands of the Riverton reclamation project: *Provided further,* That all existing contracts relating to irrigation charges, with respect to such irrigable land, shall remain in full force and effect: *And provided further,* That nothing in this Act shall be construed to affect the rights and interests in and to any land embraced within the tract described herein that has been allotted to an individual member of either of the said tribes which, on the date of enactment of this Act [Aug. 15, 1953], is held by the United States in trust for such member or his or her heirs.

"[SECTION 2. *Lands restored to public domain.*] Subject only to the existing rights and interests which are not extinguished and terminated by this Act, all unentered and vacant lands within the area described in section 1 hereof, are hereby restored to the public domain for administration, use, occupancy, and disposal under the reclamation and public land laws of the United States: *Provided,* That the sale or other disposition of

such lands shall be at rates and upon terms and conditions approved by the Secretary of the Interior: *Provided further,* That the average price of all such lands disposed of by sale shall be not less than $6.25 per acre.

"[SECTION 3. *Funds.*] The sum transferred to the credit of the Shoshone and Arapahoe Tribes of Indians as aforesaid and the expenses of carrying out the provisions of this Act shall be nonreimbursable and nonreturnable under the reclamation laws of the United States. The net proceeds derived from the disposal of said lands shall be covered into the general fund of the Treasury or into the reclamation fund as the Secretary of the Interior shall find appropriate in the light of the source from which the funds transferred or expended in carrying out this Act are derived.

"[SECTION 4. *Lands restored to tribes.*] Subject to any outstanding rights and interests, all of the ceded lands of the Wind River Reservation withdrawn pursuant to the Act of June 17, 1902, for the development of the Riverton reclamation project, Wyoming, not included within the boundaries of the tract described in section 1 of this Act, are hereby restored to the ownership of said tribes to the same extent as the ownership provided by the Act of July 27, 1939 (53 Stat. 1128) [sections 571—577 of this title], with respect to vacant lands ceded to the United States under the provisions of the Act of March 3, 1905 (33 Stat. 1016), but not subsequently withdrawn for reclamation purposes: *Provided,* That the compensation authorized in section 1 hereof shall also be deemed to release the United States from any and all claims for damages whatsoever arising out of withdrawal of lands herein restored to tribal ownership.

"[SECTION 5. *Disposition of gross receipts.*] Notwithstanding any other provision of law, the United States shall deposit in the Treasury of the United States to the credit of said tribes, to be available for expenditure for the benefit of said tribes and their members, as provided by the Act of May 19, 1947 (61 Stat. 102), as amended by the Act of August 30, 1951 (65 Stat. 208), and by the Act of July 17, 1953 (Public Law 132, Eighty-third Congress) [sections 611—613 of this title], and as may be hereinafter amended, 90 per centum of the gross receipts of the United States, as they are received from time to time, from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral-leasing laws of the United States from any and all lands in which all rights and interests of the tribes are terminated and extinguished by the terms and conditions of section 1 of this Act and which are embraced within the boundaries of the tract described in said section 1. Notwithstanding any other provision of law the remaining 10 per centum of such gross receipts shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

"[SECTION 6. *Rejection privilege.*] Should this Act become law subsequent to June 30, 1954, there is hereby reserved to the Shoshone and Arapahoe Tribes the privilege of rejecting, within one hundred and twenty days after the date of the Act [Aug. 15, 1953], the terms and conditions of its sections 1, 4, and 5. If those terms and conditions are rejected, no part of the Act shall become effective.

"[SECTION 7. *Administration.*] The Secretary of the Interior is authorized to perform any and all acts to carry out the provisions and purposes of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612, 613 of this title.

§ 612. Establishment of trust fund for each tribe; transfer of funds; interest; crediting of revenues, receipts, and proceeds of judgments.

The Secretary of the Treasury, upon request of the Secretary of the Interior, is authorized and directed to establish a trust fund account for each tribe and shall make such transfer of funds on the books of his department as may be necessary to effect the purpose of section 611 of this title: *Provided,* That interest shall accrue on the principal fund only, at the rate of 4 per centum per annum, and shall be credited to the interest trust fund accounts established by this section: *Provided further,* That all future revenues and receipts derived from the Wind River Reservation under any and all laws, and the proceeds from any judgment for money against the United States hereafter paid jointly to the Shoshone and Arapahoe Tribes of the Wind River Reservation, shall be divided in accordance with section 611 of this title and credited to the principal trust fund accounts established herein; and the proceeds from any judgment for money against the United States hereafter paid to either of the tribes singly shall be credited to the appropriate principal trust fund account. (May 19, 1947, ch. 80, § 2, 61 Stat. 102; Aug. 30, 1951, ch. 367, § 1, 65 Stat. 208; Aug. 8, 1958, Pub. L. 85-610, § 1, 72 Stat. 541.)

AMENDMENTS

1958—Pub. L. 85-610 substituted "Secretary of the Treasury" for "Comptroller of the United States", required division of future receipts from the Reservation and proceeds from judgments paid jointly to the Tribes, and provided for the manner of crediting proceeds from judgments paid to either of the Tribes.

1951—Act Aug. 30, 1951, substituted "any" for "existing" preceding "law" in second proviso.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 613 of this title.

§ 613. Advances or expenditures from tribal funds; emergency and educational loans; payments to individuals of tribes; per capita payments not subject to liens or claims; exception.

Notwithstanding any other provision of existing law, the trust funds credited to the Shoshone Tribe and the Arapahoe Tribe, respectively, under the provisions of sections 611 to 613 of this title shall be available for expenditure or for advance to the tribes for such purposes as may be requested by the business council of the tribe concerned and approved by the Secretary of the Interior, or such official as may be designated by him: *Provided,* That the Secretary of the Interior is directed to make available out of the trust funds of the Shoshone Tribe the sum of $7,500 for the purpose of making emergency and educational loans on the authority and responsibility of the Shoshone Tribe, through its business council, without liability to the United States and free from regulation or approval by the Secretary of the Interior: *Provided further,* That, commencing as soon after August 8, 1958 as the Secretary of the Interior determines may be practicable in order to change from the existing quarterly payment system, but not later than January 1, 1959, 85 per centum of said trust funds shall be paid per capita to the members of the respective tribes in equal monthly installments on the first day of each month, or as near thereto as practicable, or with the approval of the Secretary of the Interior, at such more frequent intervals as the tribes may request. The amount of the monthly payments during any one calendar year shall be determined by the Secretary of the Interior on the basis of estimated anticipated income for that calendar year: *Provided further,* That the Secretary may increase or decrease the amount of the monthly payments in the light of actual receipts during the calendar year,

and in order to avoid the omission of a payment or a reduction in the amount that would cause unnecessary hardship the Secretary may permit the total monthly payments for a year to exceed 85 per centum of the actual receipts for that year and deduct the excess from the receipts of the following or succeeding years before determining the amount of the monthly payments for such succeeding years: *Provided further,* That said per capita payments shall not be subject to any lien or claim of any nature against any of the members of said tribes unless the business council of such member shall consent thereto in writing, except as to reimbursable Treasury loans made to individual members of either tribe which may be due to the United States, and except as to irrigation charges owed by individual Indians to the United States with respect to lands for which water is requested and received by said individual Indians, and with respect to lands that are determined by the Secretary of the Interior to be properly classified under existing law on the basis of the survey undertaken by the Secretary after the amendment of this section on July 25, 1956 (70 Stat. 642): *Provided further,* That quarterly per capita payments under sections 611 to 613 of this title shall continue without interruption until the monthly per capita payments are put into effect on or before January 1, 1959. (May 19, 1947, ch. 80, § 3, 61 Stat. 102; Aug. 31, 1951, ch. 367, § 2, 65 Stat. 209; July 17, 1953, ch. 223, 67 Stat. 179; Aug. 9, 1955, ch. 638, 69 Stat. 557; July 25, 1956, ch. 723, § 1, 70 Stat. 642; Aug. 8, 1958, Pub. L. 85-610, § 2, 72 Stat. 541.)

AMENDMENTS

1958—Pub. L. 85-610 substituted "business council" for "tribal council", to authorize $7,500 for emergency and educational loans, permitted monthly payments instead of quarterly payments and allowed for payments at more frequent intervals if the tribes so request, required the Secretary to determine the amount of monthly payments during any calendar year on the basis of estimated anticipated income for that calendar year, provided for increases and decreases in monthly payments and omitted provisions which related to authority of the Secretary to protect and conserve funds payable to minors and incompetents.

1956—Act July 25, 1956, increased per capita payments from 80 to 85 percent, extended the period of payments from May 19, 1957, to May 19, 1959, subjected the per capita payments to irrigation charges with respect to lands that are determined by the Secretary of Interior to to be properly classified under existing law on the basis of a survey, and inserted provisions relating to authority of the Secretary to protect and conserve funds payable to minors and incompetents.

1955—Act Aug. 9, 1955, permitted quarterly per capita payments instead of semiannual payments.

1953—Act July 17, 1953, increased the per capita distribution from two-thirds to 80 per centum.

1951—Act Aug. 30, 1951, substituted "ten" for "five" preceding "years" in first proviso.

PER CAPITA PAYMENTS AFTER MAY 19, 1959

Section 2 of act July 25, 1956, requested the Secretary of the Interior to report to Congress before January 1, 1958, in order to determine the conditions under which per capita payments could be authorized after May 19, 1959, (1) recommendations regarding any new authority, if any, needed to protect adequately the interests of minors and incompetent Indians, (2) the results of a survey and reclassification of the lands that should be removed from the irrigation project, and (3) the adequacy of the tribal contribution to the cost of administering the reservation.

PUEBLO AND CANONCITO NAVAJO INDIANS

§ 621. Portions of tribal lands to be held in trust by the United States; remainder to become part of the public domain.

Title to the lands and the improvements thereon, lying and situated within the State of New Mexico, which have been acquired by the United States under authority of title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), section 55 of title I of the Act of August 24, 1935 (49 Stat. 750, 781), the Bankhead-Jones Farm Tenant Act (50 Stat. 522, 525) and subsequent emergency relief appropriation Acts administrative jurisdiction over which has heretofore been transferred by the President from the Secretary of Agriculture to the Secretary of the Interior, to be administered through the Commissioner of Indian Affairs for the benefit of the Indians, by Executive Orders Numbered 7792, 7975, 8255, 8471, 8696, and 8472 and that title to the public domain lands and improvements thereon, lying and situated within the State of New Mexico, which were withdrawn in aid of proposed legislation by the Secretary of the Interior on December 23, 1938, and May 31, 1939, and now in use by Pueblo or Canoncito Navajo Indians, excepting those portions thereof used by the United States for administrative purposes, is declared to be in the United States of America in trust for the respective tribes, bands, or groups of Indians occupying and using same as a part of their respective existing reservations, subject to valid existing rights. The remainder of the aforesaid land is declared to be a part of the public domain of the United States and shall be transferred by the Secretary of the Interior to the Bureau of Land Management for administration under the provisions of the Act of Congress of June 28, 1934, generally known as Taylor Grazing Act (48 Stat. 1269, as amended). The boundaries and descriptions of the areas to become Indian lands and those which are to be transferred to the Bureau of Land Management are set out in sections III and IV, respectively, of the memorandum of information which is attached to and a part of the report of the Secretary of the Interior to the Senate Committee on Interior and Insular Affairs on sections 621 to 623 of this title, and such boundaries and descriptions are adopted as part of said sections and shall be published in the Federal Register: *Provided,* That before said boundaries and descriptions are published in the Federal Register as provided in this section, the Secretary of the Interior may correct any clerical errors in section III of said memorandum of information and shall revise the same so as to define the areas on that portion of the lands conveyed by sections 621 to 623 of this title and known as Bell Rock Mesa used and occupied respectively by the Laguna Pueblo Indians and the Canoncito Navajo Indians. (Aug. 13, 1949, ch. 425, § 1, 63 Stat. 604.)

REFERENCES IN TEXT

Title II of the National Industrial Recovery Act, referred to in text, was formerly classified to sections 401—411 of title 40, Public Buildings, Property, and Works, but terminated on June 30, 1943, by the provisions of act June 27, 1943, ch. 450, § 101, 56 Stat. 410. Section 221 of such title II is classified to section 607 of Title 7, Agriculture.

The Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), referred to in text, was not classified to the Code.

Section 55 of title I of the act of August 24, 1935 (49 Stat. 750, 781), referred to in text, was not classified to the Code.

The Bankhead-Jones Farm Tenant Act (50 stat. 522, 525), referred to in text, is now classified to sections 1010—1012 and 1013a of Title 7, Agriculture. Sections 1001—1005d, 1006c—1006e, 1007, 1008, 1009, 1014—1025, and 1027—1029 were repealed by Public Law 87—128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318, and are now covered by chapter 50 of Title 7, Agriculture. Section 1006 was omitted in the amendment of act July 22, 1937, ch. 517, title I, § 6, 50 Stat. 524, by act Aug. 14, 1946, ch. 964, § 4, 60 Stat. 1071. Section 1013 expired by its own limitations at end of fiscal year 1940. Section 1026 was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is now covered by sections 657, 658, 1006, and 1014 of Title 18, Crimes and Criminal Procedure.

Taylor Grazing Act (48 Stat. 1269, as amended), referred to in text, is classified to chapter 8A of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 622 of this title.

§ 622. Exchange of tribal lands; title to lands.

For the purpose of consolidation of Indian lands the Secretary of the Interior is authorized, under such regulations as he may prescribe, to exchange any lands or interests therein, including improvements and water rights with the consent of the Pueblo or Navajo tribal authorities for other lands, water rights, and improvements of similar value in the area set apart for the Pueblos and Canoncito Navajos or in the areas declared to be public domain or within any public domain within New Mexico. Title to all lands acquired under the provisions of sections 621 to 623 of this title shall be taken in the name of the United States in trust for the respective Pueblo Indians and the Navajo Canoncito group. (Aug. 13, 1949, ch. 425, § 2, 63 Stat. 605.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 621 of this title.

§ 623. Disbursement of deposits in the United Pueblos Agency.

The funds now on deposit in the United Pueblos Agency in "special deposits" which have accrued from issuance of livestock-crossing permits and fees collected for grazing permits on the lands which have been under the jurisdiction of the Department of the Interior shall be expended or disbursed for the benefit of the Indians under such rules and regulations as the Secretary of the Interior may prescribe. (Aug. 13, 1949, ch. 425, § 3, 63 Stat. 605.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 621, 622 of this title.

§ 624. Exchange of lands; reservation of rights; title to lands.

(a) For the purpose of improving the land tenure pattern and consolidating Pueblo Indian lands, the Secretary of the Interior is authorized, under such regulations as he may prescribe, to acquire by exchange any lands or interests therein, including improvements and water rights, within the Pueblo land consolidation areas, and to convey in exchange therefor not to exceed an equal value of unappropriated public lands within the State of New Mexico, or, with the consent of the Pueblo authorities any Pueblo tribal lands or interest therein, including improvements and water rights.

(b) Either party to an exchange under this section may reserve minerals, easements, or rights of use.

(c) The Secretary may execute any title documents necessary to effect the exchanges authorized by this section.

(d) Title to all lands acquired under the provisions of this section shall be taken in the name of the United States in trust for the respective Pueblo Indian tribes. (Pub. L. 87-231, § 10, Sept. 14, 1961, 75 Stat. 505.)

NAVAJO AND HOPI TRIBES: REHABILITATION

§ 631. Basic program for conservation and development of resources; projects; appropriations.

In order to further the purposes of existing treaties with the Navajo Indians, to provide facilities, employment, and services essential in combating hunger, disease, poverty, and demoralization among the members of the Navajo and Hopi Tribes, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens, the Secretary of the Interior is authorized and directed to undertake, within the limits of the funds from time to time appropriated pursuant to sections 631 to 640 of this title, a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians, the more productive employment of their manpower, and the supplying of means to be used in their rehabilitation, whether on or off the Navajo and Hopi Indian Reservations. Such program shall include the following projects for which capital expenditures in the amount shown after each project listed in subsections (1)—(14) of this section and totaling $108,570,000 are authorized to be appropriated:

(1) Soil and water conservation and range improvement work, $10,000,000.

(2) Completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, $9,000,000.

(3) Surveys and studies of timber, coal, mineral, and other physical and human resources, $500,000.

(4) Development of industrial and business enterprises, $1,000,000.

(5) Development of opportunities for off-reservation employment and resettlement and assistance in adjustments related thereto, $3,500,000.

(6) Relocation and resettlement of Navajo and Hopi Indians (Colorado River Indian Reservation), $5,750,000.

(7) Roads and trails, $40,000,000; of which not less than $20,000,000 shall be (A) available for contract authority for such construction and improvement of the roads designated as route 1 and route 3 on the Navajo and Hopi Indian Reservations as may be necessary to bring the portion of

such roads located in any State up to at least the secondary road standards in effect in such State, and (B) in addition to any amounts expended on such roads under the $20,000,000 authorization provided under this clause prior to amendment."

(8) Telephone and radio communications systems, $250,000.

(9) Agency, institutional, and domestic water supply, $2,500,000.

(10) Establishment of a revolving loan fund, $5,000,000.

(11) Hospital buildings and equipment, and other health conservation measures, $4,750,000.

(12) School buildings and equipment, and other educational measures, $25,000,000.

(13) Housing and necessary facilities and equipment, $820,000.

(14) Common service facilities, $500,000.

Funds so appropriated shall be available for administration, investigations, plans, construction, and all other objects necessary for or appropriate to the carrying out of the provisions of sections 631 to 640 of this title. Such further sums as may be necessary for or appropriate to the annual operation and maintenance of the projects herein enumerated are also authorized to be appropriated. Funds appropriated under these authorizations shall be in addition to funds made available for use on the Navajo and Hopi Reservations, or with respect to Indians of the Navajo Tribes, out of appropriations heretofore or hereafter granted for the benefit, care, or assistance of Indians in general, or made pursuant to other authorizations now in effect. (Apr. 19, 1950, ch. 92, § 1, 64 Stat. 44; Aug. 23, 1958, Pub. L. 85–740, 72 Stat. 834.)

AMENDMENTS

1958—Pub. L. 85–740 substituted $108,570,000 for $88,570,000 in opening par., and, in clause (7), increased from $20,000,000 to $40,000,000 the amount authorized for roads and trails, of which not less than $20,000,000 shall be available for contract authority to bring routes 1 and 3 on the Navajo and Hopi Indian reservations up to secondary road standards in the State.

CONTRACT AUTHORITY; APPROPRIATIONS

Pub. L. 85–740 provided in part that the contract authority and appropriations authorized by the amendment to clause (7) of this section shall be in addition to sums apportioned to Indian reservations or to the State of Arizona under the Federal Highway Act, as amended and supplemented.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 632, 633, 634, 636, 638, 640 of this title.

§ 632. Character and extent of administration; time limit; reports on use of funds.

The foregoing program shall be administered in accordance with the provisions of sections 631 to 640 of this title and existing laws relating to Indian affairs, shall include such facilities and services as are requisite for or incidental to the effectuation of the projects herein enumerated, shall apply sustained-yield principles to the administration of all renewable resources, and shall be prosecuted in a manner which will provide for completion of the program, so far as practicable, within ten years from April 19, 1950. An account of the progress being had in the rehabilitation of the Navajo and Hopi Indians, and of the use made of the funds appropriated to that end under said sections, shall be included in each annual report of the work of the Department of the Interior submitted to the Congress during the period covered by the foregoing program. (Apr. 19, 1950, ch. 92, § 2, 64 Stat. 45.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 633, 636, 638, 640 of this title.

§ 633. Preference in employment; on-the-job training.

Navajo and Hopi Indians shall be given, whenever practicable, preference in employment on all projects undertaken pursuant to sections 631 to 640 of this title, and, in furtherance of this policy may be given employment on such projects without regard to the provisions of the civil-service and classification laws. To the fullest extent possible, Indian workers on such projects shall receive on-the-job training in order to enable them to become qualified for more skilled employment. (Apr. 19, 1950, ch. 97, § 3, 64 Stat. 45.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees.

The classification laws, referred to in text, are classified to chapter 51 and subchapter III of chapter 53 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 636, 638, 640 of this title.

§ 634. Loans to Tribes or individual members; loan fund.

The Secretary of the Interior is authorized, under such regulations as he may prescribe, to make loans from the loan fund authorized by section 631 of this title to the Navajo Tribe, or any member or association of members thereof, or to the Hopi Tribe, or any member or association of members thereof, for such productive purposes as, in his judgment, will tend to promote the better utilization of the manpower and resources of the Navajo or Hopi Indians. Sums collected in repayment of such loans and sums collected as interest or other charges thereon shall be credited to the loan fund, and shall be available for the purpose for which the fund was established. (Apr. 19, 1950, ch. 92, § 4, 64 Stat. 45.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 636, 638, 640 of this title.

§ 635. Disposition of lands.

(a) Lease of restricted lands; renewals.

Any restricted Indian lands owned by the Navajo Tribe, members thereof, or associations of such members, or by the Hopi Tribe, members thereof, or associations of such members, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, or business purposes, including the development or utilization of natural resources in connection with operations under such leases. All leases so granted shall be for a term of not to exceed twenty-five years, but may include provisions authorizing their renewal for an additional term of not

to exceed twenty-five years, and shall be made under such regulations as may be prescribed by the Secretary. Restricted allotments of deceased Indians may be leased under this section, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title. Nothing contained in this section shall be construed to repeal or affect any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

(b) Lease, sale, or other disposition of lands owned in fee simple by Navajo Tribe.

Notwithstanding any other provision of law, land owned in fee simple by the Navajo Tribe may be leased, sold, or otherwise disposed of by the sole authority of the Navajo Tribal Council, in any manner that similar land in the State in which such land is situated may be leased, sold, or otherwise disposed of by private landowners, and such disposition shall create no liability on the part of the United States.

(c) Transfer of unallotted lands to tribally owned or municipal corporations.

The Secretary of the Interior is authorized to transfer, upon request of the Navajo Tribal Council, to any corporation owned by the tribe and organized pursuant to State law, or to any municipal corporation organized under State law, legal title to or a leasehold interest in any unallotted lands held for the Navajo Indian Tribe, and thereafter the United States shall have no responsibility or liability for, but on request of the tribe shall render advice and assistance in, the management, use, or disposition of such lands. (Apr. 19, 1950, ch. 92, § 5, 64 Stat. 46; June 11, 1960, Pub. L. 86-505, § 1, 74 Stat. 199.)

AMENDMENTS

1960—Pub. L. 86-505 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 636, 638, 640 of this title.

§ 636. Adoption of constitution by Navajo Tribe; method; contents.

In order to facilitate the fullest possible participation by the Navajo Tribe in the program authorized by sections 631 to 640 of this title, the members of the tribe shall have the right to adopt a tribal constitution in the manner herein prescribed. Such constitution may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such additional powers as the members of the tribe may, with the approval of the Secretary of the Interior, deem proper to include therein. Such constitution shall be formulated by the Navajo Tribal Council at any regular meeting, distributed in printed form to the Navajo people for consideration, and adopted by secret ballot of the adult members of the Navajo Tribe in an election held under such regulations as the Secretary may prescribe, at which a majority of the qualified votes cast favor such adoption. The constitution shall authorize the fullest possible participation of the Navajos in the administration of their affairs as approved by the Secretary of the Interior and shall become effective when approved by the Secretary. The constitution may be amended from time to time in the same manner as herein provided for its adoption, and the Secretary of the Interior shall approve any amendment which in the opinion of the Secretary of the Interior advances the development of the Navajo people toward the fullest realization and exercise of the rights, privileges, duties, and responsibilities of American citizenship. (Apr. 19, 1950, ch. 92, § 6, 64 Stat. 46.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 638, 640 of this title.

§ 637. Use of Navajo tribal funds.

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Navajo Tribe of Indians in the United States Treasury shall be available for such purposes as may be designated by the Navajo Tribal Council and approved by the Secretary of the Interior. (Apr. 19, 1950, ch. 92, § 7, 64 Stat. 46.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 636, 638, 640 of this title.

§ 638. Participation by Tribal Councils; recommendations.

The Tribal Councils of the Navajo and Hopi Tribes and the Indian communities affected shall be kept informed and afforded opportunity to consider from their inception plans pertaining to the program authorized by sections 631 to 640 of this title. In the administration of the program, the Secretary of the Interior shall consider the recommendations of the tribal councils and shall follow such recommendations whenever he deems them feasible and consistent with the objectives of said sections. (Apr. 19, 1950, ch. 92, § 8, 64 Stat. 46.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 636, 640 of this title.

§ 639. Additional Social Security contributions to States.

Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under sections 303 (a), 603 (a), and 1203 (a) of Title 42) an amount, in addition to the amounts prescribed to be paid to such State under such sections, equal to 80 per centum of the total amounts of contributions by the State toward expenditures during the preceding quarter by the State, under the State plans approved under the Social Security Act for old age assistance, aid to dependent children, and aid to the needy blind, to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under sections 303 (a), 603 (a), and 1203 (a) of Title 42, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections. (Apr. 19, 1950, ch. 92, § 9, 64 Stat. 47.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is classified to chapter 7 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 636, 638, 640 of this title.

§ 640. Joint Congressional Committee.

(a) Establishment and composition; vacancies; chairman.

There is established a joint congressional committee to be known as the Joint Committee on Navajo-Hopi Indian Administration (hereinafter referred to as the "committee"), to be composed of three members of the Committee on Interior and Insular Affairs of the Senate to be appointed by the President of the Senate, not more than two of whom shall be from the same political party, and three members of the Committee on Public Lands of the House of Representatives to be appointed by the Speaker of the House of Representatives, not more than two of whom shall be from the same political party. A vacancy in the membership of the committee shall be filled in the same manner as the original selection. The committee shall elect a chairman from among its members.

(b) General functions; aid to standing committees; reports; consultations with Commissioner.

It shall be the function of the committee to make a continuous study of the programs for the administration and rehabilitation of the Navajo and Hopi Indians, and to review the progress achieved in the execution of such programs. Upon request, the committee shall aid the several standing committees of the Congress having legislative jurisdiction over any part of such programs, and shall make a report to the Senate and the House of Representatives, from time to time, concerning the results of its studies, together with such recommendations as it may deem desirable. The Commissioner of Indian Affairs at the request of the committee, shall consult with the committee from time to time with respect to his activities under sections 631 to 640 of this title.

(c) Hearings; witnesses and evidence; oaths; application of other laws.

The committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The provisions of sections 192 to 194 of Title 2 shall apply in case of any failure of any witness to comply with any subpena or to testify when summoned under authority of this subsection.

(d) Employment of personnel.

The committee is authorized to appoint and, without regard to chapter 51 and subchapter III of chapter 53 of Title 5, as amended, fix the compensation of such experts, consultants, technicians, and organizations thereof, and clerical and stenographic assistants as it deems necessary and advisable.

(e) Appropriations; disbursements.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman. (Apr. 19, 1950, ch. 92, § 10, 64 Stat. 47.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 636, 638 of this title.

HOPI TRIBE: INDUSTRIAL PARK

§ 641. Congressional findings and declaration of purpose.

For the purpose of assisting in the economic advancement and contributing to the general welfare of the Hopi Indian Tribe of Arizona, the Congress hereby finds it to be fitting and appropriate to provide the Hopi Tribal Council with certain powers of self-determination that are necessary to enable the Hopi people to carry out the effective development and operation of the Hopi Industrial Park, which is located in the counties of Navajo and Coconino in the State of Arizona. (Pub. L. 91-264, § 1, May 22, 1970, 84 Stat. 260.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 643, 644 of this title.

§ 642. Powers of Tribal Council.

The Hopi Tribal Council shall have the following powers:

(a) Sale of lands.

To sell any part of the lands within the Hopi Industrial Park.

(b) Mortgages or deeds of trust; law governing mortgage foreclosure or sale; United States as party; removal of cases; appeals.

To execute mortgages upon, or deeds of trust to, the lands within said Hopi Industrial Park. Such lands shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed to trust in accordance with the laws of the State of Arizona. The United States shall be an indispensable party to, and may be joined in, any such proceeding involving said lands with the right to remove the action to the United States district court for the district in which the land is situated, according to the procedure in section 1446 of Title 28, and the United States shall have the right to appeal from any order of remand entered in such action.

(c) Pledge of revenue or other income to secure indebtedness for development of park; law governing action to enforce pledge; United States as party.

To pledge any revenue or other income from lands within said Hopi Industrial Park, and the improvement situated thereon, and any other revenue or income that may be available to the Hopi Tribe without regard to source, to secure any indebtedness of the Hopi Tribe incurred in the development of said Hopi Industrial Park, and any action to enforce said pledge shall be in accordance with the laws of the State of Arizona, and the United States shall be an indispensable party thereto to the same extent and under the same conditions as hereinbefore provided in the case of mortgage foreclosures.

(d) Issuance of bonds and payment of costs thereof; sale of bonds at public or private sale.

To issue bonds for and on behalf of the Hopi Tribe, and pay the costs thereof, to accomplish the purposes of sections 641 to 646 of this title, in one or more series, in such denomination or denominations, maturing at such time or times, and in such amount or amounts, bearing interest at such rate or rates, in such form either coupon or registered, to be executed in such manner, payable in such medium of payment, at such place or places, subject to such terms of redemption, with or without premium, and containing such other restrictive terms as may be provided by tribal ordinance. Such bonds may be sold at not less than par at either public or private sale and shall be fully negotiable.

(e) Appointment of bank or trust company as trustee for purposes of authorization and creation of issue of bonds; authority to commence action to enforce obligations to tribe without joining United States as party.

To appoint a bank or trust company with its home office in the State of Arizona having an officially reported combined capital, surplus, undivided profits and reserves aggregating not less than $10,000,000 as trustee for all of the purposes provided in the ordinance authorizing and creating any issue of bonds. Any trustee so appointed may be authorized to commence an action for and on behalf of, or on relation of, the Hopi Tribe to enforce any obligation to the tribe pledged to secure payment of the bonds without joining the United States as a party thereto.

(f) Entering business ventures as shareholder, or as limited partner with corporation, firm or person operating within Industrial Park.

To enter into any business venture as a shareholder of a corporation issuing nonassessable stock, or as a limited partner with any corporation, firm or person operating within said Hopi Industrial Park.

(g) Lease of lands and improvements thereon.

To lease lands within the Hopi Industrial Park, any other tribal lands, and the improvements thereon, in accordance with the provisions of Federal laws. (Pub. L. 91–264, § 2, May 22, 1970, 84 Stat. 260.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 644 of this title.

§ 643. Council's powers subject to approval by Secretary.

The exercise of all powers granted the Hopi Tribal Council by sections 641 to 646 of this title shall be subject to the approval of the Secretary of the Interior, or his duly authorized representatives. (Pub. L. 91–264, § 3, May 22, 1970, 84 Stat. 261.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 644 of this title.

§ 644. Bonds as valid and binding obligations.

Bonds issued by authority of sections 641 to 646 of this title and bearing the signatures of tribal officers in office on the date of the signing thereof shall be valid and binding obligations, not withstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the Hopi Tribal Council. (Pub. L. 91–264, § 4, May 22, 1970, 84 Stat. 261.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 643 of this title.

§ 645. Same; exemption from taxation.

All bonds issued by the Hopi Tribal Council for and on behalf of the Hopi Tribe and the interest provided in said bonds shall be exempt from taxation to the same extent they would have been exempt if the bonds had been issued by the State of Arizona or a political subdivision thereof. (Pub. L. 91–264, § 5, May 22, 1970, 84 Stat. 261.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 643, 644 of this title.

§ 646. Exempted securities.

Any securities issued by the Hopi Tribal Council (including any guarantee by such council), and any securities guaranteed by the council as to both principal and interest, shall be deemed to be exempted securities within the meaning of sections 77c(a)(2) and 78e(a)(12) of Title 15, and shall be exempt from all registration requirements of Acts of May 27, 1933, and June 6, 1934. (Pub. L. 91–264, § 6, May 22, 1970, 84 Stat. 261.)

REFERENCE IN TEXT

The Acts of May 27, 1933, and June 6, 1934, referred to in text, were, in the original, "said Acts". Such acts are the Securities Act of 1933, the Corporation of Foreign Bondholders Act, 1933, the Trust Indenture Act of 1939, and the Securities Exchange Act of 1934, set out as sections 77a et seq., 77bb et seq., 77aaa et seq., and 78a et seq. of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 643, 644 of this title.

HUALAPAI TRIBE

§ 647. Disposition of judgment fund; deductions; advances, expenditures, investments or reinvestments for authorized purposes.

The unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Hualapai Tribe of Indians that were appropriated to pay a judgment granted by the Indian Claims Commission in dockets Numbered 90 and 122, and the interest thereon, less payment of attorney fees and expenses, may be advanced, expended, invested or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. (Pub. L. 91–400, § 1, Sept. 16, 1970, 84 Stat. 838.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 649 of this title.

§ 648. Tax exemption.

Any part of such funds that may be distributed to members of the tribe shall not be subject to Federal or State income tax. (Pub. L. 91–400, § 2, Sept. 16, 1970, 84 Stat. 838.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 649 of this title.

§ 649. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 647 to 649 of this title. (Pub. L. 91-400, § 3, Sept. 16, 1970, 84 Stat. 838.)

INDIANS OF CALIFORNIA

§ 651. Definitions.

For the purposes of sections 651 to 657 of this title the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State. (May 18, 1928, ch. 624, § 1, 45 Stat. 602.)

REPORT TO CONGRESS

Act June 8, 1954, ch. 271, § 2, 68 Stat. 240, required the Secretary of the Interior to transmit to Congress on or before August 31, 1955, a full and complete report of funds used and the purposes accomplished to carry out the provisions of this Act [amending section 657 of this title] and the Act approved May 18, 1928 (45 Stat. 602). as amended by the Act of April 29, 1930 (46 Stat. 259), the Act of June 30, 1948 (62 Stat. 1166), and the Act of May 24. 1950 (64 Stat. 189) [sections 651—657 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 654, 655, 657, 658, 659 of this title.

§ 652. Claims against United States for appropriated lands; submission to Court of Claims; appeal; grounds for relief.

All claims of whatsoever nature the Indians of California as defined in section 651 of this title may have against the United States by reason of lands taken from them in the State of California by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands in said State which the United States appropriated to its own purposes without the consent of said Indians, may be submitted to the Court of Claims by the attorney general of the State of California acting for and on behalf of said Indians for determination of the equitable amount due said Indians from the United States; and jurisdiction is conferred upon the Court of Claims of the United States, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all such equitable claims of said Indians against the United States and to render final decree thereon.

It is declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen unratified treaties is sufficient ground for equitable relief. (May 18, 1928, ch. 624, § 2, 45 Stat. 602.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 654, 655, 689 of this title.

§ 653. Statutes of limitations unavailable against claims; amount of decree; set-off.

If any claim or claims be submitted to said courts, they shall settle the equitable rights therein, notwithstanding lapse of time or statutes of limitation or the fact that the said claim or claims have not been presented to any other tribunal, including the commission created by the Act of March 3, 1851 (Ninth Statutes at Large, page 631): *Provided,* That any decree for said Indians shall be for an amount equal to the just value of the compensation provided or proposed for the Indians in those certain eighteen unratified treaties executed by the chiefs and head men of the several tribes and bands of Indians of California and submitted to the Senate of the United States by the President of the United States for ratification on the 1st day of June, 1852, including the lands described therein at $1.25 per acre. Any payment which may have been made by the United States or moneys heretofore or hereafter expended to date of award for the benefit of the Indians of California, made under specific appropriations for the support, education, health, and civilization of Indians in California, including purchases of land, shall not be pleaded as an estoppel but may be pleaded by way of set-off. (May 18, 1928, ch. 624, § 3, 45 Stat. 602.)

REFERENCES IN TEXT

The act of March 3, 1851 (Ninth Statutes at Large, page 631) referred to in text, is act Mar. 3, 1851, ch. 41, 9 Stat. 631, and was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 654, 655, 659 of this title.

§ 654. Claims presented by petition; filing date; amendment; signature and verification; official letters, documents, etc. furnished.

The claims of the Indians of California under the provisions of sections 651 to 657 of this title shall be presented by petition, which shall be filed within three years after May 18, 1928. Said petition shall be subject to amendment. The petition shall be signed and verified by the attorney general of the State of California. Verification may be upon information and belief as to the facts alleged. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence and the departments of the Government shall give the said attorney access to such papers, correspondence, or furnish such certified copies of record as may be necessary in the premises free of cost. (May 18, 1928, ch. 624, § 4, 45 Stat. 602.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 655, 659 of this title.

§ 655. Reimbursement of State of California for necessary costs and expenses.

In the event that the court renders judgment against the United States under the provisions of sections 651 to 657 of this title, it shall decree such amount as it finds reasonable to be paid to the State of California to reimburse the State for all necessary costs and expenses incurred by said State, other than attorney fees: *Provided,* That no reimbursement shall be made to the State of California for the services rendered by its attorney general. (May 18, 1928, ch. 624, § 5, 45 Stat. 602.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 654, 656, 659 of this title.

§ 656. Judgment amount deposited in Treasury to credit of Indians; interest rate; use of fund.

The amount of any judgment shall be placed in the Treasury of the United States to the credit of the Indians of California and shall draw interest at the rate of 4 per centum per annum and shall be thereafter subject to appropriation by Congress for educational, health, industrial, and other purposes for the benefit of said Indians, including the purchase of lands and building of homes, and no part of said judgment shall be paid out in per capita payments to said Indians: *Provided,* That the Secretary of the Treasury is authorized and directed to pay to the State of California, out of the proceeds of the judgment when appropriated, the amount decreed by the court to be due said State, as provided in section 655 of this title. (May 18, 1928, ch. 624, § 6, 45 Stat. 603.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 654, 655, 658, 659 of this title.

§ 657. Revision of roll of Indians.

The Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to revise the roll of the Indians of California, as defined in section 651 of this title, which was approved by him on May 16, 1933, in the following particulars: (a) By adding to said roll the names of persons who filed applications for enrollment as Indians of California on or before May 18, 1932, and who, although determined to be descendants of the Indians residing in the State of California on June 1, 1852, were denied enrollment solely on the ground that they were not living in the State of California on May 18, 1928, and who were alive on May 24, 1950; (b) by adding to said roll the names of persons who are descendants of the Indians residing in the State of California on June 1, 1852, and who are the fathers, mothers, brothers, sisters, uncles, or aunts of persons whose names appear on said roll, and who were alive on May 24, 1950, irrespective of whether such fathers, mothers, brothers, sisters, uncles, or aunts were living in the State of California on May 18, 1928; (c) by adding to said roll the names of persons born since May 18, 1928, and living on May 24, 1950, who are the children or other descendants of persons whose names appear on said roll, or of persons whose names are eligible for addition to said roll under clauses (a) or (b) of this section, or of persons dying prior to May 24, 1950, whose names would have been eligible for addition to said roll under clauses (a) or (b) of this section if such persons had been alive on May 24, 1950; and (d) by removing from said roll the names of persons who have died since May 18, 1928, and prior to May 24, 1950. Persons entitled to enrollment under clause (a) of this section shall be enrolled by the Secretary of the Interior without further application. Persons claiming to be entitled to enrollment under clauses (b) or (c) of this section shall, within one year after May 24, 1950, make an application in writing to the Secretary of the Interior for enrollment, unless they have previously filed such an application under this section. For the purposes of clause (d) of this section, when the Secretary of the Interior is satisfied that reasonable and diligent efforts have been made to locate a person whose name is on said roll and that such person cannot be located, he may presume that such person died prior to May 24, 1950, and his presumption shall be conclusive. The Secretary of the Interior shall prepare not less than five hundred copies of an alphabetical list of the Indians of California whose names appear on the roll approved on May 16, 1933, giving the name, address, and age at time of enrollment of each such enrollee, together with such other factual information, if any, as the Secretary may deem advisable as tending to identify each enrollee, and shall distribute copies of this list to the various communities of California Indians. The Indians of California in each community may elect a committee of three enrollees who may aid the enrolling agent in any matters relating to the revision of said roll. After the expiration of the period allowed by this section for filing applications, the Secretary of the Interior shall have until June 30, 1955, to approve and promulgate the revised roll of the Indians of California provided for in this section. Upon such approval and promulgation, the roll shall be closed and thereafter no additional names shall be added thereto. (May 18, 1928, ch. 624, § 7, 45 Stat. 602; Apr. 29, 1930, ch. 222, 46 Stat. 259; June 30, 1948, ch. 765, § 1, 62 Stat. 1166; May 24, 1950, ch. 196, § 1, 64 Stat. 189; June 8, 1954, ch. 271, § 1, 68 Stat. 240.)

AMENDMENTS

1954—Act June 8, 1954, inserted the sentence providing for presumption of death, for the purposes of clause (d), after failure to locate, and extended to June 30, 1955, the time for approving and promulgating the revised roll.

1950—Act May 24, 1950, permitted revision of the roll to include certain classes of Indians not previously eligible for inclusion.

1948—Act June 30, 1948, amended section generally to permit the Secretary of the Interior to revise the roll of Indians.

1930—Act Apr. 29, 1930, increased the time within which an Indian could make application to be enrolled, and increased time within which the Secretary of the Interior could alter and revise roll.

APPROPRIATIONS

Section 2 of act June 30, 1948, provided that: "There is hereby authorized to be appropriated out of any funds in the Treasury of the United States to the credit of the Indians of California, the sum of $25,000 to remain available until expended, to be used to defray the expenses incurred by the Secretary of the Interior in revising the roll, as provided herein [this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 654, 655, 658, 659 of this title.

§ 658. Distribution of $150 from fund to each enrolled Indian.

Notwithstanding the provisions of section 656 of this title, the Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to distribute per capita the sum of $150 to each Indian of California living on May 24, 1950, who is now or may hereafter be enrolled under sections 651 and 657 of this title. The Secretary of the Interior may, in his discretion, make such distribution from time to time to persons on

the roll of the Indians of California approved on May 16, 1933, as he identifies such enrolees, before the completion of the revised roll provided for in section 651 of this title. The Secretary of the Interior is authorized to withdraw from the fund on deposit in the Treasury of the United States arising from the judgment in favor of the Indians of California entered by the Court of Claims on December 4, 1944, and appropriated for them by section 203 of the Act of April 25, 1945 (59 Stat. 77), such sums as may be necessary to make the per capita payments required by this section, including not to exceed $15,000 for the purpose of defraying the expenses incident to carrying out the provisions of sections 657 and 658 of this title. Such payments shall be made out of the accumulated interest on such judgment fund and so much of the principal thereof as is necessary to complete the payments. The money paid to enrollees pursuant to this section shall not be subject to any lien or claim of any nature against any of such persons, except for debts owing to the United States. (May 24, 1950, ch. 196, § 2, 64 Stat. 190.)

REFERENCES IN TEXT

Section 203 of the act of Apr. 25, 1945 (59 Stat. 77) referred to in text was not classified to the Code. It is from the First Deficiency Appropriation Act, 1945, act Apr. 25, 1945, ch. 95, title II, § 203, 59 Stat. 94.

§ 659. Distribution of judgment fund; preparation of Indian roll; applications for inclusion.

(a) The Secretary of the Interior shall prepare a roll of persons of Indian blood who apply for inclusion thereon and (i) whose names or the name of a lineal or collateral relative appears on any of the approved rolls heretofore prepared pursuant to sections 651 to 657 of this title and the amendments thereto or (ii) who can establish, to the satisfaction of the Secretary, lineal or collateral relationship to an Indian who resided in California on June 1, 1852, and (iii) who were born on or before and were living on September 21, 1968.

(b) The roll so prepared shall indicate, as nearly as possible, the group or groups of Indians of California with which the ancestors of each enrollee were affiliated on June 1, 1852. If the affiliation of an enrollee's ancestors on that date is unknown, it shall be presumed to be the same as that of the ancestors' relatives whose affiliation is known unless there is sound reason to believe otherwise. Applicants whose ancestry is derived partly from one of the groups named in section 660(b) of this title and partly from another group of Indians in California shall elect the affiliation to be shown for them on the roll.

(c) Application for enrollment shall be filed with the Area Director of the Bureau of Indian Affairs, Sacramento, California, on forms prescribed for that purpose. (Pub. L. 90–507, § 1, Sept. 21, 1968, 82 Stat. 860.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 660, 661, 662, 663 of this title.

§ 660. Equal share distribution of 1964 appropriation.

(a) The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title, except those whose ancestry is derived from one or more of the groups named in subsection (b) of this section, an equal share of the moneys which were appropriated by the Act of October 7, 1964 (78 Stat. 1033), in satisfaction of the judgment of the Indian Claims Commission in consolidated dockets numbered 31, 37, 80, 80–D, and 347, plus the interest earned thereon, minus attorneys fees, litigation expenses (including the reimbursement of funds expended under authority of the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512)), a proper share of the costs of roll preparation, and such amounts as may be required to effect the distribution.

(b) Persons whose ancestry is derived solely from one or more of the following groups and persons of mixed ancestry who elected to share, other than as heirs or legatees of enrollees, in any award granted to any of the following groups shall not share in the funds distributed pursuant to subsection (a) of this section: Northern Paiute, Southern Paiute, Mohave, Quechan (Yuma), Chemehuevi, Shoshone, Washoe, Klamath, Modoc, and Yahooskin Band of Snakes. (Pub. L. 90–507, § 2, Sept. 21, 1968, 82 Stat. 860.)

REFERENCES IN TEXT

The Act of October 7, 1964 (78 Stat. 1033), referred to in text, is the Supplemental Appropriation Act, 1965, Pub. L. 88–635. That portion of Pub. L. 88–635 which appropriated the moneys referred to was not classified to the Code.

The Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), are, respectively, the Interior Department Appropriation Act, 1947, the Supplemental Appropriation Act, 1956, and Pub. L. 86–651, the Supplemental Appropriation Act, 1961. Those portions of such acts which appropriated the funds referred to were not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 659, 662, 663 of this title.

§ 661. Equal share distribution of undistributed balance of 1945 appropriation; credit to judgment account.

(a) The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title regardless of group affiliation an equal share of the undistributed balance of the moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of The Indians of California against United States (102 Court of Claims 837; 59 Stat. 94), plus the interest earned thereon, including the reimbursed moneys and unexpended balances of the funds established by the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), minus a proper share of the costs of roll preparation and such amounts as may be necessary to effect the distribution.

(b) The Secretary of the Treasury is authorized and directed to credit to the judgment account referred to in subsection (a) of this section, for distribution as a part of such account, the sum of $83,275, plus interest at 4 per centum per annum from December 4, 1944, which sum represents the value of sixty-six thousand six hundred and twenty acres of land erroneously used as an offset against

said judgment. (Pub. L. 90–507, § 3, Sept. 21, 1968, 82 Stat. 860; Pub. L. 91–64, Aug. 25, 1969, 83 Stat. 105.)

REFERENCES IN TEXT

The moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of The Indians of California against United States (102 Court of Claims 837; 59 Stat. 94), referred to in text, are the moneys appropriated by act Apr. 25, 1945, c. 95, The First Deficiency Appropriation Act, 1945, 59 Stat. 77. The portions of the act appropriating such moneys were not classified to the Code.

The Act of July 1, 1946 (60 Stat. 348) August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), referred to in text, are, respectively, the Interior Department Appropriation Act, 1947, the Supplemental Appropriation Act, 1956, and Pub. L. 86–651, the Supplemental Appropriation Act, 1961. Those portions of such acts which appropriated the funds referred to were not classified to the Code.

AMENDMENTS

1969—Pub. L. 91–64 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 662, 663 of this title.

§ 662. Heirs of deceased enrollees; tax exemption.

Each share distributable to an enrollee under sections 660 and 661 of this title shall be paid directly to the enrollee or, if he is deceased at the time of distribution, to his heirs or legatees unless the distributee is under twenty-one years of age or is otherwise under legal disability, in which case such disposition shall be made of the share as the Secretary determines will adequately protect the best interests of the distributee. Funds distributed under sections 659 to 663 of this title shall not be subject to Federal or State income taxes. (Pub. L. 90–507, § 4, Sept. 21, 1968, 82 Stat. 861.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 663 of this title.

§ 663. Rules and regulations; filing deadline.

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of sections 659 to 663 of this title, which rules and regulations shall include an appropriate deadline for the filing of applications for enrollment under section 659 of this title. The determinations of the Secretary regarding eligibility for enrollment, the affiliation of an applicant's ancestors, and the shares of the cost of roll preparation to be charged to each of the two funds referred to in sections 660 and 661 of this title shall be final. Not more than $325,000 in all shall be available under sections 659 to 663 of this title for the costs of roll preparation and of the distribution of shares. (Pub. L. 90–507, § 5, Sept. 21, 1968, 82 Stat. 861.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 662 of this title.

UTE INDIANS OF UTAH

§ 671. Use of funds of the Ute Indian Tribe of the Uintah and Ouray Reservation for expenditure and per capita payments; regulations applicable to loans; restriction on attorney fees.

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Ute Indian Tribe of the Uintah and Ouray Reservation may be expended or advanced for such purposes, including per capita payments, as may be designated by the Tribal Business Committee of said tribe and approved by the Secretary of the Interior: *Provided,* That the aggregate amount of the expenditures and advances authorized by this section exclusive of per capita payments from interest shall not exceed 33⅓ per centum of such tribal funds now on deposit: *Provided further,* That with the exception of a $1,000 per capita payment which is authorized, no per capita payment shall be approved by the Secretary of the Interior from the principal of any judgment obtained under the Jurisdictional Act of June 28, 1938 (52 Stat. 1209), as amended, without further legislation: *Provided further,* That any funds advanced for loans by the tribe to individual Indians or associations of Indians shall be subject to regulations established for the making of loans from the revolving loan fund authorized by section 470 of this title: *Provided further,* That no part of the funds authorized to be expended or advanced by this section shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with the preparation or prosecution of the suit or suits in the Court of Claims which resulted in any or all of the judgments handed down by said court on July 13, 1950, unless approved by the said court in the proceeding now pending before said court for the adjudication of attorneys' fees, or to any agent or attorney on account of any contract for services rendered or to be rendered in the preparation of any suit against the United States. (Aug. 21, 1951, ch. 338, § 1, 65 Stat. 193; June 29, 1954, ch. 412, 68 Stat. 321.)

REFERENCES IN TEXT

The Jurisdictional Act of June 28, 1938 (52 Stat. 1209), referred to in text, is act June 28, 1938, ch. 776, 52 Stat. 1209, which is not classified to the Code.

AMENDMENTS

1954—Act June 29, 1954, excepted from the 33⅓ per centum limitation on expenditures and advances, per capita payments made from interest.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 673, 676a of this title.

§ 672. Division of trust funds; ratification of resolution; crediting of shares; release of United States from liability in certain cases.

The Secretary of the Interior is authorized and directed to divide the trust funds belonging to the Confederated Bands of Ute Indians and deposited in the United States Treasury pursuant to section 399 of this title, section 315j of Title 43, and the Act of June 28, 1938 (52 Stat. 1211), as amended, including the interest thereon, by crediting 60 per centum to the Ute Indian Tribe of the Uintah and Ouray Reservation, consisting of the Uintah, Uncompahgre, and White River Utes, and 40 per centum to the Southern Utes, consisting of the Southern Utes of the Southern Ute Reservation and the Ute Mountain Tribe of the Ute Mountain Reservation. The resolution adopted June 1, 1950, by the members of the Uncompahgre, White River, and Uintah bands of

Ute Indians compromising and settling all existing controversies between themselves as to ownership and distribution of any judgments which may be obtained against the United States and as to ownership of land within the Uintah and Ouray Reservation and income issuing therefrom by providing that the same shall become the tribal property of all the Indians of the Ute Indian Tribe of the Uintah and Ouray Reservation without regard to band derivation is ratified, approved and confirmed. The funds apportioned to the Southern Utes under this section shall be divided between the Southern Utes of the Southern Ute Reservation and the Ute Mountain Tribe of the Ute Mountain Reservation as agreed between said tribes. The shares of the respective groups shall be credited to the existing accounts established pursuant to sections 155 and 161a to 161d of this title. None of the funds involved herein shall be credited or distributed to the Ute Indian Tribe of the Uintah and Ouray Reservation, consisting of the Uintah, Uncompahgre, and White Rivers Utes, until the Uncompahgre and White River Bands present to the Secretary of the Interior a release satisfactory to him, relieving the United States of any liability resulting from the inclusion of the Uintah Band in the disposition or use of said trust funds. (Aug. 21, 1951, ch. 338, § 2, 65 Stat. 194.)

REFERENCES IN TEXT

The Act of June 28, 1938 (52 Stat. 1211), referred to in text, is act June 28, 1938, ch. 776, 52 Stat. 1209, which was not classified to the Code. Page 1211 of Vol. 52, Statutes at Large, embraces part of section 6, and all of sections 7—9, of that act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 676b of this title.

§ 673. Report to Congress.

The Secretary of the Interior shall make a full and complete annual progress report to the Congress of his activities and of the expenditures authorized under section 671 of this title. (Aug. 21, 1951, ch. 338, § 3, 65 Stat. 194.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676a of this title.

§ 674. Use of funds of the Ute Mountain Tribe of the Ute Mountain Reservation for expenditure and per capita payments; taxation of lands and funds; regulations applicable to loans.

Notwithstanding any other provisions of existing laws, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Ute Mountain Tribe of the Ute Mountain Reservation, may be expended or advanced for such purposes and in a manner, including per capita payments, the purchase of land or any interests therein or improvements thereon and water rights, as may be designated by the Ute Mountain Tribal Council and approved by the Secretary of the Interior: *Provided,* That the purchase of taxable lands under this authority shall not operate to remove such lands from the tax rolls: *Provided further,* That neither the transfer to the tribe of tribal funds, nor the distribution thereof to individual members of the tribe, as provided herein, from those funds consisting of compensation for lands acquired by the United States Government, shall be subject to Federal tax: *And provided further,* That any funds advanced for loans by the tribe to individual Indians or associations of Indians shall be subject to regulations established for the making of loans from the revolving loan fund authorized by section 470 of this title. (Aug. 12, 1953, ch. 406, § 1, 67 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 675, 676a, 676b of this title.

§ 675. Restriction on payment of funds for agents' or attorneys' fees.

No part of the funds authorized to be expended or advanced pursuant to section 674 of this title shall be paid or disbursed to or received by any agent or attorney on account of any contract for services rendered or to be rendered or expenses in the preparation of any suit against the United States. (Aug. 12, 1953, ch. 406, § 2, 67 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676a of this title.

§ 676. Use of funds of Southern Ute Tribe of Southern Ute Reservation for expenditure and per capita payments; regulations applicable to loans.

Notwithstanding any other provisions of existing laws, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Southern Ute Tribe of the Southern Ute Reservation, may be expended or advanced for such purposes and in a manner, including per capita payments the purchase of land or any interests therein or improvements thereon and water rights, as may be designated by the Southern Ute Tribal Council and approved by the Secretary of the Interior: *Provided,* That the purchase of taxable lands under this authority shall not operate to remove such lands from the tax rolls: *Provided further,* That neither the transfer to the tribe of tribal funds, nor the distribution thereof to individual members of the tribe, as provided herein, from those funds consisting of compensation for lands acquired by the United States Government, shall be subject to Federal tax: *Provided further,* That any funds advanced for loans by the tribe to individual Indians or associations of Indians shall be subject to regulations established for the making of loans from the revolving loan fund authorized by section 470 of this title: *And provided further,* That no part of the funds authorized to be expended or advanced by this section shall be paid or disbursed to or received by any agent or attorney on account of any contract for services rendered or to be rendered or expenses in the preparation of any suit against the United States. (June 28, 1954, ch. 405, 68 Stat. 300.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 676b of this title.

§ 676a. Distribution of judgment fund.

The Secretary of the Interior is hereby authorized and directed to divide the trust fund belonging to the Confederated Bands of Ute Indians appropriated by

the Second Supplemental Appropriations Act, 1965, and deposited in the United States Treasury pursuant to the final judgment entered in Indian Claims Commission docket numbered 327, including the interest thereon, by crediting 60 per centum to the Ute Indian Tribe of the Uintah and Ouray Reservation, and the Ute Distribution Corporation, to the Ute Mountain Tribe of the Ute Mountain Reservation, 20 per centum to the Ute Mountain Tribe of the Ute Mountain Reservation, and 20 per centum for the Southern Ute Tribe of the Southern Ute Reservation. The portion of the trust fund, upon its division as herein directed, credited to the Ute Indian Tribe of the Uintah and Ouray Reservation to the Ute Distribution Corporation and to the Southern Ute Tribe of the Southern Ute Reservation, shall be available for use in accordance with existing authorizations for use of funds of the tribes and the Ute Distribution Corporation, including sections 671 to 676, and 677 to 677aa of this title. Any part of such funds that may be distributed to the members of the tribe shall not be subject to Federal or State income taxes. (Pub. L. 90–60, Aug. 1, 1967, 81 Stat. 164; Pub. L. 90–332, June 7, 1968, 82 Stat. 171.)

REFERENCES IN TEXT

The Second Supplemental Appropriations Act, 1965, referred to in text, is Pub. L. 89–16, Apr. 30, 1965, 79 Stat. 81, and the trust fund was appropriated by title IV thereof, which was not classified to the Code.

AMENDMENTS

1968—Pub. L. 90–332 inserted reference to the Ute Mountain Tribe of the Ute Mountain Reservation in the provisions covering the authorized uses of the trust funds and added sections 674 and 675 to the enumerated sections of this title authorizing various uses of funds, and made minor changes in punctuation.

§ 676b. Distribution of judgment fund; deductions; availability for certain uses.

The unexpended balance of funds on deposit in the Treasury to the credit of the Confederated Bands of Ute Indians appropriated by the Act of May 13, 1966 (80 Stat. 141), pursuant to the final judgment entered in Court of Claims case numbered 47567; and the funds on deposit to the credit of the Ute Tribe of the Uintah and Ouray Reservation, for and on behalf of the Uncompahgre Band of Ute Indians, that were appropriated by the Act of April 30, 1965 (79 Stat. 81), to pay a judgment by the Indians Claims Commission in docket numbered 349; and the interest thereon, less attorney fees and litigation expenses, shall be available for use by the respective tribes in accordance with the Act of August 21, 1951 (section 672 of this title), the Act of August 12, 1953 (section 674 of this title), the Act of June 28, 1954 (section 676 of this title), and the Act of August 27, 1954 (section 677 of this title), as amended. (Pub. L. 91–420, § 1, Sept. 25, 1970, 84 Stat. 871.)

§ 676b–1. Tax exemption.

Any portion of the funds distributed per capita to the members of the respective tribes shall not be subject to Federal or State income tax. (Pub. L. 91–420, § 2, Sept. 25, 1970, 84 Stat. 871.)

UTE INDIANS OF UTAH: DISTRIBUTION OF ASSETS BETWEEN MIXED-BLOOD AND FULL-BLOOD MEMBERS; TERMINATION OF FEDERAL SUPERVISION OVER PROPERTY OF MIXED-BLOOD MEMBERS

§ 677. Purpose.

The purpose of sections 677 to 677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property. (Aug. 27, 1954, ch. 1009, § 1, 68 Stat. 868.)

REPEAL OF INCONSISTENT LAWS

Section 29 of act Aug. 27, 1954, provided that: "All Acts or parts of Acts, inconsistent with this Act [sections 677—677aa of this title] are hereby repealed insofar as they affect the tribe or its members."

SEPARABILITY OF PROVISIONS

Section 30 of act Aug. 27, 1954, provided that: "If any provision of this Act [sections 677—677aa of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 676b, 677a, 677b, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677a. Definitions.

For the purposes of sections 677 to 677aa of this title—

(a) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(b) "Full-blood" means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) "Mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) "Secretary" means Secretary of the Interior.

(e) "Superintendent" means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) "Asset" means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) "Adult" means a member of the tribe who has attained the age of twenty-one years. (Aug. 27, 1954, ch. 1009, § 2, 68 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677b, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677b. Method of determining Ute Indian blood.

For the purposes of sections 677 to 677c of this title Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954. (Aug. 27, 1954, ch. 1009, § 3, 68 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677c. Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary.

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group: *Provided,* That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within thirty days subsequent to notification of the decision on said appeal: *And provided further,* That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change. (Aug. 27, 1954, ch. 1009, § 4, 68 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677b, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677d. Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership.

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in sections 677 to 677aa of this title. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder. (Aug. 27, 1954, ch. 1009, § 5, 68 Stat. 868; Aug. 2, 1956, ch. 880, § 1, 70 Stat. 936.)

AMENDMENTS

1956—Act Aug. 2, 1956, provided for control and determination of new membership in the tribe in accordance with the constitution and bylaws of the tribe and ordinances enacted thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677e. Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization.

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by sections 677 to 677aa of this title to be taken by the mixed-blood members as a group: *Provided,* That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of said sections. (Aug. 27, 1954, ch. 1009, § 6, 68 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677f. Employment of legal counsel for mixed-blood members; fees.

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of sections 677 to 677aa of this title, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677*o* of this title. (Aug. 27, 1954, ch. 1009, § 7, 68 Stat. 869.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677g. Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership.

The tribe shall have a period of thirty days from August 27, 1954 in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in sections 677 to 677aa of this title, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the

Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published in the Federal Register, and such rolls shall be final for the purposes of sections 677 to 677aa of this title, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and bylaws of the tribe. (Aug. 27, 1954, ch. 1009, § 8, 68 Stat. 869; Aug. 2, 1956, ch. 880, § 2, 70 Stat. 936.)

AMENDMENTS

1956—Act Aug. 2, 1956, prohibited constructions of sections 677—677aa of this title granting inheritable interest in tribal assets to full-blood members of the tribe or preventing future membership in the tribe in accordance with its constitution and bylaws.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677c, 677d, 677e, 677f, 677h, 677i, 677k, 677l, 677o, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677h. Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands.

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit:

Description	Section	Acres
Township 1 North, Range 1 East:		
NW/4 SW/4	35	40.00
Township 1 North, Range 1 West:		
W/2 NE/4	20	80.00
SE/4 SW/4	21	40.00
NE/4 NW/4; N/2 SW/4	28	120.00
Total		240.00
Township 2 North, Range 1 West:		
E/2 SW/4 NE/4	35	20.00
Township 1 South, Range 1 West:		
NW/4 SE/4	6	40.00
Lot 3	7	40.51
S/2 NE/4; NE/4 SE/4; W/2 SW/4 NW/4; W/2 NW/4 SW/4	16	160.00
E/2 SE/4	17	80.00
E/2 NE/4	20	80.00
SE/4 SE/4	29	40.00
Lot 2	30	40.26
SW/4 NW/4; SW/4 SE/4	35	80.00
SW/4 NE/4	36	40.00
Total		600.77
Township 1 South, Range 2 West:		
NW/4 SW/4	12	40.00
S/2 NE/4; N/2 SE/4	14	160.00
Total		200.00
Township 1 South, Range 3 West:		
SW/4 E/4	8	40.00
NW/4S NW/4	16	40.00
Total		80.00
Township 1 South, Range 8 West:		
W/2 SW/4	3	80.00
NE/4 SE/4	4	40.00
All	5	721.00
All	6	695.40
NE/4 NW/4	10	40.00
NE/4 SW/4	12	40.00
SW/4 NW/4	14	40.00
Total		1,656.40
Township 2 South, Range 1 West:		
S/2 SW/4; SE/4 SE/4	1	120.00
Lot 3; SE/4 NW/4	4	81.28
Lots 1 & 2; E/2 NW/4; W/2 NE/4	7	237.78
NW/4 NW/4	12	40.00
SE/4 NE/4	13	40.00
Total		519.06
Township 2 South, Range 1 East:		
Lot 2; SE/4 NW/4	18	79.71
Township 2 South, Range 2 West:		
S/2 S/2	2	160.00
N/2	12	320.00
Total		480.00
Township 2 South, Range 3 West:		
E/2 NE/4	17	80.00
NE/4 SW/4; S/2 SE/4	19	120.00
NW/4 SW/4	29	40.00
Lots 1 & 2; E/2 NW/4; NE/4	30	316.36
Lot 2; SE/4 NW/4	31	78.40
Total		634.76
Township 2 South, Range 4 West:		
SW/4 SW/4	1	40.00
SE/4 SW/4; SW/4 SE/4	9	80.00
W/2 NE/4	16	80.00
NE/4	28	160.00
N/2 SE/4	32	80.00
Lots 3 & 4; N/2 SW/4	33	167.31
NE/4 SW/4; N/2 SE/4; Lots 1 & 2	36	200.46
Total		807.77
Township 2 South, Range 5 West:		
NW/4	10	160.00
NE/4 NE/4	29	40.00
N/2 NE/4; SE/4 NE/4	33	120.00
W/2 NW/4; SE/4 NW/4; N/2 SW/4; SE/4 SW/4; S/2 SE/4	34	320.00
NW/4 SE/4	36	40.00
Total		680.00
Township 2 South, Range 7 West:		
NE/4 SE/4; SW/4 SW/4	13	80.00
NE/4 NE/4; SW/4 NW/4; N/2 SW/4; SE/4 SW/4; W/2 SE/4; SE/4 SE/4	14	320.00
W/2 NE/4; SE/4 NE/4	15	120.00
N/2 NE/4	23	80.00
N/2 N/2; SE/4 NE/4	24	200.00
Total		800.00
Township 2 South, Range 8 West:		
SE/4 SW/4	31	40.00
Township 3 South, Range 1 East:		
Lot 2; SE/4 NW/4; S/2 NE/4	7	158.12
N/2 SW/4; SW/4 NE/4; NW/4 SE/4	16	160.00
Lots 1, 2 & 3; NE/4 SW/4	18	155.35
E/2 NE/4	30	80.00
Total		553.47
Township 3 South, Range 2 East:		
Lot 8	6	35.49
SW/4 SW/4	25	40.00
SE/4 NW/4; E/2 SW/4	36	120.00
Total		195.49
Township 3 South, Range 1 West:		
N/2 SE/4	3	80.00
Lots 1–8, Incl	22	331.46
Lots 1–4, Incl.; S/2 N/2	23	338.28
Lots 1–4, Incl.; S/2 N/2	24	341.20
W/2 SE/4	25	80.00
Total		1,170.94
Township 3 South, Range 2 West:		
S/2 S/2	9	160.00
S/2 SE/4	7	80.00
SW/4 SW/4	8	40.00
W/2 SW/4	15	80.00
NE/4 SW/4; NW/4; SE/4	16	360.00
SW/4 SW/4	17	40.00
NE/4 NE/4	18	40.00
N/2 NE/4	21	80.00
N/2 NW/4	24	80.00
W/2 SW/4	33	80.00
Total		1,040.00

Description	Section	Acres
Township 3 South, Range 3 West:		
S/2 NW/4; NE/4 SW/4; N/2 SE/4	2	200.00
NW/4 SE/4; N/2 SW/4	17	120.00
All (Lots 1-4, Incl., E/2 W/2; E/2)	19	633.87
SW/4 SW/4	20	40.00
E/2 SW/4	21	80.00
N/2 NW/4; S/2 NE/4; NE/4 SE/4	29	200.00
W/2 NE/4; NE/4 NW/4; Lot 1	30	158.66
Total		1,432.53
Township 3 South, Range 4 West:		
SW/4 NW/4	11	40.00
S/2 SE/4; SE/4 SW/4; N/2 S/2	13	280.00
NE/4; NE/4 NW/4	24	200.00
SE/4 NE/4; W/2 NE/4; E/2 NW/4	26	200.00
E/2 NE/4	30	80.00
Total		800.00
Township 3 South, Range 5 West:		
Lots 1 & 2; SE/4 NE/4	3	118.86
Lot 4; SW/4 NW/4; W/2 SW/4; SE/4 SW/4	2	199.58
S/2 NE/4; N/2 SE/4	5	160.00
NW/4; W/2 NE/4; NE/4 SW/4; NW/4 SE/4	11	320.00
W/2 E/2	12	160.00
W/2 E/2	13	160.00
SW/4 NW/4; N/2 SW/4; SW/4 SW/4	21	160.00
E/2 NE/4	34	80.00
Total		1,358.44
Township 3 South, Range 7 West:		
Lots 3 & 4	7	66.55
S/2	13	320.00
NW/4 SW/4	16	40.00
E/2 SE/4; SW/4 SE/4; W/2 NW/4	17	200.00
E/2 NE/4; Lots 1 & 2	18	147.16
Total		773.71
Township 3 South, Range 8 West:		
E/2; NW/4; E/2 SW/4	35	560.00
S/2 S/2	1	160.00
SW/4	2	160.00
W/2 SE/4	3	80.00
Lot 3; SE/4 NW/4; NE/4 SW/4	6	120.04
SE/4	9	160.00
NE/4	10	160.00
S/2 NW/4	11	80.00
NW/4; SE/4	12	320.00
N/2 NE/4; SE/4 NE/4; SE/4; NE/4 NW/4	13	320.00
NE/4; S/2	14	480.00
S/2	15	320.00
W/2 NE/4; S/2 NW/4	27	160.00
Total		3,080.04
Township 3 South, Range 9 West:		
SW/4 NW/4; NW/4 SW/4	27	80.00
Township 4 South, Range 2 West:		
Lot 3; NE/4 SW/4; N/2 SE/4	7	159.70
E/2 NE/4; SW/4 NE/4	12	120.00
E/2 NW/4; SW/4 NW/4	16	120.00
SE/4 NE/4; NW/4; NW/4 SW/4; N/2 SE/4	17	320.00
Lot 1	18	39.91
SE/4, S/2 NE/4; S/2 SW/4	21	320.00
S/2	22	320.00
W/2 SW/4	23	80.00
Lot 4	26	6.89
Lots 1-4, Incl	27	26.59
Lots 1-4, Incl	28	126.64
Lots 1-6, Incl.; NE/4; E/2 NW/4	30	475.16
Total		2,114.89
Township 4 South, Range 3 West:		
Lot 10	2	40.90
E/2 NE/4; NE/4 SE/4	13	120.00
Lots 1 & 2; N/2 SE/4; SW/4; N/2	25	622.29
All	26	640.00
Lots 1-6, Incl.; NW/4 NW/4	35	237.96
Lot 1	36	25.75
Total		1,686.90
Township 4 South, Range 4 West:		
S/2	25	320.00
Township 4 South, Range 8 West:		
N/2	29	320.00
Township 4 South, Range 9 West:		
S/2	9	320.00
All	10	640.00
All	11	640.00
S/2	12	320.00
N/2; N/2 S/2; SE/4 SE/4	13	520.00
N/2	14	320.00
N/2	15	320.00
N/2	16	320.00
N/2	17	320.00
Lots 3 & 4; E/2 SW/4; SE/4	18	319.09
Lots 1 & 2; E/2 NW/4; NE/4	19	319.37
Total		4,358.46
Township 4 South, Range 10 West:		
S/2	13	320.00
SE/4 NW/4; E/2 SW/4	17	120.00
NE/4 NW/4	20	40.00
Total		480.00
Township 5 South, Range 7 West:		
S/2 SW/4	35	80.00
Township 5 South, Range 9 West:		
SE/4 NW/4; S/2 NE/4	34	120.00
SW/4 NW/4	35	40.00
Total		160.00
Township 6 South, Range 9 West:		
SW/4 SE/4	5	40.00
W/2 NE/4; NW/4 SE/4	8	120.00
Total		160.00
Grand total		27,043.34

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be subject to the terms of sections 677 to 677aa of this title. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary. (Aug. 27, 1954, ch. 1009, § 9, 68 Stat. 869.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677i, 677k, 677l, 677o, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677i. Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon nonagreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions.

The tribal business committee representing the full-blood group, and the authorized representatives of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or encumbrance before the transfer of title to such tribal property only as

provided in sections 677 to 677aa of this title. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe and in the distribution and[1] unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the usual processes of the law. (Aug. 27, 1954, ch. 1009, § 10, 68 Stat. 873; Sept. 25, 1962, Pub. L. 87–698, 76 Stat. 597.)

AMENDMENTS

1962—Pub. L. 87–698 inserted last paragraph providing that originally owned stock of corporate representative should not be subject to the usual processes of the law but that corporate distributions should be subject to them.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677k, 677*l*, 677m, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

[1] So in original. Probably should be "of".

§ 677j. Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision.

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided,* That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677*l* of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary. (Aug. 27, 1954, ch. 1009, § 11, 68 Stat. 873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677k. Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property.

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution under sections 677 to 677aa of this title shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to sections 677 to 677aa of this title shall be subject to a mortgage to be made in favor of the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution. (Aug. 27, 1954, ch. 1009, § 12, 68 Stat. 874.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677*l*. Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan.

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of

six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

(1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover—

(i) the proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of sections 677 to 677aa of this title, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by sections 677 to 677aa of this title, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, located so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group; after deducting reasonable cost of sale and distribution.

(Aug. 27, 1954, ch. 1009, § 13, 68 Stat. 874.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677j, 677k, 677m, 677o, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z 677aa of this title.

§ 677m. Same; procedure by Secretary if distribution not completed within seven years from August 27, 1954.

In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677*l* of this title, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the

net proceeds, or convey such assets to the persons entitled thereto as tenants in common. (Aug. 27, 1954, ch. 1009, § 14, 68 Stat. 875.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677l, 677o, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677n. Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions.

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period. (Aug. 27, 1954, ch. 1009, § 15, 68 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677l, 677o, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677o. Termination of restrictions on individually owned property of the mixed-blood group.

(a) Transfer of control of trust property; removal of sales restrictions.

When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of sections 677 to 677aa of this title, notwithstanding anything contained in said sections to the contrary.

(b) Partition or sale by Secretary prior to removal of restrictions.

Prior to the removal of restrictions in accordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided,* That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

(Aug. 27, 1954, ch. 1009, § 16, 68 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677l, 677o, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677p. Tax exemption; exceptions and time limits; valuation for income tax on gains or losses.

No distribution of the assets made under the provisions of sections 677 to 677aa of this title shall be subject to any Federal or State income tax: *Provided,* That so much of any cash distribution made under said sections as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of said sections be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of said sections shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance: *Provided,* That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property distributed to the mixed-blood members of the tribe under the provisions of sections 677 to 677aa of this title, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any valuation for purposes of Fed-

eral income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to said sections. (Aug. 27, 1954, ch. 1009, § 17, 68 Stat. 876; Aug. 2, 1956, ch. 880, § 3, 70 Stat. 936.)

AMENDMENTS

1956—Act Aug. 2, 1956, included within the exception clause the provisions respecting exemption from corporate income taxes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677q. Applicability of decedents' estates laws to individual trust property of mixed-blood members.

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply. (Aug. 27, 1954, ch. 1009, § 18, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677r. Indian claims unaffected.

Nothing in sections 677 to 677aa of this title shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe. (Aug. 27, 1954, ch. 1009, § 19, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677s. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 677 to 677aa of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. (Aug. 27, 1954, ch. 1009, § 20, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677t. Water rights.

Nothing in sections 677 to 677aa of this title shall abrogate any water rights of the tribe or its members. (Aug. 27, 1954, ch. 1009, § 21, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677u. Protection of minors, persons non compos mentis, and other members needing assistance; guardians.

For the purposes of sections 677 to 677aa of this title, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated. (Aug. 27, 1954, ch. 1009, § 22, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677v. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws.

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction. (Aug. 27, 1954, ch. 1009, § 23, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z, 677aa of this title.

§ 677w. Presentation of development program for full-blood group to eventually terminate Federal supervision; annual progress reports.

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-supporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members. The tribal business committee, representing the full-blood group shall, through the Secretary of the Interior, make a full and complete annual progress report to the Congress of its activities, and of the expenditures authorized under sections 677 to 677aa of this title. (Aug. 27, 1954, ch. 1009, § 24, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677x, 677y, 677aa of this title.

§ 677x. Citizenship status unaffected.

Nothing in sections 677 to 677aa of this title, shall affect the status of the members of the tribe as citizens of the United States. (Aug. 27, 1954, ch. 1009, § 25, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677y, 677z, 677aa of this title.

§ 677y. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of sections 677 to 677aa of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections. (Aug. 27, 1954, ch. 1009, § 26, 68 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677z, 677aa of this title.

§ 677z. Rules and regulations; tribal or group referenda.

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 677 to 677aa of this title, and may, in his discretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets. (Aug. 27, 1954, ch. 1009, § 27, 68 Stat. 878.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677aa of this title.

§ 677aa. Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups.

Whenever any action pursuant to the provisions of sections 677 to 677aa of this title requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups. (Aug. 27, 1954, ch. 1009, § 28, 68 Stat. 878.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676a, 677, 677a, 677d, 677e, 677f, 677g, 677h, 677i, 677k, 677*l*, 677*o*, 677p, 677r, 677s, 677t, 677u, 677w, 677x, 677y, 677z of this title.

RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA

§ 681. Per capita payment to tribal members; rules and regulations.

The Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the Act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom $100 to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living on June 19, 1952. Such payment shall be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That such payment shall be made first from any funds on deposit in the Treasury of the United States to the credit of the Red Lake Band of the Chippewa Indians, of Minnesota, drawing interest at the rate of 5 per centum and thereafter from funds drawing 4 per centum. (June 19, 1952, ch. 445, § 1, 66 Stat. 139.)

REFERENCES IN TEXT

Act of May 18, 1916 (39 Stat. 137), referred to in text, is act May 18, 1916, ch. 125, 39 Stat. 137, and was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 682, 683 of this title.

§ 682. Payment free of liens or claims.

No money paid to Indians under sections 681 to 683 of this title shall be subject to any lien or claim of attorneys or other persons. Before any payment is made under said sections, the Red Lake Band of Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify and accept the provisions of said sections. (June 19, 1952, ch. 445, § 2, 66 Stat. 139.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 683 of this title.

§ 683. Payments not "other income and resources."

Payments made under sections 681 to 683 of this title shall not be held to be "other income and resources" as that term is used in sections 302 (a) (7), 602 (a) (7), and 1202 (a) (8) of Title 42. (June 19, 1952, ch. 445, § 3, 66 Stat. 140.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 682 of this title.

§ 684. Per capita payment to tribal members; installments; rules and regulations.

The Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the Act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom $50 to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living on August 27, 1954. Such payment shall be made in two installments of $25 each, the first to be made within thirty days of ratification by the Red Lake Band of Chippewa Indians of Minnesota as provided for in section 685 of this title, the second installment ninety days thereafter, and under such other rules and regulations as the Secretary of the Interior may prescribe. (Aug. 27, 1954, ch. 1011, § 1, 68 Stat. 878.)

REFERENCES IN TEXT

The Act of May 18, 1916 (39 Stat. 137), referred to in text, is act May 18, 1916, ch. 125, 39 Stat. 137, which is not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 685, 686 of this title.

§ 685. Payment free of liens or claims.

No money paid to Indians under sections 684 to 686 of this title shall be subject to any lien or claim of attorneys or other persons. Before any payment is made under said sections, the Red Lake Band of Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify and accept the provisions of said sections. (Aug. 27, 1954, ch. 1011, § 2, 68 Stat 879.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 684, 686 of this title.

§ 686. Payments not "other income and resources."

Payments made under sections 684 to 686 of this title shall not be held to be "other income and resources" as that term is used in sections 302 (a) (7), 602 (a) (7), and 1202 (a) (8) of Title 42. (Aug. 27, 1954, ch. 1011, § 3, 68 Stat. 879.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 685 of this title.

§ 687. Per capita payment to tribal members; rules and regulations.

The Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the Act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom $100 to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living on August 28, 1958. Such payment shall be made under such rules and regulations as the Secretary of the Interior may prescribe. (Pub. L. 85-794, § 1, Aug. 28, 1958, 72 Stat. 958.)

REFERENCES IN TEXT

The Act of May 18, 1916 (39 Stat. 137), referred to in text of this section, is act May 18, 1916, ch. 125, 39 Stat. 137, which was not classified to the Code.

PER CAPITA PAYMENTS FROM NET PROCEEDS

Section 4 of Pub. L. 85-794 amended the nineteenth paragraph of section 9 of act May 18, 1916, ch. 125, 39 Stat. 138, to read as follows: "After the payment of all expenses connected with the administration of these lands as herein provided, the net proceeds therefrom shall be covered into the Treasury of the United States to the credit of the Red Lake Indians and draw interest at the rate of 4 per centum per annum. Any part of such fund or the interest thereon that is in excess of reserve and operating requirements, as determined by the Secretary of the Interior, may be distributed per capita to the members of the Red Lake Band upon request of the tribal council and approval by the Secretary."

ADMINISTRATION OF RED LAKE INDIAN FOREST

Section 5 of Pub. L. 85-794, amended paragraph seventeen of section 9 of act May 18, 1916, ch. 125, 39 Stat. 137, to read as follows: "The Red Lake Indian Forest shall be administered by the Secretary of the Interior in accordance with principles of scientific forestry that will encourage the production of successive timber crops for the benefit of the Indians of the Red Lake Band, and he is hereby authorized (a) to harvest, sell, and manufacture such marketable timber from any tribal lands within the Red Lake Indian Reservation as he may deem to be advisable and, if the timber is the growth of Red Lake Indian Forest, in keeping with the foregoing principles, (b) to establish nurseries and otherwise provide for the reforestation of said lands, (c) to construct and operate sawmills and other facilities for the manufacture into marketable products of the timber harvested from said lands, (d) to purchase, harvest, and manufacture such additional timber standing on or severed from any other lands, including lands outside the reservation, as in his opinion may contribute to the profitable operation of such sawmills and other facilities as a tribal enterprise, subject to such limitations on expenditures as may be prescribed in annual appropriations acts, and (e) to employ such persons and use such means as he may find necessary to carry out the purposes of the foregoing provisions. Any proceeds derived from sales of timber or timber products under this paragraph may be expended in payment of the expenses of any of the activities authorized by this paragraph including construction expenses."

§ 688. Payment free of liens or claims.

No money paid to Indians under this Act shall be subject to any lien or claim of attorneys, or other persons. (Pub. L. 85-794, § 2, Aug. 28, 1958, 72 Stat. 958.)

REFERENCES IN TEXT

"This Act", referred to in text, means Pub. L. 85-794, which is classified to sections 687—689 of this title.

§ 689. Payments not "other income and resources."

Payments made under this Act shall not be held to be "other income and resources" as that term is used in sections 302 (a) (7), 602 (a) (7), and 1202 (a) (8) of Title 42. (Pub. L. 85-794, § 3, Aug. 28, 1958, 72 Stat. 958.)

REFERENCES IN TEXT

"This Act", referred to in text, means Pub. L. 85-794, which is classified to sections 687—689 of this title.

§ 690. Distribution of judgment fund; tax exemption of per capita payments.

The funds on deposit in the Treasury of the United States to the credit of the Red Lake Band of Chippewa Indians that were appropriated by the Act of June 9, 1964, to pay a judgment by the Indian Claims Commission in docket 18A, and the interest thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed per capita to the members of the tribe shall not be subject to Federal or State income tax. (Pub. L. 88-663, Oct. 13, 1964, 78 Stat. 1093.)

WESTERN OREGON INDIANS: TERMINATION OF FEDERAL SUPERVISION

§ 691. Purpose.

The purpose of sections 691 to 708 of this title is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of such Indians, and for a termination of Federal services furnished such Indians because of their status as Indians. (Aug. 13, 1954, ch. 733, § 1, 68 Stat. 724.)

REPEALS

Section 19 of act Aug. 13, 1954, provided that: "All Acts or parts of Acts inconsistent with this Act [sections 691—708 of this title] are hereby repealed insofar as they affect a tribe or its members. The Act of June 18, 1934 (48 Stat. 948), as amended by the Act of June 15, 1935 (49 Stat. 378) [sections 461, 462, 463, 464, 465, 466—470, 471—473, 474, 475, 476—478, and 479 of this title], shall not apply to a tribe and its members after the date of the proclamation provided for in section 13 of this Act [section 703 of this title]."

SEPARABILITY OF PROVISIONS

Section 20 of act Aug. 13, 1954, provided that: "If any provision of this Act [sections 691—708 of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act [said sections] and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 692. Definitions.

For the purposes of sections 691 to 708 of this title:

(a) "Tribe" means any of the tribes, bands, groups, or communities of Indians located west of the Cascade Mountains in Oregon, including the following: Confederated Tribes of the Grand Ronde Community, Confederated Tribes of Siletz Indians, Alsea, Applegate Creek, Calapooya, Chaftan, Chempho, Chetco, Chetlessington, Chinook, Clackamas, Clatskanie, Clatsop, Clowwewalla, Coos, Cow Creek, Euchees, Galic Creek, Grave, Joshua, Karok, Kathlamet, Kusotony, Kwatami or Sixes, Lakmiut, Long Tom Creek, Lower Coquille, Lower Umpqua, Maddy, Mackanotin, Mary's River, Multnomah, Munsel Creek, Naltunnetunne, Nehalem, Nestucca, Northern Molalla, Port Orford, Pudding River, Rogue River, Salmon River, Santiam, Scoton, Shasta, Shasta Costa, Siletz, Siuslaw, Skiloot, Southern Molalla, Takelma, Tillamook, Tolowa, Tualatin, Tututui, Upper Coquille, Upper Umpqua, Willamette Tumwater, Yamhill, Yaquina, and Yoncalla;

(b) "Secretary" means the Secretary of the Interior.

(c) "Lands" means real property interest therein, or improvements thereon, and includes water rights.

(d) "Tribal property" means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States. (Aug. 13, 1954, ch. 733, § 2, 68 Stat. 724.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 693. Membership roll; preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication.

Within ninety days after August 13, 1954, the Secretary shall publish in the Federal Register (1) a list of those tribes for which membership rolls will be required for the purposes of sections 691 to 708 of this title, and (2) a list of those tribes for which no membership rolls will be required for the purposes of said sections. Each tribe on each list shall have a period of six months from the date of publication of the notice in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on August 13, 1954, which shall be published in the Federal Register. In the absence of applicable law, or eligibility requirements in an approved constitution, bylaws, or membership ordinance, eligibility for enrollment shall be determined under such rules and regulations as the Secretary may prescribe. No person shall be enrolled on more than one tribal roll prepared pursuant to said sections. If a tribe on list one fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within ninety days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals the roll of the tribe shall be published in the Federal Register and such roll shall be final for the purposes of said sections. (Aug. 13, 1954, ch. 733, § 3, 68 Stat. 724.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 694, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 694. Personal property rights; restrictions.

Upon publication in the Federal Register of the final roll as provided in section 693 of this title, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 695 of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void. (Aug. 13, 1954, ch. 733, § 4, 68 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title

§ 695. Tribal property.

(a) Procedure for transfer.

Upon request of a tribe, the Secretary is authorized within two years from August 13, 1954, to transfer to a corporation or other legal entity organized by the tribe in a form satisfactory to the Secretary title to all or any part of the tribal property, real and personal, or to transfer to one or more trustees designated by the tribe and approved by the Secretary, title to all or any part of such property to be held in trust for management or liquidation purposes under such terms and conditions as may be specified by the tribe and approved by the Secretary, or to sell all or any part of such property and make a pro rata distribution of the proceeds of sale among the members of the tribe after deducting, in his discretion, reasonable costs of sale and distribution.

(b) Property not transferred in accordance with recognized procedure; election to retain property.

Title to any tribal property that is not transferred in accordance with the provisions of subsection (a) of this section shall be transferred by the Secretary to one or more trustees designated by him for the liquidation and distribution of assets among the members of the tribe under such terms and conditions as the Secretary may prescribe: *Provided,* That the trust agreement shall provide for the termination of the trust not more than three years from the date of such transfer unless the term of the trust is extended by order of a judge of a court of record designated in the trust agreement: *Provided further,* That the trust agreement shall provide that at any time before the sale of tribal property by the

trustees the tribe may notify the trustees that it elects to retain such property and to transfer title thereto to a corporation, other legal entity, or trustee in accordance with the provisions of subsection (a) of this section, and that the trustees shall transfer title to such property in accordance with the notice from the tribe if it is approved by the Secretary.

(c) Compensation of agents or attorneys.

The Secretary shall not approve any form of organization pursuant to subsection (a) of this section that provides for the transfer of stock or an undivided share in corporate assets as compensation for the services of agents or attorneys unless such transfer is based upon an appraisal of tribal assets that is satisfactory to the Secretary.

(d) Selection of trustees; approval by Secretary.

When approving or disapproving the selection of trustees in accordance with the provisions of subsection (a) of this section, and when designating trustees pursuant to subsection (b) of this section, the Secretary shall give due regard to the laws of the State of Oregon that relate to the selection of trustees. (Aug. 13, 1954, ch. 733, § 5, 68 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 694, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 696. Individual property.

(a) Transfer of unrestricted control.

The Secretary is authorized and directed to transfer within two years after August 13, 1954 to each member of each tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title.

All restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribes (including allottees, purchasers, heirs, and devisees, either adult or minor) are removed two years after August 13, 1954 and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribes by devise or inheritance two years or more after August 13, 1954 shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owners.

Prior to the time provided in subsection (d) of this section for the removal of restrictions on land owned by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted two years from August 13, 1954;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided,* That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(Aug. 13, 1954, ch. 733, § 6, 68 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 697. Property of deceased members; probate laws.

(a) Sections 47, 151, 202, 312, 331, 333, 336, 337, 344a, 351, 352, 353, 372, 373, 403, 406, 407 and 408 of this title, and section 148 of title 43, and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the tribes who die six months or more after August 13, 1954.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribes who die six months or more after August 13, 1954. (Aug. 13, 1954, ch. 733, § 7, 68 Stat. 726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 698. Transfer of Federally owned property.

The Secretary is authorized, in his discretion, to transfer to any tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribes subject to sections 691 to 708 of this title which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary for public use and from which members of the tribes will derive benefits. (Aug. 13, 1954, ch. 733, § 8, 68 Stat. 726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 699. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.

No property distributed under the provisions of sections 691 to 708 of this title shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of said sections, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity. (Aug. 13, 1954, ch. 733, § 9, 68 Stat. 726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 700, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 700. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of sections 691 to 708 of this title, the Secretary shall protect the rights of members of the tribes who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate. (Aug. 13, 1954, ch. 733, § 10, 68 Stat. 726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 701, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 701. Advances or expenditures from tribal funds.

Pending the completion of the property dispositions provided for in sections 691 to 708 of this title, the funds now on deposit, or hereafter deposited in the Treasury of the United States to the credit of a tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary. (Aug. 13, 1954, ch. 733, § 11, 68 Stat. 726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 702, 703, 704, 705, 706, 707, 708 of this title.

§ 702. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of sections 691 to 708 of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections. (Aug. 13, 1954, ch. 733, § 12, 68 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 703, 704, 705, 706, 707, 708 of this title.

§ 703. Termination of Federal trust.

(a) Publication; termination of Federal services; application of Federal and State laws.

Upon removal of Federal restrictions on the property of each tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians, excluding statutes that specifically refer to the tribe and its members, shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected.

Nothing in sections 691 to 708 of this title shall affect the status of the members of a tribe as citizens of the United States.

(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

Prior to the issuance of a proclamation in accordance with the provisions of this section, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Aug. 13, 1954, ch. 733, § 13, 68 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 704, 705, 706, 707, 708 of this title.

§ 704. Revocation of corporate charter; termination of Federal power over tribe.

(a) Effective on the date of the proclamation provided for in section 703 of this title, the corporate charter of the Confederated Tribes of the Grand Ronde Community, Oregon, issued pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, and ratified by the Community on August 22, 1936, is revoked.

(b) Effective on the date of the proclamation provided for in section 703 of this title, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of sections 691 to 708 of this title are terminated Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with said sections without the participation of the Secretary or other officer of the United States. (Aug. 13, 1954, ch. 733, § 14, 68 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 693, 698, 699, 700, 701, 702, 703, 705, 706, 707, 708 of this title.

§ 705. Offset of individual indebtedness; credit.

The Secretary is authorized to set off against any indebtedness payable to the tribe or to the United States by an individual member of the tribe, or payable to the United States by the tribe, any funds payable to such individual or tribe under sections 691 to 708 of this title and to deposit the amount set off to the credit of the tribe or the United States as the case may be. (Aug. 13, 1954, ch. 733, § 15, 68 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 706, 707, 708 of this title.

§ 706. Indian claims unaffected.

Nothing in sections 691 to 708 of this title shall affect any claim heretofore filed against the United States by any tribe. (Aug. 13, 1954, ch. 733, § 16, 68 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 707, 708 of this title.

§ 707. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 691 to 708 of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency. (Aug. 13, 1954, ch. 733, § 17, 68 Stat. 728.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 708 of this title.

§ 708. Rules and regulations; tribal referenda.

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 691 to 708 of this title, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets. (Aug. 13, 1954, ch. 733, § 18, 68 Stat. 728.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 692, 693, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707 of this title.

ALABAMA AND COUSHATTA INDIANS OF TEXAS: TERMINATION OF FEDERAL SUPERVISION

§ 721. Transfer of property to Texas.

The Secretary of the Interior is authorized to convey to the State of Texas the lands held in trust by the United States for the tribe of Indians organized and known as the Alabama and Coushatta Tribes of Texas, located in Polk County, Texas; and such tribe is authorized to convey to the State of Texas the lands purchased for and deeded to the Alabama Indians in accordance with an act of the legislature of the State of Texas approved February 3, 1854, located in Polk County, Texas. All of the lands so conveyed shall be held by the State of Texas in trust for the benefit of the Indians of the Alabama and Coushatta Tribes of Texas, subject to such conditions regarding management and use as the State of Texas may prescribe and the disposition of such lands shall be subject to approval of a majority of the adult members of the Alabama and Coushatta Tribes of Texas. (Aug. 23, 1954, ch. 831, § 1, 68 Stat. 768.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 727 of this title.

§ 722. Termination of Federal trust; publication; termination of Federal services; admission to hospitals and schools.

Upon the conveyance to the State of Texas of the lands held in trust by the United States for the Alabama and Coushatta Tribes of Texas, the Secretary of the Interior shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such tribe and its members has terminated. Thereafter such tribe and its members shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians: *Provided,* That after August 21, 1954 such Indians shall be eligible for admission, on the same terms that apply to other Indians, to hospitals and schools maintained by the United States. (Aug. 23, 1954, ch. 831, § 2, 68 Stat. 769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 725, 726, 727, 728 of this title.

§ 723. Termination of Federal powers over tribe.

Effective on the date of the proclamation provided for in section 722 of this title, all powers of the Secretary of the Interior or any other officer of the United States to take, review, or approve any action under the constitution and bylaws of the Alabama and Coushatta Tribes of Texas approved on August 19, 1938, pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, are terminated. Any powers conferred upon the tribe by its constitution and bylaws that are inconsistent with the provisions of sections 721 to 728 of this title are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with sections 721 to 728 of this title without the participation of the Secretary or other officer of the United States in such action. (Aug. 23, 1954, ch. 831, § 3, 68 Stat. 769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 727 of this title.

§ 724. Cancellation of indebtedness.

The indebtedness of the Alabama and Coushatta Tribes of Texas to the United States incurred under the provisions of the Act of May 29, 1928 (45 Stat. 883, 900), is canceled, effective on the date of the proclamation to be issued in accordance with the provisions of section 722 of this title. (Aug. 23, 1954, ch. 831, § 4, 68 Stat. 769.)

REFERENCES IN TEXT

Act May 29, 1928, ch. 853, 45 Stat. 883, 900, referred to in text, and known as the "Second Deficiency Act, fiscal year, 1928," which appropriated $40,000 for the purchase of lands in trust for the Alabama and Coushatta Indians to be reimbursed to the United States, was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 727 of this title.

§ 725. Revocation of corporate charter.

The corporate charter of the Alabama and Coushatta Tribes of Texas issued pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475 476 to 478, and 419 of this title, ratified on October 17,

1939, is revoked, effective on the date of the proclamation to be issued in accordance with the provisions of section 722 of this title. (Aug. 23, 1954, ch. 831, § 5, 68 Stat. 769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 727 of this title.

§ 726. Applicability of Federal and State laws.

On and after the date of the proclamation to be issued in accordance with the provisions of section 722 of this title, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the Alabama and Coushatta Tribes of Texas or the members thereof, except as provided in said section and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction. (Aug. 23, 1954, ch. 831, § 6, 68 Stat. 769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 727 of this title.

§ 727. Citizenship status unaffected.

Nothing in sections 721 to 728 of this title shall affect the status of the members of the tribes as citizens of the United States. (Aug. 23, 1954, ch. 831, § 7, 68 Stat. 769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 723 of this title.

§ 728. Applicability of sections 461 to 479 of this title.

Sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478 and 479 of this title shall not apply to the tribe and its members after the date of the proclamation to be issued in accordance with the provisions of section 722 of this title. (Aug. 23, 1954, ch. 831, § 8, 68 Stat. 769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 727 of this title.

PAIUTE INDIANS OF UTAH: TERMINATION OF FEDERAL SUPERVISION

§ 741. Purpose.

The purpose of sections 741 to 760 of this title is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in the State of Utah and the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of such Indians, and for a termination of Federal services furnished such Indians because of their status as Indians. (Sept. 1, 1954, ch. 1207, § 1, 68 Stat. 1099.)

REPEALS

Section 20 of act Sept. 1, 1954, provided that: "All Acts or parts of Acts inconsistent with this Act [sections 741 to 760 of this title] are repealed insofar as they affect the tribe or its members. The Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378) [sections 461 to 479 of this title], shall not apply to the tribe and its members after the date of the proclamation provided for in section 17 of this Act [section 757 of this title]."

SEPARABILITY OF PROVISIONS

Section 21 of act Sept. 1, 1954, provided that: "If any provision of this Act [sections 741 to 760 of this title], or the application thereof, to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 742, 743, 749 to 755, 757 to 759 of this title.

§ 742. Definitions.

For the purposes of sections 741 to 760 of this title—

(a) "Tribe" means any of the following tribes or bands of Indians located in the State of Utah: Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of the Paiute Indian Tribe.

(b) "Secretary" means the Secretary of the Interior.

(c) "Lands" means real property, interests therein, or improvements thereon, and includes water rights.

(d) "Individual Indian" means any individual Indian whose name appears on the final roll prepared pursuant to section 743 of this title.

(e) "Tribal property" means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States. (Sept. 1, 1954, ch. 1207, § 2, 68 Stat. 1100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 743, 749 to 755, 757 to 759 of this title.

§ 743. Membership roll; preparation and initial publication; appeal from inclusion or omission from roll; finality of determination; final publication.

Each tribe shall have a period of six months from September 1, 1954, in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on September 1, 1954, which shall be published in the Federal Register. If a tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed role[1] for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of sections 741 to 760 of this title. (Sept. 1, 1954, ch. 1207, § 3, 68 Stat. 1100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 742, 744, 749 to 755, 757 to 759 of this title.

§ 744. Personal property rights; restrictions.

Upon publication in the Federal Register of the final roll as provided in section 743 of this title, the

[1] So in original. Probably should read "roll."

rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 745 of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void. (Sept. 1, 1954, ch. 1207, § 4, 68 Stat. 1100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757 to 759 of this title.

§ 745. Tribal property.

(a) Procedure for transfer; compensation of agents or attorneys.

The Secretary shall, within six months after the publication of each final membership roll, notify the tribe of the period of time during which the tribe may study means of disposition of tribal property, real and personal, under supervision of the United States. Such period shall not be less than three months and not more than two years, including any authorized extension of the original periods. The Secretary is authorized to provide such reasonable assistance as may be requested by the tribe in the formulation of a plan for the disposition or future control and management of the property, including necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, and members of the tribe. During such period, the tribe may elect—

(1) to apply to the Secretary for the transfer to a corporation or other legal entity organized by the tribe in a form satisfactory to the Secretary of title to all or any part of the tribal property, and the Secretary is authorized to make such transfer: *Provided,* That the Secretary of the Interior shall not approve any form of organization that provides for the transfer of stock or an undivided share in corporate assets as compensation for services of agents or attorneys unless such transfer is based upon an appraisal of tribal assets that is satisfactory to the Secretary;

(2) to apply to the Secretary for the transfer to one or more trustees designated by the tribe of title to all or any part of the tribal property, real and personal, the title to be held by such trustee for management or liquidation purposes under terms and conditions prescribed by the tribe, and the Secretary is authorized to make such transfer if he approves the trustees and the terms and conditions of the trust;

(3) to apply to the Secretary for the sale of all or any part of the tribal property, and for the pro rata distribution among the members of the tribe of all or any part of the proceeds of sale or of any other tribal funds, and the Secretary is authorized and directed to sell such property upon such terms and conditions as he deems proper and to make such distribution among the members of the tribe after deducting, in his discretion, reasonable costs of sale and distribution; and

(4) to apply to the Secretary for a division of all or any part of the tribal land into parcels for members and for public purposes, together with a general plan for the subdivision showing the approximate size, location, and number of parcels, and the Secretary is authorized to issue patents for that purpose.

(b) Property not transferred in accordance with recognized procedure.

Title to any tribal property that is not transferred in accordance with the provisions of subsection (a) of this section shall be transferred by the Secretary either to all members of the tribe as tenants in common or to one or more trustees designated by him for the liquidation and distribution of assets among the members of the tribe under such terms and conditions as the Secretary may prescribe: *Provided,* That the trust agreement shall provide for the termination of the trust not more than three years from the date of such transfer unless the term of the trust is extended by order of a judge of a court of record designated in the trust agreement.

(c) Selection of trustees; approval by Secretary; election to retain property.

When approving or disapproving the selection of trustees in accordance with the provisions of subsection (a) of this section, and when designating trustees pursuant to subsection (b) of this section, the Secretary shall give due regard to the laws of the State of Utah that relate to the selection of trustees: *Provided further,* That the trust agreement shall provide that at any time before the sale of tribal property by the trustees the tribe may notify the trustees that it elects to retain such property and to transfer title thereto to a corporation, other legal entity, or trustee in accordance with the provisions of paragraphs (1) and (2) of subsection (a) of this section, and that the trustee shall transfer title to such property in accordance with the notice from the tribe if it is approved by the Secretary.

(d) Reservation of subsurface rights.

Notwithstanding any other provision of this section, the Secretary is directed to reserve subsurface rights in tribal property from any sale or division of such property, and to require any trustee or trustees to whom title to tribal property is transferred to retain title to the subsurface rights in such property for not less than 10 years. (Sept. 1, 1954, ch. 1207, § 5, 68 Stat. 1100.)

DISCONTINUANCE OF IRRIGATION WORKS; TRANSFER OF TITLE

Section 22 of act Sept. 1, 1954, provided that not later than two years after Sept. 1, 1954, the management and operation of irrigation works for Indian lands of the tribe by the Bureau of Indian Affairs was to be discontinued, and that, upon such discontinuance, the Secretary was to cancel the unpaid irrigation operation and maintenance assessments and reimbursable irrigation construction charges against such lands and transfer the title to such irrigation works to water users, water user's associations organized for such purpose, or to corporations organized, or trustees designated, as provided in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 744, 749 to 755, 757 to 759 of this title.

§ 746. Individual property.

(a) Transfer of unrestricted control.

The Secretary is authorized and directed to transfer within two years after September 1, 1954 to each member of each tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title.

All restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribe (including allottees, heirs, and devisees, either adult or minor) are removed two years after September 1, 1954, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrance: *Provided,* That the provisions of this subsection shall not apply to subsurface rights in such lands, and the Secretary is directed to transfer such subsurface rights to one or more trustees designated by him for management for a period not less than 10 years. The title to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance two years or more after September 1, 1954 shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner.

Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted two years from September 1, 1954;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided,* That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(Sept. 1, 1954, ch. 1207, § 6, 68 Stat. 1101.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757 to 759 of this title.

§ 747. Property of deceased members; probate laws.

(a) Sections 47, 151, 202, 312, 331, 333, 336, 337, 344a, 351, 352, 353, 372, 373, 403, 406, 407, and 408 of this title, and section 148 of title 43, and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of a tribe who die six months or more after September 1, 1954.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months after September 1, 1954. (Sept. 1, 1954, ch. 1207, § 7, 68 Stat. 1102.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757 to 759 of this title.

§ 748. Transfer of Federally owned property.

The Secretary is authorized, in his discretion, to transfer to a tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary to public use and from which members of the tribes will derive benefit. (Sept. 1, 1954, ch. 1207, § 8, 68 Stat. 1102.)

KANOSH INDIANS, UTAH

Act July 11, 1956, ch. 569, 70 Stat. 528, provided: "That the following-described public domain is hereby declared to be held by the United States in trust for the Kanosh Band of the Paiute Indian Tribe in Utah, subject to the provisions of the Act of September 1, 1954 (68 Stat. 1099) [sections 741—760 of this title], with respect to the termination of Federal supervision over all property of such Indians: The southeast quarter, east half northeast quarter, and the northwest quarter northeast quarter, section 35, township 22 south, range 5 west; the west half west half, section 14, and the east half east half, section 15, township 23 south, range 5 west, Salt Lake meridian, Utah, containing 600 acres."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757 to 759 of this title.

§ 749. Taxes; initial exemption; taxes following distribution; valuation for capital gains and losses.

No property distributed under the provisions of sections 741 to 760 of this title shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of said sections, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity. (Sept. 1, 1954, ch. 1207, § 9, 68 Stat. 1102.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 750 to 755, 757 to 759 of this title.

§ 750. Indian claims unaffected.

Nothing contained in sections 741 to 760 of this title shall deprive any Indian tribe, band, or other identifiable group of American Indians of any right, privilege, or benefit granted by the Indian Claims Commission Act of August 13, 1946, including the right to pursue claims against the United States as authorized by said Act. (Sept. 1, 1954, ch. 1207, § 10, 68 Stat. 1103.)

REFERENCES IN TEXT

The Indian Claims Commission Act of August 13, 1946, referred to in text, is act Aug. 13, 1946, ch. 959, 60 Stat. 1049, which is classified to section 70 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749, 751 to 755, 757 to 759 of this title.

§ 751. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 741 to 760 of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency and may transfer such function, in whole or in part, to a State agency with the consent of such agency and the other party or parties to such instrument. (Sept. 1, 1954, ch. 1207, § 11, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749, 750, 752 to 755, 757 to 759 of this title.

§ 752. Water rights.

Nothing in sections 741 to 760 of this title shall abrogate any water rights of a tribe or its members. (Sept. 1, 1954, ch. 1207, § 12, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 751, 753 to 755, 757 to 759 of this title.

§ 753. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of sections 741 to 760 of this title, the Secretary shall protect the rights of members of a tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians in courts of competent jurisdiction, or by such other means as he may deem adequate. (Sept. 1, 1954, ch. 1207, § 13, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 752, 754, 755, 757 to 759 of this title.

§ 754. Advances or expenditures from tribal funds.

Pending the completion of the property dispositions provided for in sections 741 to 760 of this title, the funds now on deposit, or hereafter deposited, in the United States Treasury to the credit of the tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary. (Sept. 1, 1954, ch. 1207, § 14, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 753, 755, 757 to 759 of this title.

§ 755. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of sections 741 to 760 of this title, or to establish a marketable and recordable title to any property disposed of pursuant to said sections. (Sept. 1, 1954, ch. 1207, § 15, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 754, 757 to 759 of this title.

§ 756. Cancellation of indebtedness.

The Secretary is authorized and directed to cancel any indebtedness payable to the United States by the tribe arising out of any loan made by the United States to such tribe, and any indebtedness, whether payable to the United States or to the tribe, arising out of a loan made from the proceeds thereof to an individual Indian. (Sept. 1, 1954, ch. 1207, § 16, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This sction is referred to in sections 741 to 743, 749 to 755, 757 to 759 of this title.

§ 757. Termination of Federal trust.

(a) Publication; termination of Federal services; application of Federal and State laws.

Upon removal of Federal restrictions on the property of each tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected.

Nothing in sections 741 to 760 of this title shall affect the status of the members of the tribe as citizens of the United States, or shall affect their rights, privileges, immunities, and obligations as such citizens. (Sept. 1, 1954, ch. 1207, § 17, 68 Stat. 1103.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 758, 759, 760 of this title.

§ 758. Revocation of charter; termination of Federal powers over tribe.

(a) Effective on the date of the proclamation provided for in section 757 of this title, the corporate charter issued pursuant to sections 461 to 479 of this title to the Kanosh Band of Paiute Indians of the Kanosh Reservation, Utah, and ratified by the band on August 15, 1943, and to the Shivwits Band of Paiute Indians of the Shivwits Reservation, Utah, and ratified by the band on August 30, 1941, are revoked.

(b) Effective on the date of the proclamation provided for in section 757 of this title, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of sections 741 to 760 of this title are terminated.

Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with sections 741 to 760 of this title without the participation of the Secretary or other officer of the United States. (Sept. 1, 1954, ch. 1207, § 18, 68 Stat. 1104.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757, 759 of this title.

§ 759. Rules and regulations; tribal referenda.

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of sections 741 to 760 of this title, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets. (Sept. 1, 1954, ch. 1207, § 19, 68 Stat. 1104.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757, 758 of this title.

§ 760. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

Prior to the issuance of a proclamation in accordance with the provisions of section 757 of this title, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Sept. 1, 1954, ch. 1207, § 23, 68 Stat. 1104.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741 to 743, 749 to 755, 757 to 759 of this title.

INDIAN TRIBES OF OREGON

§ 771. Enrollment of descendants; determination of eligibility.

The Secretary of the Interior, hereafter referred to as the "Secretary", is authorized and directed to prepare separate rolls of the Indians of the blood of the Molel or Molallalas Tribe of Oregon and of the Confederated Bands of the Umpqua Tribe of Indians and the Calappoias residing in the Umpqua Valley, and of the Tillamook, Coquille, Tootootoney, and Chetco Tribes of Oregon, living on the date of this Act. Applications for enrollment shall be filed within one year of August 30, 1954. The determination of the Secretary of the eligibility of an applicant for enrollment shall be final and conclusive. No person shall be entitled to be enrolled on more than one roll. (Aug. 30, 1954, ch. 1085, § 1, 68 Stat. 979.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 772, 775 of this title.

§ 772. Per capita payments to tribal members; tax exemption.

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the respective tribes or bands, including those funds appropriated by Public Law 253 (Eighty-second Congress) approved November 1, 1951, in satisfaction of judgments obtained by the tribes or bands in the cases of Alcea Band of Tillamook, et al., against United States (119 C. Cls. 835), and Rogue River Tribes of Indians, et al., against United States (116 C. Cls. 454), and to make appropriate and equitable per capita payments therefrom to each person whose name appears on said approved rolls: *Provided,* That any amounts paid to or for individual members, or distributed to or for the legatees or next of kin of any enrollee, as provided in sections 771 to 775 of this title, shall not be subject to Federal tax. (Aug. 30, 1954, ch. 1085, § 2, 68 Stat. 979.)

REFERENCES IN TEXT

Public Law 253 (Eighty-second Congress), referred to in text, is the Supplemental Appropriation Act, 1952, act Nov. 1, 1951, ch. 664, 65 Stat. 736, which was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 773. Payments to enrollees, next of kin or legatees; minors and persons under legal disability; guardians; other appropriate action; payments not subject to debts; time limits.

(a) The Secretary shall make payments directly to a living enrollee. The Secretary shall distribute the share of a person determined to be eligible for enrollment, but who dies subsequent to August 30, 1954, and on whose behalf an application is filed and approved, and the share of a deceased enrollee, directly to his next of kin or legatees as determined by the laws of the domicile of the decedent, upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments due persons under twenty-one years of age or persons under legal disability shall be made in accordance with laws applicable to such persons in the State of domicile of the payee. The Secretary may apply to any court of competent jurisdiction for the appointment of a guardian to receive and administer payments due a person under twenty-one years of age or under legal disability, and may take such other action as he deems appropriate for the protection of the interests of any such person in connection with payments hereunder.

(c) No part of any payment hereunder shall be subject to any debt or debts created prior to August 30, 1954 by a beneficiary of Indian blood. Payment to living enrollees, unless under twenty-one years of age, or under legal disability, shall be completed within one year after approval of the tribal rolls. Payment to next of kin and legatees, and payment for the account of persons under twenty-one years

of age or under legal disability shall be completed within the same period of time to the maximum extent possible. (Aug. 30, 1954, ch. 1085, § 3, 68 Stat. 979.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 772, 775 of this title.

§ 774. Costs.

All costs incurred by the Secretary in the preparation of such rolls and the payment of such per capita shares shall be paid by appropriate withdrawals out of the fund or funds on deposit in the Treasury of the United States arising out of such judgments. (Aug. 30, 1954, ch. 1085, § 4, 68 Stat. 980.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 772, 775 of this title.

§ 775. Rules and regulations.

The Secretary is authorized to prescribe the necessary rules and regulations to carry out the purposes of sections 771 to 775 of this title. (Aug. 30, 1954, ch. 1085, § 5, 68 Stat. 980.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 772 of this title.

CREEK NATION OF INDIANS

§ 781. Distribution of funds; allotment equalization payments.

(a) The Secretary of the Interior is authorized and directed to use any funds on deposit in the Treasury of the United States to the credit of the Creek Nation to complete allotment equalization payments to persons with claims thereto that were filed and adjudicated in accordance with the provisions of section 18 in the Act of June 30, 1919 (41 Stat. 3, 24).

(b) The Secretary of the Interior is authorized to distribute per capita to the members of the Creek Nation whose names appear on the final rolls approved under the Act of April 26, 1906 (34 Stat. 137), or to their heirs or legatees, any funds heretofore or hereafter deposited in the Treasury of the United States to the credit of the Creek Nation that are not used for the purposes of subsection (a) of this section and that are not needed, in the judgment of the Secretary, for other tribal purposes except the proceeds of any final judgment entered in Docket No. 21, pending before the Indian Claims Commission, in which the Creek Nation (Oklahoma) is plaintiff, and McGhee et al., on behalf of the Creek Nation East of the Mississippi are intervenors, and the United States is defendant.

(c) The Secretary of the Interior is authorized and directed to distribute among the persons entitled thereto the funds appropriated by chapter XII of the Third Supplemental Appropriation Act, 1952 (66 Stat. 101, 121), in payment of the judgment entered by the Indian Claims Commission in favor of the Loyal Creek Band or Group of Creek Indians et al., Docket No. 1. Such funds shall be paid to those persons whose names appear on the payroll prepared pursuant to the Act of March 3, 1903 (32 Stat. 982, 994), by J. Blair Schoenfelt, United States Indian Agent, or to their heirs or legatees, on a pro rata basis in proportion to the amounts appearing opposite their names on such payroll. (Aug. 1, 1955, ch. 444, § 2, 69 Stat. 431.)

REFERENCES IN TEXT

Section 18 in the Act of June 30, 1919, referred to in subsec. (a), is classified as a note under section 375 of this title.

The Act of Apr. 26, 1906, referred to in subsec. (b), is classified as a note under section 355 of this title.

Chapter XII of the Third Supplemental Appropriation Act, 1952, referred to in subsec. (c), is chapter XII of act June 5, 1952, ch. 369, 66 Stat. 101, which was not classified to this Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 782, 783 to 785, 786 of this title.

§ 782. Payment to heirs or legatees; proof of death or heirship.

(a) If a person entitled to a payment authorized by sections 781 to 785 of this title is deceased, such payment shall be made to his heirs or legatees determined in accordance with the laws, relating to the distribution of personal property, of the Creek Nation if the decedent died before January 1, 1898, or of the State of Arkansas in effect at the time of death if the decedent died before November 16, 1907, or of the State of Oklahoma in effect at the time of death if the decedent died on or after November 16, 1907. For the purposes of this section the decedent shall be regarded as an owner in possession of the payment at the time of his death.

(b) Before a payment authorized by sections 781 to 785 of this title is made to an heir or legatee of a deceased person, proof of death and heirship or bequest satisfactory to the Secretary of the Interior shall be submitted to him, and his findings with respect thereto shall be final and conclusive. Where satisfactory proof of death and heirship or bequest is already available to the Secretary, no additional submission shall be required. (Aug. 1, 1955, ch. 444, § 3, 69 Stat. 432.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 783 to 785 of this title.

§ 783. Payments to minors or persons under legal disability; liens, exception; tax exemption.

Funds payable under sections 781 to 785 of this title to minors or to persons under legal disability shall be paid to such representatives and under such conditions as the Secretary of the Interior may direct. The distribution of funds under said sections shall not be subject to any lien, except for debts owed to the United States or to Indian organizations indebted to the United States, and shall not be taxable. (Aug. 1, 1955, ch. 444, § 4, 69 Stat. 432.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 782, 784, 785 of this title.

§ 784. Appropriations.

There is authorized to be appropriated out of any money in the Treasury not otherwise appropriated the sum of $325,000 to remain available until expended, for necesssary expenses incident to the distribution of funds authorized by sections 781 to 785

of this title. (Aug. 1, 1955, ch. 444, § 5, 69 Stat. 432; Sept. 8, 1959, Pub. L. 86-229, 73 Stat. 456.)

AMENDMENTS

1959—Pub. L. 86-229 increased the appropriation authorization from $200,000 to $325,000.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 782, 783, 785 of this title.

§ 785. Rules and regulations.

The Secretary of the Interior is authorized to issue rules and regulations necessary for the purposes of sections 781 to 785 of this title. (Aug. 1, 1955, ch. 444, § 6, 69 Stat. 432.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 782 to 784 of this title.

§ 786. Credit of unclaimed and unpaid share of funds.

The unclaimed and unpaid share of the funds, and the accrued interest thereon, appropriated by chapter XII of the Third Supplemental Appropriation Act, 1952 (66 Stat. 101, 121), in payment of the judgment entered by the Indian Claims Commission in favor of the Loyal Creek Band or Group of Indians et al., docket numbered 1, and which were authorized to be distributed by section 781(c) of this title, shall be deposited in the Treasury of the United States to the credit of the Creek Nation of Indians of Oklahoma. (Pub. L. 90-76, § 1, Aug. 29, 1967, 81 Stat. 177.)

REFERENCES IN TEXT

Chapter XII of the Third Supplemental Appropriation Act, 1952, referred to in the text, is chapter XII of Act June 5, 1952, c. 369, 66 Stat. 101, which was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 787 of this title.

§ 787. Advances or expenditures from tribal funds.

Funds that are deposited to the Creek Nation pursuant to sections 786 to 788 of this title, including interest and income therefrom, may be advanced or expended for any purpose that is authorized by the principal chief of the Creek Nation and the Secretary of the Interior. (Pub. L. 90-76, § 2, Aug. 29, 1967, 81 Stat. 177.)

§ 788. Federal trust upon escheat of estates of members dying intestate without heirs.

When, upon the final determination of a court having jurisdiction or by decision of the Secretary of the Interior after a period of five years from the death of the decedent, it is determined that a member of the Creek Nation or tribe of Oklahoma or a person of Creek Indian blood has died intestate without heirs, owning trust or restricted Indian lands or an interest therein in Oklahoma, such lands or interests owned, together with all rents and profits occurring therefrom, shall escheat to the Creek Nation of Indians of Oklahoma and be held thereafter in trust for said Indians by the United States. (Pub. L. 90-76, § 3, Aug. 29, 1967, 81 Stat. 177.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 787 of this title.

§ 788a. Disposition of judgment funds; preparation of Indian roll; eligibility.

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (a) they were born on or prior to and were living on September 21, 1968; (b) their names or the names of lineal ancestors appear on any of the documents identified herein or on any available census rolls or other records acceptable to the Secretary, which identify the person as a Creek Indian, including ancient documents or records of the United States located in the National Archives, State or county records in the archives of the several States or counties therein or in the courthouses thereof, and other records that would be admissible as evidence in an action to determine Indian lineage:

(1) The Final Rolls of Creeks by Blood which were closed as of March 4, 1907;

(2) Claims of Friendly Creeks paid under the Act of March 3, 1817 (H.R. Doc. 200, 20:1, 1828);

(3) Census of the Creek Nation, 1833, made pursuant to article 2 of the treaty concluded March 24, 1832 (Senate Doc. 512, 1835, Emigration Correspondence, 1831—1833, pages 239—395);

(4) Land Location Registers of Creek Indian Lands, made pursuant to the Treaty of March 24, 1832;

(5) Any emigration or muster rolls of Creek Indians;

(6) Any lists of self-emigrant Creek claimants (including those contained in Senate Ex. Doc. 198, 50:1, 1888, and H.R. Ex. Doc. 238, 51:2, 1891).

Applications for enrollment must be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner and within the time limits prescribed for that purpose. The determination of the Secretary regarding the eligibility of an applicant shall be final. (Pub. L. 90-504, § 1, Sept. 21, 1968, 82 Stat. 855.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 788b, 788d of this title.

§ 788b. Distribution of funds; tax exemption; equal shares.

After the deduction of attorney fees, litigation expenses, the costs of distribution, and the cost of preparing the roll pursuant to section 788a of this title, the funds, including interest, remaining to the credit of the Creek Nation as constituted August 9, 1814, which were appropriated by the Act of April 30, 1965, to pay a judgment obtained in Indian Claims Commission docket numbered 21, shall be distributed on a per capita basis to all persons whose names appear on the roll. The funds so distributed shall not be subject to Federal or State income taxes. (Pub. L. 90-504, § 2, Sept. 21, 1968, 82 Stat. 855.)

REFERENCES IN TEXT

The Act of April 30, 1965, referred to in text, is Pub. L. 89-16, Apr. 30, 1965, 79 Stat. 81. The portion of Pub. L. 89-16 appropriating the funds to pay the judgment referred to was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 788d of this title.

§ 788c. Heirs of deceased enrollees.

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest, and he shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under legal disability shall be paid to the persons who the Secretary determines will best protect their interests. (Pub. L. 90–504, § 3, Sept. 21, 1968, 82 Stat. 855.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 788d of this title.

§ 788d. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 788a to 788d of this title, including establishing an appropriate deadline for filing applications. (Pub. L. 90–504, § 4, Sept. 21, 1968, 82 Stat. 855.)

§ 788e. Disposition of judgment funds; preparation of Indian roll; eligibility.

(a) The Secretary of the Interior shall prepare a roll of the Creek Indians who meet the following requirements: (1) they were born on or prior to and living on September 21, 1968, and 2) their names or the names of lineal ancestors through whom eligibility is claimed appear on either the 1857 or 1859 payment roll prepared pursuant to Article VI of the Treaty of August 7, 1856 (11 Stat. 699), or on the Final Roll of Creeks by Blood closed as of March 4, 1907, pursuant to statute.

(b) Applications for enrollment shall be filed with the Area Director, Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner, within the time limit, and on the form prescribed for that purpose. The determination of the Secretary of the eligibility for enrollment of an applicant shall be final. (Pub. L. 90–506, § 1, Sept. 21, 1968, 82 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 788f, 788h of this title.

§ 788f. Distribution of funds; tax exemption; equal shares.

All costs incident to carrying out the provisions of sections 788e to 788h of this title shall be paid by appropriate withdrawals from the judgment funds referred to in this section. After deducting attorney fees and all other costs, the remainder of the funds, including interest, to the credit of the Creek Nation appropriated by the Act of October 27, 1966 (80 Stat. 1057), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 788e of this title. The funds so distributed shall not be subject to Federal or State income taxes. (Pub. L. 90–506, § 2, Sept. 21, 1968, 82 Stat. 859.)

REFERENCES IN TEXT

The Act of October 27, 1966 (80 Stat. 1057), referred to in text, is Pub. L. 89–697. The portion of Pub. L. 89–697 appropriating the funds to pay the judgment referred to was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 788h of this title.

§ 788g. Heirs of deceased enrollees.

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest and the per capita share of a deceased enrollee shall be paid to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under legal disability shall be paid to the persons whom the Secretary of the Interior determines will best protect their interests. (Pub. L. 90–506, § 3, Sept. 21, 1968, 82 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 788f, 788h of this title.

§ 788h. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 788e to 788h of this title, including an appropriate deadline for filing applications for enrollment. (Pub. L. 90–506, § 4, Sept. 21, 1968, 82 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 788f of this title.

WYANDOTTE TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§ 791. Purpose.

The purpose of sections 791 to 807 of this title is to provide for the termination of Federal supervision over the trust and restricted property of the Wyandotte Tribe of Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians. (Aug. 1, 1956, ch. 843, § 1, 70 Stat. 893.)

REPEALS

Section 18 of act Aug. 1, 1956, provided that: "All Acts or parts of Acts inconsistent with this Act [sections 791—807 of this title] are hereby repealed insofar as they affect the tribe or its members. The Act of June 26, 1936 (49 Stat. 1967) [sections 501—509 of this title], and the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378) [sections 461, 462, 463, 464, 465, 466—470, 471—473, 474, 475, 476—478, and 479 of this title], shall not apply to the tribe and its members after the date of the proclamation provided for in section 3 of this Act [probably means section 13 of this Act (section 803 of this title)]."

SEPARABILITY OF PROVISIONS

Section 19 of act Aug. 1, 1956, provided that: "If any provision of this Act [sections 791—807 of this title], or the application thereof, to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 792, 793, 798 to 807 of this title.

§ 792. Definitions.

For the purposes of sections 791 to 807 of this title:

(a) "Tribe" means the Wyandotte Tribe of Oklahoma.

(b) "Secretary" means the Secretary of the Interior.

(c) "Lands" mean real property, interest therein, or improvement thereon, and include water rights.

(d) "Tribal property" means any real or personal property, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States. (Aug. 1, 1956, ch. 843, § 2, 70 Stat. 893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791, 793, 798 to 807 of this title.

§ 793. Membership roll; preparation and initial publication; appeal from inclusion or omission from roll; finality of determination; final publication.

The tribe shall have a period of six months from August 1, 1956 in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on August 1, 1956, which shall be published in the Federal Register. The proposed roll shall be prepared in accordance with eligibility requirements prescribed in the tribe's constitution and bylaws. If the tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of sections 791 to 807 of this title. (Aug. 1, 1956, ch. 843, § 3, 70 Stat. 893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791, 792, 794, 798 to 807 of this title.

§ 794. Personal property rights; restrictions.

Upon publication in the Federal Register of the final roll as provided in section 793 of this title, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 795 of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void. (Aug. 1, 1956, ch. 843, § 4, 70 Stat. 893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 807 of this title.

§ 795. Tribal property.

(a) Procedure for transfer.

Upon the request of the tribe, the Secretary is authorized within three years from August 1, 1956, to transfer to a corporation or other legal entity organized by the tribe in a form satisfactory to the Secretary title to all or any part of the tribal property, or to transfer to one or more trustee designated by the tribe and approved by the Secretary title to all or any part of such property to be held in trust for management or liquidation purposes under such terms and conditions as may be specified by the tribe and approved by the Secretary, or to distribute pro rata among the members of the tribe all or any part of such property, or to sell all or any part of such property and make a pro rata distribution of the proceeds of sale among the members of the tribe after deducting, in his discretion, reasonable costs of sale and distribution.

(b) Property not transferred in accordance with recognized procedure.

Title to any tribal property that is not transferred in accordance with the provisions of subsection (a) of this section shall be transferred by the Secretary to one or more trustees designated by him for the liquidation and distribution of assets among the members of the tribe under such terms and conditions as the Secretary may prescribe: *Provided,* That the trust agreement shall provide for the termination of the trust not more than three years from the date of such transfer unless the term of the trust is extended by order of a judge of a court of record designated in the trust agreement: *Provided, further,* That the trust agreement shall provide that at any time before the sale of tribal property by the trustees the tribe may notify the trustees that it elects to retain such property and to transfer title thereto to a corporation, other legal entity, or trustee in accordance with the provisions of subsection (a) of this section, and that the trustees shall transfer title to such property in accordance with the notice from the tribe if it is approved by the Secretary.

(c) Sale or transfer of burial ground.

Title to the tract of land in Kansas City, Kansas, that was reserved for a public burying ground under article 2 of the treaty dated January 31, 1855 (10 Stat. 1159), with the Wyandotte Tribe of Indians shall be transferred or sold in accordance with subsections (a) and (b) of this section, and the proceeds from any sale of the land may be used to remove and reinter the remains of persons who are buried there, to move any monuments now located on the graves, and to erect at reasonable cost one appropriate monument dedicated to the memory of the departed members of the Wyandotte Tribe: *Provided,* That if S. 1335 or comparable legislation is enacted by the Eighty-fourth Congress, any sale or transfer of such land shall be deferred until three months after the report required by such legislation has been submitted to Congress, during which time Congress shall decide whether to provide for the sale or disposition of the land on the basis of such report.

(d) Compensation of agents or attorneys.

The Secretary shall not approve any form of organization pursuant to subsection (a) of this section that provides for the transfer of stock or an undivided share in corporate assets as compensation for the services of agents or attorneys unless such transfer is based upon an appraisal of tribal assets that is satisfactory to the Secretary.

(e) Selection of trustees; approval by Secretary.

When approving or disapproving the selection of trustees in accordance with the provisions of subsection (a) of this section, the Secretary shall give due regard to the laws of the State of Oklahoma that relate to the selection of trustees. (Aug. 1, 1956, ch. 843, § 5, 70 Stat. 893.)

REFERENCES IN TEXT

S. 1335, referred to in subsec. (c), was not enacted by the Eighty-fourth Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 794, 798 to 807 of this title.

§ 796. Individual property.

(a) Transfer of unrestricted control.

The Secretary is authorized and directed to transfer within three years after August 1, 1956 to each member of the tribe unrestricted title to funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title.

All restrictions on the sale or encumbrance by the owners of trust or restricted lands that were originally alloted to persons who were at the time of allotment members of the tribe, regardless of whether such owners are themselves members of such tribe, and all restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribe (including allottees, heirs, and devisees, either adult or minor), regardless of where the land is located, are removed three years after August 1, 1956 and the patents or deeds under which titles are then held shall pass the titles in fee simple subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance three years or more after August 1, 1956 shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner.

Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by more than one member of the tribe, the Secretary may—

(1) upon request of any of the owners made within two years after August 1, 1956, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted three years from August 1, 1956;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof, and distribute the proceeds of sale to the owners: *Provided,* That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(Aug. 1, 1956, ch. 843, § 6, 70 Stat. 894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 807 of this title.

§ 797. Property of deceased members; probate laws.

(a) Sections 47, 151, 202, 312, 331, 333, 336, 337, 344a, 351, 352, 353, 372, 373, 403, 406, 407, and 408 of this title, and section 148 of title 43, and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the Tribe who die six months or more after August 1, 1956.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who died six months or more after August 1, 1956. (Aug. 1, 1956, ch. 843, § 7, 70 Stat. 895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 807 of this title.

§ 798. Taxes; initial exemption; taxes following distribution; valuation for capital gains and losses.

No property distributed under the provisions of sections 791 to 807 of this title shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of such sections, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity. (Aug. 1, 1956, ch. 843, § 8, 70 Stat. 895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 799 to 807 of this title.

§ 799. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of sections 791 to 807 of this title, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate. (Aug. 1, 1956, ch. 843, § 9, 70 Stat. 895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798, 800 to 807 of this title.

§ 800. Advances or expenditures from tribal funds.

Pending the completion of the property dispositions provided for in sections 791 to 807 of this title, the funds now on deposit or hereafter deposited in the Treasury of the United States to the credit of the

tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary. (Aug. 1, 1956, ch. 843, § 10, 70 Stat. 895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798, 799, 801 to 807 of this title.

§ 801. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of sections 791 to 807 of this title, or to establish a marketable and recordable title to any property disposed of pursuant to such sections. (Aug. 1, 1956, ch. 843, § 11, 70 Stat. 895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 800, 802 to 807 of this title.

§ 802. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 791 to 807 of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency, or to a State agency with the consent of such agency and the other party or parties to such instrument. (Aug. 1, 1956, ch. 843, § 12, 70 Stat. 895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 801, 803 to 807 of this title.

§ 803. Termination of Federal trust.

(a) Publication; termination of Federal services; application of Federal and State laws.

Upon removal of Federal restrictions on the property of the tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected.

Nothing in sections 791 to 807 of this title shall affect the status of the members of the tribe as citizens of the United States.

(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other educational programs.

Prior to the issuance of a proclamation in accordance with the provisions of this section, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or persons. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Aug. 1, 1956, ch. 843, § 13, 70 Stat. 896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 802, 804 to 807 of this title.

§ 804. Revocation of charter; termination of Federal powers over tribe.

(a) Effective on the date of the proclamation provided for in section 803 of this title, the corporate charter issued pursuant to sections 501 to 509 of this title, to the Wyandotte Tribe of Oklahoma and ratified by the tribe on July 24, 1937, is revoked.

(b) Effective on the date of the proclamation provided for in section 803 of this title, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of sections 791 to 807 are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with such sections without the participation of the Secretary or other officer of the United States. (Aug. 1, 1956, ch. 843, § 14, 70 Stat. 896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 803, 805 to 807 of this title.

§ 805. Indian claims unaffected.

Nothing in sections 791 to 807 of this title shall affect any claims heretofore filed against the United States by the tribe. (Aug. 1, 1956, ch. 843, § 15, 70 Stat. 896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 804, 806, 807 of this title.

§ 806. Water rights.

Nothing in sections 791 to 807 of this title shall abrogate any water rights of a tribe or its members. (Aug. 1, 1956, ch. 843, § 16, 70 Stat. 896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 805, 807 of this title.

§ 807. Rules and regulations; tribal referendums.

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of

sections 791 to 807 of this title and may in his discretion provide for tribal referendums on matters pertaining to management or disposition of tribal assets. (Aug. 1, 1956, ch. 843, § 17, 70 Stat. 896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 791 to 793, 798 to 806 of this title.

PEORIA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§ 821. Purpose.

The purpose of sections 821 to 826 of this title is to provide for the termination of Federal supervision over the affairs of the Peoria Tribe of Indians located in northeastern Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians. (Aug. 2, 1956, ch. 881, § 1, 70 Stat. 937.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 823, 824, 825, 826 of this title.

§ 822. Removal of restrictions on sales or encumbrances; fee simple title.

All restrictions on the sale or encumbrance of trust or restricted land owned by members of the Peoria Tribe of Indians of Oklahoma (including allottees, heirs, and devisees, either adult or minor), regardless of where the land is located, are removed three years after August 2, 1956, and the patents or deeds under which titles are then held shall pass the titles in fee simple subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance three years or more after August 2, 1956, shall vest in such members in fee simple, subject to any valid encumbrance. (Aug. 2, 1956, ch. 881, § 2, 70 Stat. 937.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 823, 824, 825, 826 of this title.

§ 823. Termination of Federal trust and services.

(a) Application of Federal and State laws.

The Federal trust relationship to the affairs of the Peoria Tribe and its members shall terminate three years after August 2, 1956, and thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians (including sections 501 to 509 of this title, and sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title) shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected.

Nothing in sections 821 to 826 of this title shall affect the status of the members of the tribe as citizens of the United States.

(c) Education and training program; purposes; subjects; transportation; contracts; other educational programs.

Prior to the termination of the Federal trust relationship in accordance with the provisions of this section, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Aug. 2, 1956, ch. 881, § 3, 70 Stat. 937.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 824, 825, 826 of this title.

§ 824. Revocation of charter; termination of Federal powers over tribe.

(a) Effective when all claims of the tribe that are now pending before the Indian Claims Commission or the Court of Claims have been finally adjudicated, the corporate charter issued pursuant to sections 501 to 509 of this title, is revoked.

(b) Effective when all claims of the tribe that are now pending before the Indian Claims Commission or the Court of Claims have been finally adjudicated, all powers of the Secretary of the Interior or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of sections 821 to 826 of this title are hereby terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with such sections without the participation of the Secretary or other officer of the United States. (Aug. 2, 1956, ch. 881, § 4, 70 Stat. 937.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 823, 825, 826 of this title.

§ 825. Indian claims unaffected.

Nothing in sections 821 to 826 of this title shall affect any claims heretofore filed against the United States by the Peoria Tribe. (Aug. 2, 1956, ch. 881, § 5, 70 Stat. 938.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 823, 824, 826 of this title.

§ 826. Membership roll; preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication.

The Peoria Tribe shall have a period of six months from August 2, 1956, in which to prepare and submit

to the Secretary a proposed roll of the members of the tribe living on August 2, 1956, which shall be published in the Federal Register. The proposed roll shall be prepared in accordance with eligibility requirements prescribed in the tribe's constitution and bylaws. If the tribe fails to submit such roll within the time specified in this section, the Secretary of the Interior shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or any interest in its assets, or a representative of the Secretary on behalf of any such person, may, within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of sections 821 to 826 of this title. (Aug. 2, 1956, ch. 881, § 6, 70 Stat. 938.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 823, 824, 825 of this title.

OTTAWA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§ 841. Purpose.

The purpose of sections 841 to 853 of this title is to provide for the termination of Federal supervision over the trust and restricted property of the Ottawa Tribe of Indians located in northeastern Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians. (Aug. 3, 1956, ch. 909, § 1, 70 Stat. 963.)

REPEALS

Section 13 of act Aug. 3, 1956, provided that: "All Acts or parts of Acts inconsistent with this Act [sections 841—853 of this title] are hereby repealed insofar as they affect the Ottawa Tribe or its members. The Act of June 26, 1936 (49 Stat. 1967) [sections 501—509 of this title], and the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378) [sections 461, 462, 463, 464, 465, 466—470, 471—473, 474, 475, 476—478, and 479, of this title], shall not apply to the tribe and its members three years after the date of this Act [August 3, 1956]."

SEPARABILITY OF PROVISIONS

Section 14 of act Aug. 3, 1956, provided that: "If any provision of this Act [sections 841—853 of this title], or the application thereof, to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 844 to 853 of this title.

§ 842. Individual property.

(a) Transfer of unrestricted control.

The Secretary of the Interior is authorized and directed to transfer within three years after August 3, 1956, to each member of the Ottawa Tribe unrestricted title to funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title.

All restrictions on the sale or encumbrance by the owners of trust or restricted lands that were originally allotted to persons who were at the time of allotment members of the Ottawa Tribe, regardless of whether such owners are themselves members of such tribe, and all restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribe (including allottees, heirs, and devisees, either adult or minor), regardless of where the land is located, are removed three years after August 3, 1956, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance three years or more after August 3, 1956 shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner.

Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by more than one member of the tribe, the Secretary may:

(1) Upon request of any of the owners made within two years after August 3, 1956, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted three years from August 3, 1956;

(2) Upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof, and distribute the proceeds of sale to the owners: *Provided*, That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) If the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(Aug. 3, 1956, ch. 909, § 2, 70 Stat. 963.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 853 of this title.

§ 843. Property of deceased members; probate laws.

(a) Sections 47, 151, 202, 312, 331, 333, 336, 337, 344a, 351, 352, 353, 372, 373, 403, 406, 407, and 408 of this title, and section 148 of title 43, and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the Ottawa Tribe who die six months or more after August 3, 1956.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months or more after August 3, 1956. (Aug. 3, 1956, ch. 909, § 3, 70 Stat. 963.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 853 of this title.

§ 844. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of sections 841 to 853 of this title, the Secretary of the Interior shall protect the rights of members of the tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate. (Aug. 3, 1956, ch. 909, § 4, 70 Stat. 964.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 845 to 853 of this title.

§ 845. Advances or expenditures from tribal funds.

Pending the completion of the property dispositions provided for in sections 841 to 853 of this title, the funds now on deposit or hereafter deposited in the Treasury of the United States to the credit of the Ottawa Tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary of the Interior. (Aug. 3, 1956, ch. 909, § 5, 70 Stat. 964.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 841, 844, 846 to 853 of this title.

§ 846. Execution by Secretary of patents, deeds, etc.

The Secretary of the Interior shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of sections 841 to 853 of this title, or to establish a marketable and recordable title to any property disposed of pursuant to such sections. (Aug. 3, 1956, ch. 909, § 6, 70 Stat. 964.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844, 845, 847 to 853 of this title.

§ 847. Valid leases, permits, liens, etc., unaffected.

Nothing in sections 841 to 853 of this title shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary of the Interior any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency, or to a State agency with the consent of such agency and the other party or parties to such instrument. (Aug. 3, 1956, ch. 909, § 7, 70 Stat. 964.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 846, 848 to 853 of this title.

§ 848. Termination of Federal trust and services.

(a) Application of Federal and State laws.

The Federal trust relationship to the affairs of the Ottawa Tribe and its members shall terminate three years after August 3, 1956, and thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected.

Nothing in sections 841 to 853 of this title shall affect the status of the members of the Ottawa Tribe as citizens of the United States.

(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

Prior to the termination of the Federal trust relationship in accordance with the provisions of this section, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Aug. 3, 1956, ch. 909, § 8, 70 Stat. 964.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 847, 849 to 853 of this title.

§ 849. Revocation of charter; termination of Federal powers over tribe.

(a) Effective three years after August 3, 1956, the corporate charter issued pursuant to sections 501 to 509 of this title, to the Ottawa Tribe of Oklahoma and ratified by the tribe on November 30, 1938, is revoked.

(b) Effective three years after August 3, 1956, all powers of the Secretary of the Interior or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the Ottawa Tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of sections 841 to 853 of this title are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is con-

sistent with such sections without the participation of the Secretary or other officer of the United States. (Aug. 3, 1956, ch. 909, § 9, 70 Stat. 965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 848, 850 to 853 of this title.

§ 850. Indian claims unaffected.

Nothing in sections 841 to 853 of this title shall affect any claims heretofore filed against the United States by the Ottawa Tribe. (Aug. 3, 1956, ch. 909, § 10, 70 Stat. 965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 849, 851 to 853 of this title.

§ 851. Water rights.

Nothing in sections 841 to 853 of this title shall abrogate any water rights of the Ottawa Tribe or its members. (Aug. 3, 1956, ch. 909, § 11, 70 Stat. 965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 850, 852, 853 of this title.

§ 852. Rules and regulations; tribal referendums.

The Secretary of the Interior is authorized to issue rules and regulations necessary to effectuate the purposes of sections 841 to 853 of this title and may in his discretion provide for tribal referendums on matters pertaining to management or disposition of tribal assets. (Aug. 3, 1956, ch. 909, § 12, 70 Stat. 965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 851, 853 of this title.

§ 853. Membership roll.

(a) Preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication.

The tribe shall have a period of six months from August 3, 1956 in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on August 3, 1956, which shall be published in the Federal Register. The proposed roll shall be prepared in accordance with eligibility requirements prescribed in the tribe's constitution and bylaws. If the tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or any interest in its assets, or a representative of the Secretary on behalf of any such person, may within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of sections 841 to 853 of this title.

(b) Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.

No property distributed under the provisions of sections 841 to 853 of this title shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of such section, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity. (Aug. 3, 1956, ch. 909, § 15, 70 Stat. 966.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 844 to 853 of this title.

OTOE AND MISSOURIA INDIANS

§ 871. Membership roll; preparation; eligibility for enrollment; finality of determination.

The Secretary of the Interior is authorized and directed to prepare a roll of the Indians of the blood of the Otoe and Missouria Tribe whose names appear on the allotment rolls of the tribe approved December 7, 1899, June 1, 1906, and January 17, 1907, and who are living on May 9, 1958, and the descendants of such allottees who are living on May 9, 1958, regardless of whether such allottees are living or deceased. Applications for enrollment shall be filed within six months after May 9, 1958. The determination of the Secretary regarding the eligibility of an applicant for enrollment shall be final and conclusive. (Pub. L. 85-395, § 1, May 9, 1958, 72 Stat. 105.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 872, 874 of this title.

§ 872. Per capita distribution to tribal members.

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the Otoe and Missouria Tribe appropriated by the Act of May 19, 1956 (70 Stat. 161, 176), together with accrued interest, in satisfaction of the judgment obtained in the Indian Claims Commission against the United States in docket numbered 11, and to distribute such funds per capita to the persons whose names appear on the roll prepared pursuant to section 871 of this title. (Pub. L. 85-395, § 2, May 9, 1958, 72 Stat. 105.)

REFERENCES IN TEXT

The Act of May 19, 1956, referred to in text, is the Second Supplemental Appropriation Act, 1956. That part of such Act which appropriated the funds referred to was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 875 of this title.

§ 873. Per capita payments to enrollees, next of kin or legatees; minors and persons under legal disability; payments not subject to debts, exceptions; tax exemption.

(a) The Secretary shall make per capita payments directly to a living enrollee, except as provided in subsection (b) of this section. The Secretary shall

distribute the share of a person determined to be eligible for enrollment but who dies subsequent to May 9, 1958, and on whose behalf the application is filed and approved, and the share of a deceased enrollee, directly to his next of kin or legatee as determined by the laws of the place of domicile of the decedent, upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Per capita payments due persons under twenty-one years of age or persons under legal disability shall be made in accordance with the laws of the place of domicile of such person, or in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(c) No part of any per capita payment shall be subject to any debt or debts, other than to the United States, created prior to May 9, 1958, by a person of Indian blood, and such per capita payments shall not be taxable. (Pub. L. 85–395, § 3, May 9, 1958, 72 Stat. 106; Pub. L. 86–540, June 29, 1960, 74 Stat. 252.)

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–540 authorized per capita payments to be made in accordance with such procedures as the Secretary determines will adequately protect the best interests of the persons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 875 of this title.

§ 874. Costs.

All costs incurred by the Secretary in the preparation of such roll and in the payment of such per capita shares shall be paid from the judgment fund or the interest accruing thereon. (Pub. L. 85–395, § 4, May 9, 1958, 72 Stat. 106.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 875 of this title.

§ 875. Rules and regulations.

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of sections 871 to 875 of this title. (Pub. L. 85–395, § 5, May 9, 1958, 72 Stat. 106.)

§ 876. Advances or expenditures from tribal funds; tax exemption.

The unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Otoe and Missouria Tribe of Indians that were appropriated by the Act of June 9, 1964, to pay a judgment by the Indian Claims Commission in docket numbered 11–A, and the interest thereon, less payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed to the members of the tribe shall not be subject to Federal or State income taxes. The sum of $150,000, and any accrued interest thereon, shall be held in the United States Treasury pending final determination of the Yankton Sioux claim in docket numbered 332–A. Any portion of such sum that is determined to belong to the Otoe and Missouria Tribe shall thereupon become subject to the foregoing provisions of this section. (Pub. L. 89–661, Oct. 14, 1966, 80 Stat. 911.)

INDIANS OF OKLAHOMA

§ 881. Potawatomi Indians; disposition of judgment fund; deductions; advances or expenditures for authorized purposes; tax exemption.

The funds on deposit in the Treasury of the United States to the credit of the Citizen Band of Potawatomi Indians of Oklahoma that were appropriated by the Act of July 22, 1969 (Public Law 91–47) to pay a judgment by the Indian Claims Commission in docket numbered 96 dated August 27, 1968, and the interest thereon, including the interest accuring thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed per capita to the members of the band shall not be subject to Federal or State income tax. (Pub. L. 91–401, § 1, Sept. 16, 1970, 84 Stat. 838.)

REFERENCES IN TEXT

Pub. L. 91–47, July 22, 1969, 83 Stat. 49, referred to in text, was the Second Supplemental Appropriation Act, 1969. That part of said Act which appropriated the funds referred to was not classified to the Code.

§ 881a. Same; trusts and other procedures for protection of minors and persons under legal disability.

Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons. (Pub. L. 91–401, § 2, Sept. 16, 1970, 84 Stat. 838.)

§ 882. Sac and Fox Tribes; disposition of judgment fund; deductions; advances, expenditures, investments, or reinvestments for authorized purposes.

The funds appropriated by the Act of June 19, 1968 (82 Stat. 239), to pay a judgment by the Indian Claims Commission in docket numbered 220, together with interest thereon, after payment of attorneys' fees and other litigation expenses, may be advanced, deposited, expended, invested, or reinvested for any purposes that are authorized by the tribal governing body and approved by the Secretary of the Interior. (Pub. L. 91–404, § 1, Sept. 19, 1970, 84 Stat. 845.)

REFERENCES IN TEXT

The Act of June 19, 1968 (82 Stat. 239), referred to in text, is Pub. L. 90–352 which was not classified to the Code.

§ 882a. Same; tax exemption.

Any portion of such funds that may be distributed per capita to members of the tribe shall not be subject to Federal or State income tax. (Pub. L. 91–404, § 2, Sept. 19, 1970, 84 Stat. 845.)

MENOMINEE TRIBE OF WISCONSIN: TERMINATION OF FEDERAL SUPERVISION

§ 891. Purpose.

The purpose of sections 891 to 902 of this title is to provide for orderly termination of Federal supervision over the property and members of the Menom-

inee Indian Tribe of Wisconsin. (June 17, 1954, ch. 303, § 1, 68 Stat. 250.)

SEPARABILITY OF PROVISIONS

Section 13 of act June 17, 1954, provided that: "If any provision of this Act [sections 891—902 of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

AUTHORIZATION OF APPROPRIATIONS TO COMPENSATE THE STATE OF WISCONSIN FOR EXTRAORDINARY EXPENSES OCCASIONED BY TERMINATION OF FEDERAL SUPERVISION OVER MENOMINEE TRIBE OF WISCONSIN

Pub. L. 89-653, § 1, Oct. 14, 1966, 80 Stat. 903, provided: "That in order to compensate the State of Wisconsin and its political subdivisions for extraordinary expenses occasioned by the termination of Federal supervision over the affairs of the Menominee Tribe of Indians by the Act of June 17, 1954 (68 Stat. 250), as amended [sections 891—902 of this title], there are hereby authorized to be appropriated for the fiscal year ending June 30, 1967, and for each of the three succeeding fiscal years and, when appropriated, to be paid by the Secretary of Health, Education, and Welfare to the State of Wisconsin—

"(a) on account of joint school district costs, $150,000 per annum;

"(b) on account of public welfare benefits (including administrative costs, public assistance, indigent medical care services, child welfare, veterans services, surplus commodities, general relief, and the services of State hospitals, mental institutions, and industrial schools), $100,000 per annum; and

"(c) on account of health and sanitation services (including hospitalization of the tubercular, employment of a public health nurse and a sanitary aide, immunization against communicable diseases, collection and disposal of garbage and refuse, and collection and recording of vital statistics), $100,000 per annum.

"The grants authorized by this section shall be made at such times, in such amounts and on such terms and conditions as the Secretary of Health, Education, and Welfare deems appropriate. Payment of said sums, or any part of them, however, shall be conditioned on assurance by the State that its use thereof will supplement and will not replace or diminish State assistance that would otherwise be available for the purpose stated. The Secretary of Health, Education, and Welfare is authorized to issue such regulations as he may determine to be necessary to carry out the provisions of this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 892, 896, 898, 899, 901, 902 of this title.

§ 892. Definitions.

For the purposes of sections 891 to 902 of this title—

(a) "Tribe" means the Menominee Indian Tribe of Wisconsin;

(b) "Secretary" means the Secretary of the Interior. (June 17, 1954, ch. 303, § 2, 68 Stat. 250.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 896, 898, 899, 901, 902 of this title.

§ 893. Membership roll; closures; applications for enrollment; approval or disapproval of application; appeal; finality of determination; final publication; certificates of beneficial interest.

At midnight of June 17, 1954 the roll of the tribe maintained pursuant to the Act of June 15, 1934 (48 Stat. 965), as amended by the Act of July 14, 1939 (53 Stat. 1003), shall be closed and no child born thereafter shall be eligible for enrollment: *Provided,* That applicants for enrollment in the tribe shall have three months from the date of the roll is closed in which to submit applications for enrollment: *Provided further,* That the tribe shall have three months thereafter in which to approve or disapprove any application for enrollment: *Provided further,* That any applicant whose application is not approved by the tribe within six months from June 17, 1954 may, within three months thereafter, file with the Secretary an appeal from the failure of the tribe to approve his application or from the disapproval of his application, as the case may be. The decision of the Secretary on such appeal shall be final and conclusive. When the Secretary has made decisions on all appeals, he shall issue and publish in the Federal Register a Proclamation of Final Closure of the roll of the tribe and the final roll of the members. Effective upon the date of such proclamation, the rights or beneficial interests of each person whose name appears on the roll shall constitute personal property and shall be evidenced by a certificate of beneficial interest which shall be issued by the tribe. Such interests shall be distributable in accordance with the laws of the State of Wisconsin. Such interests shall be alienable only in accordance with such regulations as may be adopted by the tribe. (June 17, 1954, ch. 303, § 3, 68 Stat. 250.)

REFERENCES IN TEXT

The Act of June 15, 1934, as amended by the Act of July 14, 1939, referred to in text, is Act June 15, 1934, ch. 540, 48 Stat 965, which was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 901, 902 of this title.

§ 894. Per capita payments to tribal members.

The Secretary is authorized and directed, as soon as practicable after June 17, 1954, to pay from such funds as are deposited to the credit of the tribe in the Treasury of the United States $1,500 to each member of the tribe on the rolls of the tribe on June 17, 1954. Any other person whose application for enrollment on the rolls of the tribe is subsequently approved, pursuant to the terms of section 893 of this title, shall, after enrollment, be paid a like sum of $1,500: *Provided,* That such payments shall be made first from any funds on deposit in the Treasury of the United States to the credit of the Menominee Indian Tribe drawing interest at the rate of 5 per centum, and thereafter from the Menominee judgment fund, symbol 14X7142. (June 17, 1954, ch. 303, § 5, 68 Stat. 251.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 901, 902 of this title.

§ 895. Management specialists; studies and reports; availability of funds; reimbursement of expenditures.

The tribe is authorized to select and retain the services of qualified management specialists, including tax consultants, for the purpose of studying industrial programs on the Menominee Reservation and making such reports or recommendations, including appraisals of Menominee tribal property, as may be desired by the tribe, and to make other studies and reports as may be deemed necessary and desirable by the tribe in connection

with the termination of Federal supervision as provided for hereinafter. Such reports shall be completed not later than February 1, 1959. Such specialists are to be retained under contracts entered into between them and authorized representatives of the tribe, subject to approval by the Secretary. Such amounts of Menominee tribal funds as may be required for this purpose shall be made available by the Secretary. In order to reimburse the tribe, in part, for expenditures of such tribal funds as the Secretary deems necessary for the purposes of carrying out the requirements of this section, there is authorized to be appropriated out of any money in the Treasury not otherwise appropriated, an amount equal to all of such expenditures incurred prior to July 2, 1958, plus one-half of such expenditures incurred thereafter, or the sum of $275,000, whichever is the lesser amount. (June 17, 1954, ch. 303, § 6, 68 Stat. 251; July 14, 1956, ch. 601, 70 Stat. 544; July 2, 1958, Pub. L. 85-488, § 1 (a), 72 Stat. 290.)

AMENDMENTS

1958—Pub. L. 85-488 substituted "February 1, 1959" for "December 31, 1957", and authorized appropriations in an amount equal to all of the expenditures incurred prior to July 11, 1958, plus one-half of the expenditures incurred thereafter, or the sum of $275,000, whichever is the lesser amount.

1956—Act July 14, 1956, authorized appropriations of sums deemed necessary to reimburse the tribe for the expenditure of tribal funds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 901, 902 of this title.

§ 896. Plan for control of tribal property and service functions; termination of Federal supervision and services; approval of plan; publication in Federal Register.

The tribe shall as soon as possible and in no event later than February 1, 1959, formulate and submit to the Secretary a plan for the future control of the tribal property and service functions now conducted by or under the supervision of the United States, including but not limited to services in the fields of health, education, welfare, credit, roads, and law and order, and for all other matters involved in the withdrawal of Federal supervision. The Secretary is authorized to provide such reasonable assistance as may be requested by officials of the tribe in the formulation of the plan heretofore referred to, including necessary consultations with representatives of Federal departments and agencies, officials of the State of Wisconsin and political subdivisions thereof, and members of the tribe. The Secretary shall accept such tribal plan as the basis for the conveyance of the tribal property if he finds that it will treat with reasonable equity all members on the final roll of the tribe prepared pursuant to section 893 of this title, and that it conforms to applicable Federal and State law. In the event the tribe fails to submit a plan approvable under the terms of sections 891 to 902 of this title by February 1, 1959, the Secretary shall cause such a plan to be prepared and submitted to the tribe within three months thereafter. The tribe shall thereafter have three months within which to accept the plan of the Secretary or to submit to the Secretary tribal proposals for modification. If the Menominee Tribe and the Secretary cannot agree upon a plan within the aforementioned six-month period, or if they agree upon a plan within such period and the tribal corporation and voting trust contemplated by the plan are not established prior to March 1, 1961, the Secretary shall transfer the tribal property to a trustee of his choice for the management or disposition for the benefit of the Menominee Tribe. The responsibility of the United States to furnish all such supervision and services to the tribe and to the members thereof, because of their status as Indians, shall cease on April 30, 1961, or on such earlier date as may be agreed upon by the tribe and the Secretary. The plan shall contain provision for protection of the forest on a sustained yield basis and for the protection of the water, soil, fish and wildlife. To the extent necessary, the plan shall provide for such terms of transfer pursuant to section 897 of this title, by trust or otherwise, as shall insure the continued fulfillment of the plan. The Secretary, after approving the plan, shall cause the plan to be published in the Federal Register. The sustained yield management requirement contained in sections 891 to 902 of this title, and the possible selection of a trustee in the event of a tribal planning default, shall not be construed by any court to impose a financial liability on the United States. (July 17, 1954, ch. 303, § 7, 68 Stat. 251; July 14, 1956, ch. 604, § 1, 70 Stat. 549; July 2, 1958, Pub. L. 85-488, § 1(b), 72 Stat. 290; Sept. 8, 1960, Pub. L. 86-733, § 1, 74 Stat. 867.)

AMENDMENTS

1960—Pub. L. 86-733 inserted "or if they agree upon a plan within such period and the tribal corporation and voting trust contemplated by the plan are not established prior to March 1, 1961", and changed the termination date of the United States responsibility to the tribe from Dec. 31, 1960, to Apr. 30, 1961.

1958—Pub. L. 85-488 substituted "February 1, 1959" for "December 31, 1957" in the first sentence, and "December 31, 1960" for "December 31, 1958", and inserted provisions requiring the Secretary to accept the plan if he finds that it will treat with reasonable equity all members on the final roll of the tribe, and provided for the preparation of a plan if the tribe fails to submit a plan approvable under the terms of sections 891—901 of this title by Feb. 1, 1959.

1956—Act July 14, 1956, required submission of the plan not later than Dec. 31, 1957, to provide for the inclusion of all matters involved in the withdrawal of Federal supervision, for the protection of the forest on a sustained yield basis, for the protection of water, soil, fish and wildlife, and for the transfer of property, and to require publication in the Federal Register.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 897, 898, 899, 901, 902 of this title.

§ 897. Transfer of property.

On or before April 30, 1961, the Secretary is authorized to transfer to the tribal corporation or to a trustee of the Secretary's choice, as provided in section 896 of this title, the title to all property, real and personal, held in trust by the United States for the tribe. The Secretary is directed to begin immediate negotiations with a private trustee of his choice to perfect a trust agreement so that if by March 1, 1961, the tribal corporation is not functioning, the Secretary will be prepared to transfer title to such property to said trustee as soon after

March 1, 1961, as possible, but in no event later than April 30, 1961. The Secretary is authorized, in his discretion, to transfer to the tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary for public use and from which members of the tribe will derive benefits. (June 17, 1954, ch. 303, § 8, 68 Stat. 252; July 14, 1956, ch. 604, § 2, 70 Stat. 550; July 2, 1958, Pub. L. 85-488, § 1(c), 72 Stat. 291; Sept. 8, 1960, Pub. L. 86-733, § 2, 74 Stat. 867.)

AMENDMENTS

1960—Pub. L. 86-733 extended the date after which transfer is authorized from Dec. 31, 1960, to Apr. 30, 1961, permitted the Secretary to transfer property to a trustee of his choice, directed the Secretary to begin negotiations with a trustee to perfect a trust agreement so that if the tribal corporation is not functioning by Mar. 1, 1961, he could transfer title to the trustee as soon after such date as possible and no later than April 30, 1961, and deleted a proviso stating that if the tribe incorporated or otherwise organized under State or District of Columbia law, for the purpose of taking title to tribal lands, assets or enterprises, and requested such transfer to be made, the Secretary was to make such a transfer.

1958—Pub. L. 85-488, substituted "December 31, 1960" for "December 31, 1958".

1956—Act July 14, 1956, permitted the Secretary to transfer federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 900, 901, 902 of this title.

§ 898. Taxes; initial exemption; taxes following distribution; valuation for income tax on gains or losses.

No distribution, conveyance, or transfer of title to assets and no issuance or distribution of securities pursuant to the plan approved by the Secretary under the provisions of sections 891 to 902 of this title shall be subject to any Federal or State transfer, issuance, or income tax: *Provided,* That nothing contained in sections 891 to 902 of this title shall exempt the recipient of any cash distribution made hereunder from payment of income tax for the year in which the distribution is made on that portion of his share thereof which consists of interest on funds deposited in the Treasury of the United States pursuant to the Supplemental Appropriation Act, 1952 (65 Stat. 736, 754). Following any distribution, conveyance, transfer, or issuance as aforesaid, the assets and securities which are held by, and any income derived therefrom which is received by or payable to, any person, or any corporation or organization as provided in section 897 of this title, shall be subject to the same taxes, State and Federal, as in the case of non-Indians, except that the basis of any valuation for purposes of Federal income tax on gains or losses shall be the value of the property on the date title is transferred by the United States pursuant to section 897 of this title. (June 17, 1954, ch. 303, § 9, 68 Stat. 252; Sept. 8, 1960, Pub. L. 86-733, § 3, 74 Stat. 867.)

REFERENCES IN TEXT

The Supplemental Appropriation Act, 1952 (65 Stat. 736, 754), referred to in text, is act Nov. 1, 1952, ch. 664, which was not classified to the Code.

AMENDMENTS

1960—Pub. L. 86-733 exempted from transfer taxes, conveyances, transfers of title, and issuances and distributions of securities pursuant to an approved plan, from issuance and income taxes, distributions, conveyances, transfers of title, and issuances and distributions of securities pursuant to said approved plan, and subjected assets and securities, and any income derived therefrom, following any conveyance, transfer or issuance to State and Federal taxes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 899, 901, 902 of this title.

§ 899. Publication of proclamation of transfer of property; termination of Federal services; application of Federal and State laws; citizenship status unaffected.

When title to the property of the tribe has been transferred, as provided in section 897 of this title, the Secretary shall publish in the Federal Register an appropriate proclamation of that fact. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in sections 891 to 902 of this title shall affect the status of the members of the tribe as citizens of the United States. (June 17, 1954, ch. 303, § 10, 68 Stat. 252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 901, 902 of this title.

§ 900. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means.

Prior to the transfer pursuant to section 897 of this title, the Secretary shall protect the rights of members of the tribe who are less than eighteen years of age, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate. (June 17, 1954, ch. 303, § 11, 68 Stat. 252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 901, 902 of this title.

§ 901. Rules and regulations.

The Secretary is authorized and directed to promulgate such rules and regulations as are necessary to effectuate the purposes of sections 891 to 902 of this title. (June 17, 1954, ch. 303, § 12, 68 Stat. 252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 900 of this title.

§ 902. Contracts for completion of vocational or undergraduate college program.

Notwithstanding any other provision of section 891 to 902 of this title, the Secretary of the Interior is authorized to contract with the Wisconsin Depart-

ment of Public Instruction, prior to the date for terminating Federal responsibilities, for the completion of a vocational or undergraduate college program of any member of the Menominee tribe who has been accepted for such program prior to the termination date. (June 17, 1954, ch. 303, § 14, as added Sept. 8, 1960, Pub. L. 86–733, § 4, 74 Stat. 867.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 891, 892, 896, 898, 899, 901 of this title.

QUAPAW TRIBE; DISTRIBUTION OF JUDGMENT FUND

§ 911. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination.

The Secretary of the Interior is authorized and directed to prepare a roll of the persons whose names appear on the Quapaw membership roll forwarded under date of January 4, 1890, and whose membership in the tribe was then based upon Quapaw blood rather than solely upon adoption, and the descendants of such persons, who are living on July 17, 1959. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, on forms prescribed by the Secretary, within six months after July 17, 1959. For a period of three months thereafter, the Secretary shall permit the examination of the applications by the Quapaw Tribal Business Committee or by persons having a material interest therein for the purpose of lodging protests against any application. The determination of the Secretary regarding the eligibility of an applicant shall be final. (Pub. L. 86–97, § 1, July 17, 1959, 73 Stat. 221.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 912, 914 of this title.

§ 912. Per capita payments to enrollees, heirs or legatees; tax exemption.

The Secretary shall distribute on a pro rata basis to the persons whose names appear on the roll prepared pursuant to section 911 of this title, or their heirs or legatees, the balance of the funds on deposit in the Treasury of the United States to the credit of the Quapaw Indians that were appropriated by the Act of August 26, 1954 (68 Stat. 801), in satisfaction of a judgment against the United States that was obtained by the tribe in the Indian Claims Commission on May 7, 1954, and accrued interest thereon. The funds so distributed shall not be subject to Federal or State income tax. (Pub. L. 86–97, § 2, July 17, 1959, 73 Stat. 222.)

REFERENCES IN TEXT

The Act of August 26, 1954, referred to in text, in the Supplemental Appropriation Act, 1955, act Aug. 26, 1954, ch. 935, 68 Stat. 801.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 914 of this title.

§ 913. Payments to enrollees, next of kin or legatees; minors and persons under legal disability; parent or guardian.

(a) Except as provided in subsection (b) of this section, the Secretary shall distribute a share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a share payable to a deceased enrollee directly to his next of kin or legatees as determined by the laws of the place of domicile of the decedent, upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with the laws applicable to such person in the place of his domicile, or in the discretion of the Secretary to the natural parent or guardian of such person. (Pub. L. 86–97, § 3, July 17, 1959, 73 Stat. 222.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 914 of this title.

§ 914. Costs.

All costs incurred by the Secretary in the preparation of the roll and in the payment of shares in accordance with the provisions of sections 911 to 914 of this title shall be paid by appropriate withdrawals from the judgment fund, but the cost and expense of any litigation that may arise from the preparation of the roll or the payment of shares shall be paid by the United States. (Pub. L. 86–97, § 4, July 17, 1959, 73 Stat. 222.)

CATAWBA TRIBE OF SOUTH CAROLINA: DIVISION OF ASSETS

§ 931. Publication of notice of agreement to division of assets; closure of roll; preparation of roll; protests against inclusion or omission from roll; finality of determination; final publication.

When a majority of the adult members of the Catawba Indian Tribe of South Carolina, according to the most reliable information regarding membership that is available to the Secretary of the Interior, have indicated their agreement to a division of the tribal assets in accordance with the provisions of sections 931 to 938 of this title, the Secretary shall publish in the Federal Register a notice of that fact. The membership roll of the Catawba Indian Tribe of South Carolina shall thereupon be closed as of midnight of the date of such notice, and no child born thereafter shall be eligible for enrollment. The Secretary of the Interior with advice and assistance of the tribe shall prepare a final roll of the members of the tribe who are living at such time, and when so doing shall provide a reasonable opportunity for any person to protest against the inclusion or omission of any name on or from the roll. The Secretary's decisions on all protests shall be final and conclusive. After all protests are disposed of, the final roll shall be published in the Federal Register. (Pub. L. 86–322, § 1, Sept. 21, 1959, 73 Stat. 592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 932 to 938 of this title.

§ 932. Personal property rights; restrictions.

Each member whose name appears on the final roll of the tribe as published in the Federal Register shall be entitled to receive an approximately equal share of the tribe's assets that are held in trust by the United States in accordance with the provisions

of sections 931 to 938 of this title. This right shall constitute personal property which may be inherited or bequeathed, but it shall not otherwise be subject to alienation or encumbrance. (Pub. L. 86–322, § 2, Sept. 21, 1959, 73 Stat. 592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931, 933 to 938 of this title.

§ 933. Distribution of assets.

The tribe's assets shall be distributed in accordance with the following provisions:

(a) Assets held in trust by State.

If the State of South Carolina by legislation authorizes assets that are held by the State in trust for the tribe to be included in the distribution plan prepared by the Secretary in accordance with the provisions of sections 931 to 938 of this title, they may be included.

(b) Designation of land for church, park, playground, or cemetery.

The tribal council shall designate any part of the tribe's land that is to be set aside for church, park, playground, or cemetery purposes and the Secretary is authorized to convey such tracts to trustees or agencies designated by the tribal council for that purpose and approved by the Secretary.

(c) Appraisal of assets; improvements.

The remaining tribal assets shall be appraised by the Secretary and the share of each member shall be determined by dividing the total number of enrolled members into the total appraisal. The tribal assets so appraised shall not include any improvements that were placed on the part of an assignment that is selected by an assignee, or his wife or children, pursuant to subsection (d) of this section. Such improvements shall be property of the assignee.

(d) Assignee's option of selection; approval of selection by Secretary; title to assignment.

Subject to the provisions of this subsection, each member who is an adult under the laws of the State and who has an assignment shall be given the option of selecting and receiving title to any part of his assignment that has an appraised value not in excess of his share of the tribe's assets. A wife, husband, or child of such adult member may select and receive title to any part of such assignment that has an appraised value not in excess of her or his share of the tribe's assets; and, if the child is a minor under the laws of the State, the option on his behalf may be exercised by such adult member. Each selection shall be subject to the approval of the Secretary of the Interior, who shall consider the effect of the selection on the total value of the property. The title to any part of an assignment so selected may be taken in the name of the person entitled thereto, or the title to all of the parts of an assignment so selected may be taken in the names of the persons entitled thereto as tenants in common.

(e) Selection by members having no assignment.

Each member who has no assignment may select and receive title to any part of the tribal land that is not selected pursuant to subsection (d) of this section and that has an appraised value not in excess of his share of the tribe's assets.

(f) Sale and distribution of proceeds of assets not selected; bidding; member purchases; disposition of unsold assets.

All assets of the tribe that are not selected and conveyed to members pursuant to subsections (d) and (e) of this section shall be sold and the proceeds distributed to the members in accordance with their respective interests. Such sales shall be by competitive bid and any member shall have the right to purchase property offered for sale for a price not less than the highest acceptable bid therefor. If more than one member exercises such right, the property shall be sold to the member exercising the right who offers the highest price. Any tribal assets that are not sold by the Secretary within two years from the date of the notice provided for in section 931 of this title shall be conveyed to a trustee selected by the Secretary for disposition in accordance with this subsection, and the fees and expenses of such trustee shall be paid out of funds appropriated for the purposes of sections 931 to 938 of this title. (Pub. L. 86–322, § 3, Sept. 21, 1959, 73 Stat. 592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931, 932, 934 to 938 of this title.

§ 934. Land surveys and execution of conveyances by Secretary; title of grantee.

The Secretary of the Interior is authorized to make such land surveys and to execute such conveyancing instruments as he deems necessary to convey marketable and recordable titles to the tribal assets disposed of pursuant to sections 931 to 938 of this title. Each grantee shall receive an unrestricted title to the property conveyed. (Pub. L. 86–322, § 4, Sept. 21, 1959, 73 Stat. 593.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931 to 933, 935 to 938 of this title.

§ 935. Revocation of tribal constitution; termination of Federal services; application of Federal and State laws; citizenship status unaffected.

The constitution of the tribe adopted pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, shall be revoked by the Secretary. Thereafter, the tribe and its members shall not be entitled to any of the special services performed by the United States for Indians because of their status as Indians, all statutes of the United States that affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner they apply to other persons or citizens within their jurisdiction. Nothing in sections 931 to 938 of this title, however, shall affect the status of such persons as citizens of the United States. (Pub. L. 86–322, § 5, Sept. 21, 1959, 73 Stat. 593.)

REFERENCES IN TEXT

The act of June 18, 1934 (48 Stat. 984), as amended, referred to in text, is classified to sections 461, 462, 463, 464, 465, 466—470, 471—473, 474, 475, 476—478, and 479 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931 to 934, 936 to 938 of this title.

§ 936. Rights, privileges, and obligations under South Carolina laws unaffected.

Nothing in sections 931 to 938 of this title shall affect the rights, privileges, or obligations of the tribe and its members under the laws of South Carolina. (Pub. L. 86–322, § 6, Sept. 21, 1959, 73 Stat. 593.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931 to 935, 937, 938 of this title.

§ 937. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.

No property distributed under the provisions of sections 931 to 938 of this title shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of sections 931 to 938 of this title, such property and income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the grantee. (Pub. L. 86–322, § 7, Sept. 21, 1959, 73 Stat. 593.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931 to 936, 938 of this title.

§ 938. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs.

Prior to the revocation of the tribal constitution provided for in sections 931 to 938 of this title, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or persons. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it. (Pub. L. 86–322, § 8, Sept. 21, 1959, 73 Stat. 594.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 931 to 937 of this title.

AGUA CALIENTE (PALM SPRINGS) RESERVATION OF CALIFORNIA: EQUALIZATION OF ALLOTMENTS

§ 951. Authority to equalize allotments.

The Secretary of the Interior (hereinafter called the "Secretary") is authorized and directed to do whatever is necessary and proper to equalize as nearly as possible the values of all allotments of land on the Agua Caliente (Palm Springs) Reservation in California in accordance with the provisions of sections 951 to 958 of this title. (Pub. L. 86–339, § 1, Sept. 21, 1959, 73 Stat. 602.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 953, 954, 956, 957 of this title.

§ 952. Members entitled to allotment; prohibition against further allotments.

Any member of the Agua Caliente Band (hereinafter called the "band") who is living on the date of the enactment of this Act and who has not received an allotment of land shall be given an allotment in accordance with the provisions of law existing prior to this Act. No further allotments of land shall thereafter be made to any other or future born members of the band, or to their heirs or devisees, except for the purpose of equalization. This prohibition against further allotments shall not be construed as a closing of the band's membership rolls. (Pub. L. 86–339, § 2, Sept. 21, 1959, 73 Stat. 602.)

REFERENCES IN TEXT

The words "date of the enactment of this Act", and "this Act", referred to in text, mean Sept. 21, 1959, the date of enactment of sections 951—958 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 954, 956, 957 of this title.

§ 953. Lands.

(a) Determination of value of unalloted and alloted lands; exclusion of deceased allottees' allotments.

The Secretary shall determine on the basis of the contract appraisals that were made in 1957 and 1958 (1) the value of all unallotted tribal land, and (2) the value of the allotment of each allottee who is living on September 21, 1959, excluding the value of any improvements thereon. Where lands of a living allottee have been sold under the supervision of the Secretary, their value for the purpose of equalization shall be the amount received from such sale, excluding the value assigned to any improvements thereon. Where lands of a living allottee have been fee patented to and sold by the allottee, their value for the purpose of equalization shall be the appraised value of the lands, excluding improvements, as of the time of the sale, regardless of the amount received from the sale. The allotments of allottees who are not living on September 21, 1959 shall be excluded from the equalization program. All values so determined by the Secretary shall be final and conclusive for the purposes of sections 951 to 958 of this title.

(b) Lands not subject to allotment; distribution of revenues from mineral springs parcel.

In no event shall the following tribal lands be subject to allotment, and they shall henceforth be set apart and designated as tribal reserves for the benefit and use of the band:

Cemetery numbered 1, block 235, section 14, township 4 south, range 4 east.

Cemetery numbered 2, as now constituted pursuant to secretarial order, comprising approximately two acres.

Roman Catholic Church, as now constituted pursuant to secretarial order, comprising approximately two acres.

Mineral Springs, lots 3a, 4a, 13, and 14, section 14, township 4 south, range 4 east: *Provided,* That no distribution to member of the band of the net rents, profits, and other revenues derived from that portion of these lands which is designated as "parcel B" in the supplement dated September 8, 1958, to the lease by and between the Agua Caliente Band of Mission Indians and Palm Springs Spa dated January 21, 1958, or of the net income derived from the investment of such net rents, profits, and other revenues or from the sale of said lands or of assets purchased with the net rents, profits, and other revenues aforesaid or with the net income from the investment thereof shall be made except to those enrolled members who are entitled to an equalization allotment or to a cash payment in satisfaction thereof under sections 951 to 958 of this title or, in the case of such a member who died after September 21, 1959, to those entitled to participate in his estate, and any such distribution shall be per capita to living enrolled members and per stirpes to participants in the estate of a deceased member.

San Andreas Canyon, west half southeast quarter, southeast quarter southeast quarter section 3, township 5 south, range 4 east.

Palm Canyon, south half and south half north half section 14, township 5 south, range 4 east; all section 24, township 5 south, range 4 east.

Tahquitz Canyon, southwest quarter section 22, township 4 south, range 4 east; north half section 28, township 4 south, range 4 east.

Murray Canyon, east half section 10, township 5 south, range 4 east.

(c) Equalization for living members by allotment without regard to acreage limitations; creation of right by selection and approval; allotments made subject to laws and regulations.

On the basis of such values, the Secretary shall determine the highest level of equalization that is feasible for the members of the band who are living at the time of this Act by allotting all of the unallotted tribal land, except the reserved areas listed in subsection (b) of this section, without regard to acreage limitations heretofore imposed by law. Such unallotted tribal land shall then be allotted to those members who have received allotments with a value that is less than the equalization figure deemed feasible in accordance with procedures prescribed by the Secretary. No selection of an allotment pursuant to such procedures shall create a vested right in the land until all selections authorized by sections 951 to 958 of this title have been made, included in one schedule, and approved by the Secretary. Allotments thereafter made shall be subject to the same laws and regulations that apply to other trust allotments on the Agua Caliente Reservation.

(d) Portions in airport subject to allotment unless sold; procedure for sale; payment of sale proceeds in lieu of allotment.

The unallotted portions of section 18, township 4 south, range 5 east, and section 12, township 4 south, range 4 east, that are in the municipal airport for the city of Palm Springs shall be subject to allotment as a part of the equalization program, subject to the following qualifications: If within thirty days after September 21, 1959, a majority of the adult members of the band who are eligible to vote agree, the Secretary may offer to sell such land to the city for its appraised value on September 21, 1959, and the Secretary shall cause an independent appraisal thereof to be made by an appraiser he shall select who shall be approved jointly by the band and the city before proceeding with such appraisal, the costs for the appraisal to be shared by the band and the city; thereafter the Secretary shall review the completed appraisal and shall, if approved, then submit copies to both the band and the city for their approval which shall be either accepted or rejected in writing within thirty days; and if within three hundred and sixty-five days after joint acceptance of such appraisal by the band and the city, the city accepts the offer and tenders payment in full, the Secretary shall complete the sale, and any allottees who may have made or who may thereafter make an equalization selection from the lands sold to the city shall receive in lieu of the allotment selected his proportionate share of the proceeds of the sale. (Pub. L. 86-339, § 3, Sept. 21, 1959, 73 Stat. 602.)

REFERENCES IN TEXT

The words "the time of this Act", referred to in subsec. (c), mean Sept. 21, 1959, the date of enactment of sections 951 to 958 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 954, 955, 956, 957, 958 of this title.

§ 954. Powers and duties of guardians.

(a) Appointment and continuance in office; notice to Secretary of State of court proceedings; appearance.

No guardian or other fiduciary shall be appointed under State law for the estate of any member of the band, or continued in office, except with approval of the Secretary: *Provided,* That no conservator for any member of the band shall be appointed under State law or continued in office after the effective date of this Act, unless the individual Indian concerned, with the approval of the Secretary, personally petitions for the appointment or continuation of such appointment. The Secretary shall be given notice of all proceedings in the State court with respect to the estate of any member of the band which is being administered, and he may at any time appear as a party in such proceedings, and may exercise all rights accorded to a party under State law.

(b) Management and disposition of trust property and property subject to restrictions against alienation by guardians, conservators, or fiduciaries; approved activities; approval of activities.

No guardian, conservator or other fiduciary appointed under State law shall, in his official capacity, participate in the management or disposition of any property or interest therein which is held in trust by the United States for a member of the band or is subject to restrictions against alienation imposed by the laws of the United States, execute or approve any use, expenditure, investment, deposit, or disposition of such property or interest therein, or proceeds therefrom, or receive any fee or other com-

pensation for services hereafter performed with respect to such property or interest therein. The provisions of this subsection shall not preclude any such person, in his private capacity, from participating in the management or disposition of such property or interest therein with the specific approval of the Secretary of the Interior. Actions with respect to the use, expenditure, investment, deposit, or disposition of such property or interests therein, or proceeds therefrom, shall be valid and efficacious in all respects without participation of affirmation by any guardian, conservator, or other fiduciary appointed under State law.

(c) Reports by guardians; failure or refusal to report; fraudulent, capricious, arbitrary or grossly erroneous reports; prosecution; appropriate relief.

The Secretary, at any time, may require any guardian, conservator, or other fiduciary appointed under State law for a member of the band to submit a full and complete report concerning his handling of the estate during the preceding six years. If any person or entity required to do so by the Secretary fails or refuses to so report, or, if having reported, the Secretary concludes that any action connected therewith is fraudulent, or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, he may request the Attorney General to cause an action to be brought in the name of the United States in the United States District Court for the Central District of California or in any such district court having jurisdiction over the person, or persons, and subject matter, for such relief as may be appropriate, and said courts are hereby granted jurisdiction to hear and determine such action.

(d) Delivery to Secretary of money or property at termination of fiduciary relationship.

The Secretary may require any money or property in the possession of a fiduciary at the time the fiduciary relationship is terminated, or which is recovered pursuant to sections 951 to 958 of this title, to be delivered to him to be held in trust for the individual Indian concerned.

(e) Use and disposition of money or property held in trust by United States by the Secretary; consent of competent Indian; determination of competency; applicability of Administrative Procedure Act; time and place of hearing; judicial review.

Under such regulations as he shall provide, and with the consent of the individual Indian concerned, unless the Secretary determines such Indian to be incompetent by reason of minority or otherwise, in which case such consent shall not be required, the Secretary may use, advance, expend, exchange, deposit, dispose of, invest and reinvest, in any manner and for any purpose, any money or other property held by the United States in trust for such Indian. The Secretary shall make no determination that an adult Indian is imcompetent except after according him an opportunity to be heard upon reasonable notice, in accordance with the provisions of the Administrative Procedure Act. Unless the Indian otherwise agrees, the hearing shall be held in the State of California within sixty days of the date of notice. A person aggrieved by a determination of incompetency made by the Secretary shall be entitled to judicial review of such determination in accordance with sections 701 to 706 of Title 5.

(f) Authority of the Secretary under other provisions unaffected.

Nothing herein shall be deemed to limit any authority possessed by the Secretary under any other provisions of law. (Pub. L. 86-339, § 4, Sept. 21, 1959, 73 Stat. 604; Pub. L. 90-597, Oct. 17, 1968, 82 Stat. 1164.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a), probably means the date of enactment of Pub. L. 86-339, which was approved Sept. 21, 1959.

The Administrative Procedure Act, referred to in subsec. (e), is classified to section 551 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-597 substituted provisions requiring the Secretary to approve any guardian or other fiduciary appointed under state law for the estate of any member of the band, or continued in office as guardian of the estate, and provisions requiring the Secretary to be given notice of state court proceedings involving the estate of any member of the band and power to appear in such proceedings, for provisions requiring the Secretary to request the appointment of a guardian of the estate of minor allottees and adult allottees needing assistance.

Subsecs. (b)—(f). Pub. L. 90-597 added subsecs. (b)—(f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 956, 957 of this title.

§ 955. Tax exemption.

(a) The right to an equalization allotment or to a cash payment in lieu thereof pursuant to section 953(d) of this title, shall be transferable by will or descent in the same manner as are trust payments under existing law and shall not be subject to State or Federal inheritance, estate, legacy, or succession taxes.

(b) A cash payment made in lieu of an equalization allotment pursuant to section 953(d) of this title shall not be regarded as income or capital gain for purposes of Federal or State income taxation and shall not, as long as it remains in the form of cash or a bank deposit in the ownership of the allottee, be subject to taxation as personal property. (Pub. L. 86-339, § 5, Sept. 21, 1959, 73 Stat. 604.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 954, 956, 957 of this title.

§ 956. Claims against allotments.

(a) Assignment, sale, hypothecation, attachment or levy void unless approved.

Equalization allotments made pursuant to sections 951 to 958 of this title shall not be subject to assignment, sale, or hypothecation or to any attachment or levy for claims or debts created before or after September 21, 1959, without the written approval of the Secretary, and any such assignment, sale, hypothecation, attachment, or levy that has not been so approved by the Secretary shall be absolutely null and void.

(b) Liens and lis pendens; legal services.

No equalization allotment made pursuant to sections 951 to 958 of this title, and no basic allotment made prior to this Act, shall be subject to an equi-

table charging lien or other charge or lien or enforced sale for any advantage or benefit which the allottee has received or will receive under or as a consequence of enactment of sections 951 to 958 of this title, nor shall any lis pendens heretofore or hereafter filed upon such lands while in a restricted status be of any effect or constitute notice of any action. Whoever directly or indirectly accepts or receives any money or other form of compensation for legal services in connection with such restricted lands from any person who has not expressly employed him as his attorney shall be liable, in a civil action brought by the payor or his heirs or devisees or by the United States on his behalf, for twice the amount so accepted or received unless, prior to the time of acceptance or receipt of said compensation, the right to such compensation has been determined and the amount thereof fixed by a formal order of the Federal court having jurisdiction to make such order. Nothing herein provided shall be construed to prevent any attorney from petitioning the Federal court having jurisdiction to fix and determine the fees to which he is entitled and to pursue and enforce payment thereof in any lawful manner after the court has made such order. (Pub. L. 86-339, § 6, Sept. 21, 1959, 73 Stat. 604.)

REFERENCES IN TEXT

The words "prior to this Act", referred to in subsec. (b), mean prior to Sept. 21, 1959, when sections 951—958 of this title were enacted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 954, 957 of this title.

§ 957. Allotments deemed full equalization.

Allotments in accordance with the provisions of sections 951 to 958 of this title shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation. (Pub. L. 86-339, § 7, Sept. 21, 1959, 73 Stat. 605.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 954, 956 of this title.

§ 958. Organization and transfer of title to legal entity.

The band may, at any time it wishes to do so, organize a legal entity under the laws of the State of California and request the Secretary to transfer to such legal entity title to the lands in the reserves established by section 953(b) of this title. The Secretary shall transfer an unrestricted title to such property if the organization of the legal entity and request for the transfer have been approved by a majority of the adult members of the band who are eligible to vote, and if in the judgment of the Secretary the legal entity is organized in a form and manner that is fair to all members of the band: *Provided, however,* That if the lands to which the proviso to the fourth item in section 953(b) of this title is applicable are transferred to such an entity, they shall be held by it subject to the terms provided in said proviso, and the rights and duties therein set forth shall be preserved and reflected in any distribution of securities of, or other evidences of participation in, said entity. (Pub. L. 86-339, § 8, Sept. 21, 1959, 73 Stat. 605.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 953, 954, 956, 957 of this title.

OMAHA TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 961. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination.

The Secretary of the Interior is authorized and directed, pursuant to such regulations as may be issued by him, to prepare a roll of Omaha Indians whose names appear on the Omaha allotment rolls finally approved pursuant to the Acts of Congress of August 7, 1882, (22 Stat. 341) and March 3, 1893 (27 Stat. 612), and who are living on September 14, 1961, and the descendants of such allottees who are born and living on September 14, 1961 and who possess Omaha blood of the degree of one-fourth or more regardless of whether such allottees are living or deceased: *Provided,* That no person who is enrolled with any other tribe of Indians or who has received an allotment of land on any other reservation shall be enrolled under the provisions of sections 961 to 967 of this title unless the application for enrollment by such person is approved by a two-thirds vote of the governing body of the Omaha Tribe of Nebraska. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Aberdeen, South Dakota, within four months after September 14, 1961. For a period of three months thereafter, the Secretary shall permit the examination of the applications by the governing body of the Omaha Tribe of Nebraska for the purpose of lodging protests against any application. The determination of the Secretary regarding the eligibility of an applicant shall be final. (Pub. L. 87-235, § 1, Sept. 14, 1961, 75 Stat. 508.)

REFERENCES IN TEXT

Acts of Congress of August 7, 1882 (22 Stat. 341) and March 3, 1893 (27 Stat. 612), referred to in text are not classified to the code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 966, 967, 967a of this title.

§ 962. Membership roll; enrollment of children born after September 14, 1961.

The roll prepared pursuant to section 961 of this title shall constitute the membership roll of the Omaha Tribe of Nebraska as of September 14, 1961, notwithstanding the provisions of article II, section 1 of the tribal constitution, and children who are born after September 14, 1961, may be enrolled if they meet the requirements of section 1(b) of article II of the tribal constitution, applicable to children born after the date that amendment I to said constitution was approved, or any amendment thereof. (Pub. L. 87-235, § 2, Sept. 14, 1961, 75 Stat. 508.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 961, 966, 967 of this title.

§ 963. Per capita distributions to tribal members; attorneys' fees and expenses; advances or expenditures from tribal funds; tax exemption.

Of the funds on deposit in the Treasury of the United States to the credit of the Omaha Tribe of

Nebraska that were appropriated to pay a judgment by the Indian Claims Commission dated February 11, 1960, and the interest thereon, after payment of attorneys' fees and expenses, the Secretary of the Interior shall make a per capita distribution of a sum up to a maximum of $750, to the extent available, to each person whose name appears on the roll prepared pursuant to section 961 of this title; and the balance of such funds after making payment of or provision for such per capita distribution and accrued and accruing interest, if any, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved in writing by the Secretary. The fund so distributed shall not be subject to Federal or State income taxes. (Pub. L. 87–235, § 3, Sept. 14, 1961, 75 Stat. 508.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 961, 966, 967 of this title.

§ 964. Payments to enrollees, next of kin or legatees; protection of minors and persons under legal disability.

(a) Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his next of kin or legatees as determined by the laws of the place of domicile of the decedent upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) A share payable to a person under twenty-one years of age or to a person under a legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons. (Pub. L. 87–235, § 4, Sept. 14, 1961, 75 Stat. 508.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 961, 966, 967 of this title.

§ 965. Payments not subject to liens, debts, or claims; exception.

No part of any of the funds which may be so distributed shall be subject to any lien, debt, or claim of any nature whatsoever against the tribe or individual Indians except delinquent debts owed by the tribe to the United States or owed by individual Indians to the tribe or to the United States. (Pub. L. 87–235, § 5, Sept. 14, 1961, 75 Stat. 509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 961, 966, 967 of this title.

§ 966. Costs.

All costs incurred by the Secretary in the preparation of the roll and in the payment of the per capita shares in accordance with provisions of sections 961 to 967 of this title shall be paid by appropriate withdrawals from the judgment fund. (Pub. L. 87–235, § 6, Sept. 14, 1961, 75 Stat. 509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 961, 967 of this title.

§ 967. Rules and regulations.

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of sections 961 to 967 of this title. (Pub. L. 87–235, § 7, Sept. 14, 1961, 75 Stat. 509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 961, 967 of this title.

§ 967a. Per capita payments to enrolled tribal members; use of balance of funds.

From the funds on deposit in the Treasury of the United States to the credit of the Omaha Tribe of Nebraska that were appropriated by the Act of June 9, 1964, to pay a judgment obtained by the tribe in Indian Claims Commission docket numbered 138, after deduction of attorney fees, litigation expenses, and such sums as may be required to distribute individual shares, the Secretary of the Interior shall make a per capita distribution of no more than $270 to each person living on November 2, 1966, whose name appears on the roll of the tribe prepared pursuant to section 961 of this title, and to each child living on November 2, 1966, who was born after September 14, 1961, and who possesses aboriginal Omaha blood of the degree of one-fourth or more except for any such child who is enrolled with any other tribe of Indians. The balance of such funds, and the interest thereon, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary. The amount of $150,000 of said funds and any interest thereon shall not be distributed, advanced or expended until said $150,000 and any interest thereon becomes available for disbursement pursuant to the terms of the final judgment dated April 14, 1964, by the Indian Claims Commission in docket numbered 138. (Pub. L. 89–717, § 1, Nov. 2, 1966, 80 Stat. 1114.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 967c, 967d of this title.

§ 967b. Payments to minors and persons under legal disability; shares under certain amount to revert to tribe.

Sums payable to persons or to their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures as the Secretary, after consultation with the tribal governing body, determines will adequately protect their best interests. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed and such amounts shall escheat to the Omaha Tribe of Nebraska. (Pub. L. 89–717, § 2, Nov. 2, 1966, 80 Stat. 1115.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 967c, 967d of this title.

§ 967c. Tax exemption.

The funds distributed under the provisions of sections 967a to 967d of this title shall not be subject to Federal or State income taxes. (Pub. L. 89–717, § 3, Nov. 2, 1966, 80 Stat. 1115.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 967d of this title.

§ 967d. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 967a to 967d of this title. (Pub. L. 89–717, § 4, Nov. 2, 1966, 80 Stat. 1115.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 967c of this title.

PONCA TRIBE OF NEBRASKA: TERMINATION OF FEDERAL SUPERVISION

§ 971. Membership roll; preparation; eligibility for enrollment; protests against inclusion or omission from roll; finality of determination; publication of roll; publication of notice of agreement to division of assets; finality of roll.

The Secretary of the Interior shall, with the advice and assistance of the Ponca Tribe of Native Americans of Nebraska and pursuant to such regulations as he may prescribe, prepare a roll of the members of the tribe and record thereon persons whose names appeared on the census roll of April 1, 1934, and the supplement thereto of January 1, 1935, and their descendants of not less than one-quarter degree Indian blood of the Ponca Tribe, regardless of place of residence, who are living on September 5, 1962. He shall provide a reasonable opportunity for any person to protest against the inclusion or omission of any name on or from the roll and his decision on such protests shall be final and conclusive. After all protests are disposed of the roll shall be published in the Federal Register. The Secretary shall thereupon give the adult members of the tribe whose names appear on the roll an opportunity to indicte their agreement or disagreement with a division of tribal assets in accordance with the provisions of sections 971 to 980 of this title. If a majority of those indicating agreement or disagreement are favorable to such division, the Secretary shall publish in the Federal Register a notice of the fact and the roll prepared by him shall thereupon become final and sections 972 to 980 of this title shall become effective. (Pub. L. 87–629, § 1, Sept. 5, 1962, 76 Stat. 429.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 972, 975 to 980 of this title.

§ 972. Personal property rights; restrictions.

Each member whose name appears on the final roll of the tribe as published in the Federal Register shall be entitled to receive in accordance with the provisions of sections 971 to 980 of this title an equal share of the tribe's assets that are held in trust by the United States. This right shall constitute personal property which may be inherited or bequeathed, but it shall not otherwise be subject to alienation or encumbrance. (Pub. L. 87–629, § 2, Sept. 5, 1962, 76 Stat. 429.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 975 to 980 of this title.

§ 973. Distribution of assets.

(a) Tribal assets; time limitation.

All property of the United States used for the benefit of the Ponca Tribe of Native Americans of Nebraska is declared to be a part of the assets of the tribe, and all of the tribe's assets shall be distributed in accordance with the provisions of this section. The distribution shall be completed within three years from September 5, 1962, or as soon thereafter as practicable.

(b) Designation of property for church, park, playground, or cemetery.

The tribe shall designate any part of the tribe's property that is to be set aside for church, park, playground, or cemetery purposes, and the Secretary is authorized to convey such property to trustees or agencies designated by the tribe for that purpose and approved by the Secretary.

(c) Homesites; market value; improvements.

Each member may select for homesite purposes and receive title to not to exceed five acres of tribal land that is being used for homesite purposes by such member. The member shall pay the current market value of the homesite selection excluding any improvements or repairs constructed by such member, his wife, children, or ancestor, as determined by the Secretary of the Interior.

(d) Sale of assets not selected; bidding.

All assets of the tribe that are not selected and conveyed to members shall be sold by competitive bid at not less than the current market value, and any member shall have the right to purchase property offered for sale for a price not less than the highest acceptable bid therefor. If more than one member exercises such right, the property shall be sold to the member exercising the right who offers the highest price.

(e) Proceeds and tribal funds for payment of tribal debts; distributive share; set off; member purchases of tribal property.

The net proceeds of all sales of tribal property, and all other tribal funds, shall be used to pay, as authorized by the Secretary, any debts of the tribe. The remainder of such proceeds and funds shall be divided equally among the members whose names are on the final roll, or their heirs or legatees. Any debt owed by a member, heir, or legatee to the tribe or to the United States may be set off as authorized by the Secretary against the distributive share of such person. Any member of the tribe who purchases tribal property in accordance with this section may apply on the purchase price his share of the proceeds of all sales of tribal property, and the Secretary of the Interior shall adopt sales procedures that permit such action. (Pub. L. 87–629, § 3, Sept. 5, 1962, 76 Stat. 429.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975 to 980 of this title.

§ 974. Sale of trust lands.

(a) Requisite owners' request; time limitation; bidding; member purchases; reservation of mineral rights; representation of minors, incompetents and missing owners.

The Secretary of the Interior is authorized to partition or to sell the complete interest (including

any unrestricted interest) in any land in which an undivided interest is owned by a member of the Ponca Tribe of Native Americans of Nebraska in a trust or restricted status, provided the partition or sale is requested by the owners of a 25 per centum interest in the land, and the partition or sale is made within three years from September 5, 1962. Any such sale shall be by competitive bid, except that with the concurrence of the owners of a 25 per centum interest in the land any owner of an interest in the land shall have the right to purchase the land within a reasonable time fixed by the Secretary of the Interior prior to a competitive sale at not less than its current market value. If more than one preference right is exercised, the sale shall be by competitive bid limited to the persons entitled to a preference. If the owners of a 25 per centum interest in the land so request, mineral rights may be reserved to the owners in an unrestricted status. The Secretary of the Interior may represent for the purposes of this section any Indian owner who is a minor, or who is non compos mentis, and, after giving reasonable notice of the proposed partition or sale by publication, he may represent an Indian owner who cannot be located.

(b) Removal of restrictions; title to lands.

All restrictions on the alienation or taxation of interests in land that are owned by members of the Ponca Tribe of Native Americans of Nebraska three years after September 5, 1962 shall be deemed removed by operation of law, and an unrestricted title shall be vested in each such member. (Pub. L. 87-629, § 4, Sept. 5, 1962, 76 Stat. 430.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975 to 980 of this title.

§ 975. Land surveys and execution of conveyances by Secretary; title of grantee.

The Secretary of the Interior is authorized to make such land surveys and to execute such conveyancing instruments as he deems necessary to convey marketable and recordable title to the individual and tribal assets disposed of pursuant to sections 971 to 980 of this title. Each grantee shall receive an unrestricted title to the property conveyed. (Pub. L. 87-629, § 5, Sept. 5, 1962, 76 Stat. 430.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975 to 980 of this title.

§ 976. Indian claims unaffected.

Nothing in sections 971 to 980 of this title shall affect any claims heretofore filed against the United States by the Ponca Tribe of Native Americans of Nebraska. (Pub. L. 87-629, § 6, Sept. 5, 1962, 76 Stat. 430.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975, 977 to 980 of this title.

§ 977. Rights, privileges, and obligations under Nebraska laws unaffected.

Nothing in sections 971 to 980 of this title shall affect the rights, privileges, or obligations of the tribe and its members under the laws of Nebraska. (Pub. L. 87-629, § 7, Sept. 5, 1962, 76 Stat. 430.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975, 976, 979, 980 of this title.

§ 978. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses.

No property distributed under the provisions of sections 971 to 980 of this title shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of sections 971 to 980 of this title, such property and income derived therefrom by the distributee shall be subject to the same taxes, State and Federal as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the grantee. (Pub. L. 87-629, § 8, Sept. 5, 1962, 76 Stat. 430.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975 to 977, 979, 980 of this title.

§ 979. Expenses; appropriation authorization.

Such amounts of tribal funds as may be needed to meet the expenses of the tribe under sections 971 to 980 of this title, as approved by the Secretary of the Interior, shall be available for expenditure. There is authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated such sums as may be necessary to reimburse the tribe for such expenditures, and carry out the responsibilities of the Secretary under the provisions of sections 971-980 of this title. (Pub. L. 87-629, § 9, Sept. 5, 1962, 76 Stat. 430.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975 to 978, 980 of this title.

§ 980. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws; citizenship status unaffected.

When the distribution of tribal assets in accordance with the provisions of sections 971 to 980 of this title has been completed, the Secretary of the Interior shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such tribe and its members has terminated. Thereafter, the tribe and its members shall not be entitled to any of the special services performed by the United States for Indians or Indian tribes because of their Indian status, all statutes of the United States that affect Indians or Indian tribes because of their Indian status shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner they apply to other persons or citizens within their jurisdiction. Nothing in sections 971 to 980 of this title, however, shall affect the status of any Indian as a citizen of the United States. (Pub. L. 87-629, § 10, Sept. 5, 1962, 76 Stat. 431.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971, 972, 975 to 978, 980 of this title.

CHEROKEE NATION: DISTRIBUTION OF JUDGMENT FUND

§ 991. Per capita payments to tribal members; closure of rolls; appropriations; accrued interest; deductions.

The Secretary of the Interior is authorized and directed to distribute per capita to all persons whose names appear on the rolls of the Cherokee Nation, which rolls were closed and made final as of March 4, 1907, pursuant to the Act of April 26, 1906 (34 Stat. 137), and subsequent additions thereto, all funds which were appropriated by the Act of September 30, 1961 (75 Stat. 733), in satisfaction of a judgment that was obtained by the Cherokee Tribe in the Indian Claims Commission against the United States in docket numbered 173, together with the interest accrued thereon, except $1,432,084.17 which by stipulation of the parties has been set aside for the payments of any offsets that are finally determined to be due the United States, and except the amount allowed for attorney fees and expenses. (Pub. L. 87–775, § 1, Oct. 9, 1962, 76 Stat. 776.)

REFERENCES IN TEXT

The act of April 26, 1906, referred to in text, is classified as a note under section 355 of this title.

The act of Sept. 30, 1961 (75 Stat. 733), referred to in text, is Pub. L. 87–322, Sept. 30, 1961, 75 Stat. 733, which was not classified to the Code, except for the amendment to former section 16a of Title 5, Executive Departments and Government Officers and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 994, 996 to 998 of this title.

§ 992. Payments to adults, heirs or legatees; shares under certain amounts to revert to tribe; protection of minors and persons under legal disability.

(a) Except as provided in subsections (b) and (c) of this section, a share or proportional share payable to a living adult shall be paid directly to such adult; (b) a share payable to a deceased enrollee shall be distributed to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the Interior, or his authorized representative, whose findings and determinations upon such proof shall be final and conclusive: *Provided*, That proportional shares of deceased heirs amounting to $10 or less shall not be distributed, and no inherited share amounting to $5 or less shall be paid, and the money shall revert to the tribe; (c) a share or proportional share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons. (Pub. L. 87–775, § 2, Oct. 9, 1962, 76 Stat. 776.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 994, 996 to 998 of this title.

§ 993. Claims; time for filing; bar of unfiled claims; reversion to tribe; use of reverted funds.

(a) All claims for per capita shares, whether by a living enrollee or by the heirs or legatees of a deceased enrollee, shall be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, not later than three years from October 9, 1962. Thereafter, all claims and the right to file same shall be forever barred and the unclaimed shares shall revert to the tribe.

(b) Tribal funds that revert to the tribe pursuant to sections 991 to 998 of this title, including interest and income therefrom, may be advanced or expended for any purpose that is authorized by the principal chief of the Cherokee Nation and approved by the Secretary of the Interior. (Pub. L. 87–775, § 3, Oct. 9, 1962, 76 Stat. 776.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 994, 996 to 998 of this title.

§ 994. Tax exemption.

No part of any funds which may be distributed in accordance with the provisions of sections 991 to 998 of this title shall be subject to Federal or State income tax. (Pub. L. 87–775, § 4, Oct. 9, 1962, 76 Stat. 776.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 996 to 998 of this title.

§ 995. Payments not subject to liens, debts, or claims; exception.

No part of any of the funds which may be so distributed shall be subject to any lien, debt, or claim of any nature whatsoever against the tribe or individual Indians except delinquent debts owed by the tribe to the United States, or owed by individual Indians to the tribe or to the United States. (Pub. L. 87–775, § 5, Oct. 9, 1962, 76 Stat. 776.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 994, 996 to 998 of this title.

§ 996. Payments not "other income and resources".

Payments made under sections 991 to 998 of this title shall not be held to be "other income and resources", as that term is used in sections 302(a)(10)(A), 602(a)(7), 1202(a)(8), and 1352(a)(8) of Title 42. (Pub. L. 87–775, § 6, Oct. 9, 1962, 76 Stat. 776.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 994, 997, 998 of this title.

§ 997. Costs.

All costs incident to making the payments authorized by sections 991 to 998 of this title shall be paid by appropriate withdrawals from the judgment fund and interest on the judgment fund, using the interest fund first. (Pub. L. 87–775, § 7, Oct. 9, 1962, 76 Stat. 777.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 994, 996, 998 of this title.

§ 998. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 991 to 998 of this title. (Pub. L. 87–775, § 8, Oct. 9, 1962, 76 Stat. 777.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 993, 994, 996, 997 of this title.

SNAKE OR PAIUTE INDIANS OF OREGON: DISTRIBUTION OF JUDGMENT FUND

§ 1011. Membership roll; preparation; eligibility for enrollment; time for filing application; finality of Secretary's determination.

The Secretary of the Interior shall prepare a roll of the persons of Snake or Paiute Indian ancestry who meet the following requirements for eligibility: (1) They were born on or prior to and living on August 20, 1964; and (2) they were members of or are lineal descendants of members of the bands whose chiefs and headmen We-you-we-wa (Wewa), Gahanee, E-hi-gant (Egan), Po-nee, Chaw-wat-na-nee, Owits (Oits), and Tash-e-go, signed the unratified Treaty of December 10, 1868; and (3) they do not elect to participate as beneficiaries of any awards granted in the docket numbered 87 claim of the Northern Paiute Nation. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, within nine months after August 20, 1964 on forms prescribed for that purpose. The determination of the Secretary regarding utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final. (Pub. L. 88–464, § 1, Aug. 20, 1964, 78 Stat. 563.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1012, 1013, 1014, 1015 of this title.

§ 1012. Authorization to withdraw, prorate and distribute funds.

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the Snake or Paiute Tribe that were appropriated by the Act of April 13, 1960 (74 Stat. 42), in satisfaction of a judgment that was obtained by the tribe in the Indian Claims Commission against the United States in docket numbered 17 together with the interest accrued thereon, after payment of attorney fees and expenses, as well as all other expenses, and to prorate such funds among those persons whose names appear on the roll prepared pursuant to section 1011 of this title for distribution as hereinafter provided. (Pub. L. 88–464, § 2, Aug. 20, 1964, 78 Stat. 563.)

REFERENCES IN TEXT

The Act of Apr. 13, 1960 (74 Stat. 42), referred to in text, is Pub. L. 86–424, Apr. 13, 1960, 74 Stat. 42. That part of the Act which appropriated the funds referred to was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 1015 of this title.

§ 1013. Distribution; persons entitled; considerations; tax exemption.

The Secretary shall distribute shares payable to living persons enrolled pursuant to section 1011 of this title and shares payable to the heirs or legatees of deceased persons enrolled pursuant to section 1011 of this title according to rules and regulations which he shall prescribe, taking into account that in some instances a planned individual or group program for the use of shares may more properly serve the long-term interest of the enrollees than would a direct, unsupervised per capita payment. The funds so distributed shall not be subject to Federal or State income tax. (Pub. L. 88–464, § 3, Aug. 20, 1964, 78 Stat. 563.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 1015 of this title.

§ 1014. Costs.

All costs incurred by the Secretary in the preparation of the rolls and in the distribution of payment of pro rata shares in accordance with the provisions of sections 1011 to 1015 of this title shall be paid by appropriate withdrawals from the judgment fund. (Pub. L. 88–464, § 4, Aug. 20, 1964, 78 Stat. 563.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1015 of this title.

§ 1015. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1011 to 1015 of this title. (Pub. L. 88–464, § 5, Aug. 20, 1964, 78 Stat. 563.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1014 of this title.

SHAWNEE TRIBE OR NATION: DISTRIBUTION OF JUDGMENT FUND

§ 1031. Disposition of funds.

The funds on deposit in the Treasury of the United States to the credit of the Shawnee Tribe or Nation that were appropriated by the Act of September 30, 1961 (75 Stat. 733), to pay a judgment that was obtained by the tribe or nation in the Indian Claims Commission for inadequate compensation for lands ceded to the United States under the treaty of May 10, 1854 (10 Stat. 1053), and the interest thereon, shall be divided on the basis of 514/1378ths to the Absentee Band of Shawnee Indians of Oklahoma; 747/1378ths to the Cherokee Band of Shawnee Indians of Oklahoma; and 117/1378ths to the Eastern Band of Shawnee Indians of Oklahoma, after payment of attorney fees and expenses of litigation. (Pub. L. 88–457, § 1, Aug. 20, 1964, 78 Stat. 555.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036 to 1038 of this title.

§ 1032. Absentee and Eastern Bands; authorization for use of funds by tribal governing bodies; approval of Secretary of Interior.

The funds placed to the credit of the Absentee and the Eastern Bands of Shawnee Indians in the United States Treasury, and the interest thereon may be advanced on expended for any purpose and in such manner as the respective tribal governing bodies authorize and the Secretary of the Interior approves. (Pub. L. 88–457, § 2, Aug. 20, 1964, 78 Stat. 555.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036 to 1038 of this title.

§ 1033. Cherokee Band; preparation of roll; eligibility for enrollment; rules and regulations.

For the purpose of determining individual interests in the funds placed to the credit of the Cherokee Band of Shawnee Indians pursuant to section 1031

of this title, the Secretary shall prepare a new roll based on the roll of Cherokee Shawnee prepared in accordance with the Act of March 2, 1889 (25 Stat. 994). Eligible for inclusion on this new payment roll shall be all persons living on August 20, 1964, (a) who are, themselves, listed on the 1889 roll and (b) who are direct lineal descendants of persons listed on the 1889 roll. The Secretary may promulgate such rules and regulations as he considers necessary to carry out the purposes of this section. (Pub. L. 88–457, § 3, Aug. 20, 1964, 78 Stat. 555.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036 to 1038 of this title.

§ 1034. Cherokee Band; per capita distribution.

When the roll prepared pursuant to section 1033 of this title has been completed and finally approved, the Secretary shall withdraw from the Treasury the funds placed to the credit of the Cherokee Band of Shawnee Indians in accordance with section 1031 of this title, together with the interest accumulated thereon, and shall distribute them in equal per capita shares to persons whose names appear on the roll: *Provided,* That no person who receives a per capita payment from funds credited to the Cherokee Band of Shanwee Indians shall be permitted to share in any per capita distribution of the funds credited to the Absentee and Eastern Bands of Shawnee Indians. (Pub. L. 88–457, § 4, Aug. 20, 1964, 78 Stat. 555.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036 to 1038 of this title.

§ 1035. Manner of payment; living and deceased enrollees; minors and persons under legal disability.

(a) Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his next of kin or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons. (Pub. L. 88–457, § 5, Aug. 20, 1964, 78 Stat. 555.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036 to 1038 of this title.

§ 1036. Taxes.

No part of any of the funds distributed in accordance with sections 1031 to 1038 of this title shall be subject to Federal or State income tax. (Pub. L. 88–457, § 6, Aug. 20, 1964, 78 Stat. 556.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1037, 1038 of this title.

§ 1037. Costs.

All costs incurred by the Secretary in the preparation of the roll and in the payment of the per capita shares in accordance with the provisions of sections 1031 to 1038 of this title shall be paid by withdrawals from the judgment fund of the appropriate band. (Pub. L. 88–457, § 7, Aug. 20, 1964, 78 Stat. 556.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036, 1038 of this title.

§ 1038. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1031 to 1038 of this title. (Pub. L. 88–457, § 8, Aug. 20, 1964, 78 Stat. 556.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1036, 1037 of this title.

TILLAMOOK AND NEHALEM BANDS OF THE TILLAMOOK INDIANS: DISTRIBUTION OF JUDGMENT FUND

§ 1051. Membership roll; preparation; eligibility for enrollment; filing of applications; finality of Secretary's decision.

The Secretary of the Interior shall prepare a roll of all persons who meet both of the following requirements for eligibility: (1) They were born on or prior to and living on August 30, 1964; and (2) their name or the name of an ancestor through whom they claim eligibility appears either on the census roll of the Naalem (Nehalem) Band of Tillamook Indians dated January 28, 1898, or on the annuity payment roll of the Tillamook Band of Tillamook Indians prepared in 1914 under the provisions of the Act of August 24, 1912 (37 Stat. L., 519–535). Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, within six months after August 30, 1964, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility for enrollment of an applicant shall be final. (Pub. L. 88–506, § 1, Aug. 30, 1964, 78 Stat. 639.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053 to 1055 of this title.

§ 1052. Distribution of funds; pro rata basis.

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the Nehalem and Tillamook Bands of Indians that were appropriated by the Act of May 17, 1963 (77 Stat. 43), in satisfaction of a judgment obtained by the bands in the Indian Claims Commission against the United States in Docket Numbered 240 together with the interest accrued thereon and to pro rate such funds among those persons whose names appear on the roll prepared pursuant to section 1051 of this title. The Secretary shall distribute shares payable to living persons enrolled pursuant to section 1051 of this title and shares payable to the heirs and legatees of deceased persons enrolled pursuant to section 1051 of this title according to such rules and regulations as he may prescribe. (Pub. L. 88–506, § 2, Aug. 30, 1964, 78 Stat. 639.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1053 to 1055 of this title.

§ 1053. Taxes.

The funds distributed in accordance with sections 1051 to 1055 of this title shall not be subject to the Federal or State income tax. (Pub. L. 88–506, § 3, Aug. 30, 1964, 78 Stat. 639.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1054, 1055 of this title.

§ 1054. Costs.

Any costs incurred by the Secretary in the preparation of the rolls and in the distribution of payment of pro rata shares in accordance with the provisions of sections 1051 to 1055 of this title shall be paid by appropriate withdrawals from the judgment fund. (Pub. L. 88–506, § 4, Aug. 30, 1964, 78 Stat. 639.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1053, 1055 of this title.

§ 1055. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1051 to 1055 of this title. (Pub. L. 88–506, § 5, Aug. 30, 1964, 78 Stat. 639.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1053, 1054 of this title.

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION: DISTRIBUTION OF JUDGMENT FUND

§ 1071. Per capita payments to enrolled tribal members; tax exemption.

The funds on deposit in the Treasury of the United States to the credit of the Colville Tribe, San Poeils-Nespelem Tribe, Okanogan Tribe, Methow Tribe, and Lake Tribe (certain constitutent groups of the Confederated Tribes of the Colville Reservation) that were appropriated to pay a judgment of the Indian Claims Commission dated March 1, 1960, in docket numbered 181, and the funds which may be deposited in the Treasury of the United States to the credit of the said constituent groups or any other constituent groups of the Confederated Tribes of the Colville Reservation to pay any judgments arising out of claims presently pending before the Indian Claims Commission and the interest on said judgments, after payment of attorney fees and expenses, shall be credited to the account of the Confederated Tribes of the Colville Reservation and the Secretary of the Interior is authorized and directed to make a per capita distribution from such funds of $350, to the extent that such funds are available, to each enrolled member of the Confederated Tribes of the Colville Reservation. Any part of such funds distributed per capita to the members of the tribes shall not be subject to Federal or State income tax. (Pub. L. 88–551, Aug. 31, 1964, 78 Stat. 755.)

LITIGATION WITH YAKIMA TRIBES OF INDIANS OF THE YAKIMA RESERVATION

Authority to commence or defend in the United States Court of Claims an action to determine claims against judgment fund, see section 609 and 609a of this title.

QUILEUTE AND HOH TRIBES OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

§ 1081. Division of funds on basis of tribal membership rolls; advances or expenditures from tribal funds.

The unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Quileute and Hoh Tribes that were appropriated by the Act of January 6, 1964 (77 Stat. 857), to pay a judgment by the Indian Claims Commission in docket numbered 155, and the interest thereon, after payment of attorney fees and expenses, shall be divided on the basis of tribal membership rolls for the respective groups after approval of such rolls by the Secretary of the Interior, and the funds so divided, including the interest thereon, may be advanced or expended for any purpose that is authorized by the respective tribal governing bodies and approved by the Secretary of the Interior: *Provided,* That until the Hoh Indians develop a formal organization with a recognized governing body, their share of the judgment funds, and any other Hoh tribal funds, may be expended by the Secretary for the benefit of the Hoh Reservation and the Hoh tribal members, upon approval by him of plans adopted by a majority of the adult Hoh Indians voting at a general meeting of the tribal membership called by the Secretary. (Pub. L. 89–655, § 1, Oct. 14, 1966, 80 Stat. 905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1086, 1087, 1088 of this title.

§ 1082. Membership rolls; preparation; eligibility for enrollment; relinquishment of membership with other tribes.

The Secretary of the Interior shall prepare membership rolls for the Quileute and Hoh Tribes. No person shall be eligible to have his name placed on either membership roll who at the same time is a member of any other tribe, and no person shall be permitted to be enrolled in both the Quileute and Hoh Tribes: *Provided,* That persons eligible for enrollment or already enrolled with other tribes may relinquish that membership through filing a formal statement of relinquishment with the Secretary according to rules and regulations which he may prescribe. (Pub. L. 89–655, § 2, Oct. 14, 1966, 80 Stat. 905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1087, 1088 of this title.

§ 1083. Quileute base roll.

When preparing a Quileute tribal roll, the Secretary shall employ the criteria in article II of the approved constitution and bylaws of the Quileute Tribe of the Quileute Reservation, except that, in the absence of the 1935 census referred to in article II, section 1(a) of the constitution and bylaws, the Secretary, with the assistance of the governing body of the Quileute Tribe, shall construct a base roll from pertinent records, including other census data, of the same period. No person shall be eligible to have his name placed thereon if born after December 31, 1940. Upon approval of such base roll by the Secretary and the Quileute tribal governing body, it shall henceforth serve as the Quileute base roll for all purposes,

the provisions of article II, section 1(a) notwithstanding. (Pub. L. 89–655, § 3, Oct. 14, 1966, 80 Stat. 905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1087, 1088 of this title.

§ 1084. Hoh base roll.

When preparing a Hoh tribal base roll, the Secretary shall include only the names of applicants who demonstrate that their names or the names of lineal ancestors from whom they are descended appear on the Census of the Hoh Indians of Neah Bay Agency, Washington, June 30, 1894. Upon approval by the Secretary, such roll shall henceforth serve as the Hoh base roll for all purposes. (Pub. L. 89–655, § 4, Oct. 14, 1966, 80 Stat. 905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1085, 1087, 1088 of this title.

§ 1085. Tribal organizational document: development and adoption.

Upon completion of a Hoh base roll in accordance with section 1084 of this title, the Secretary shall assist the Hoh Indians in developing a tribal organizational document and shall call an election for the purpose of voting on the adoption of such document. (Pub. L. 89–655, § 5, Oct. 14, 1966, 80 Stat. 905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1087, 1088 of this title.

§ 1086. Advances or expenditures from tribal funds.

The Secretary is authorized to advance or expend, as provided in section 1081 of this title, the Hoh tribal funds now on deposit, or hereafter placed on deposit, in the Treasury of the United States under the following symbols and titles:

14X7235 Proceeds of Labor, Hoh Indians, Washington;

14X7735 Interest and Accruals on Interest, Proceeds of Labor, Hoh Indians, Washington.

(Pub. L. 89–655, § 6, Oct. 14, 1966, 80 Stat. 905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1087, 1088 of this title.

§ 1087. Tax exemption.

Any part of the funds that may be distributed to individual members of the Quileute and Hoh Tribes under the provisions of sections 1081 to 1088 of this title shall not be subject to Federal or State income taxes. (Pub. L. 89–655, § 7, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1088 of this title.

§ 1088. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1081 to 1088 of this title. (Pub. L. 89–655, § 8, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1087 of this title.

NOOKSACK TRIBE OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

§ 1101. Membership roll; preparation; eligibility for enrollment; filing of applications; finality of determination.

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and were living on October 14, 1966, and (b) they are descendants of members of the Nooksack Tribe as it existed in 1855. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, on forms prescribed for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final. (Pub. L. 89–656, § 1, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1104, 1105 of this title.

§ 1102. Distribution of funds; persons entitled.

After the deduction of attorney fees, litigation expenses, the costs of roll preparation, and such sums as may be required to distribute individual shares, the funds, including interest, remaining to the credit of the Nooksack Tribe, which were appropriated by the Act of April 30, 1965 (Public Law 89–16), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1101 of this title. (Pub L. 89–656, § 2, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1105 of this title.

§ 1103. Payments to enrollees, heirs or legatees; protection of minors and persons under legal disability; credits of shares under certain amounts; escheat.

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid to the persons whom the Secretary determines will best protect their interests. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed and shall remain to the credit of the Nooksack Tribe. Any sum of money remaining to the credit of the Nooksack Tribe as a result of this judgment, three years after October 14, 1966, shall escheat to the United States and shall be deposited in the Treasury of the United States in miscellaneous receipts. (Pub. L. 89–656, § 3, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1105 of this title.

§ 1104. Tax exemption.

The funds distributed under the provisions of sections 1101 to 1105 of this title shall not be subject to Federal or State income taxes. (Pub. L. 89–656, § 4, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1105 of this title.

§ 1105. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1101 to 1105 of this title. (Pub. L. 89–656, § 5, Oct. 14, 1966, 80 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1104 of this title.

MIAMI INDIANS OF INDIANA AND OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1111. Distribution and use of funds.

The Secretary of the Interior shall take the necessary steps to provide for the distribution and use of the money appropriated to the Miami Indians of Indiana and Oklahoma in satisfaction of judgments awarded by the Indian Claims Commission in dockets numbered 67 and 124, 124–A, and 251 as hereinafter provided. (Pub. L. 89–659, § 1, Oct. 14, 1966, 80 Stat. 909.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120, 1121 of this title.

§ 1112. Advances or expenditures from funds of Miami Tribe of Oklahoma; persons entitled.

The funds on deposit in the Treasury of the United States to the credit of the Miami Tribe of Oklahoma that were appropriated by the Act of September 30, 1961, to pay a judgment by the Indian Claims Commission in docket numbered 251, together with the interest thereon, after payment of attorney fees and expenses, shall be advanced or expended in accordance with plans adopted by the governing body of the Miami Tribe of Oklahoma and approved by the Secretary of the Interior. The persons entitled to share in any per capita payment authorized by the governing body and approved by the Secretary shall be all individuals who are enrolled members of the Miami Tribe of Oklahoma, as organized under the Oklahoma Welfare Act. (Pub. L. 89–659, § 2, Oct. 14, 1966, 80 Stat. 909.)

REFERENCES IN TEXT

The Oklahoma Welfare Act, referred to in the text, is classified to sections 501—509 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120, 1121 of this title.

§ 1113. Miami Indians of Indiana; membership roll; preparation; eligibility for enrollment.

For the purpose of determining entitlement to the judgment awarded in Indian Claims Commission docket numbered 124–A to the Miami Indians of Indiana and appropriated by the Act of September 30, 1961, the Secretary shall prepare a roll of all persons of Miami Indian ancestry who meet the following requirements for eligibility:

(a) They were born on or prior to, and living on, October 14, 1966; and

(b) Their name or the name of an ancestor from whom they claim eligibility appears on the roll of Miami Indians of Indiana of June 12, 1895, or the roll of "Miami Indians of Indiana, now living in Kansas, Quapaw Agency, I.T., and Oklahoma Territory," prepared and completed pursuant to the Act of March 2, 1895 (28 Stat. 903), or the roll of the Eel River Miami Tribe of Indians of May 27, 1889, prepared and completed pursuant to the Act of June 29, 1888 (25 Stat. 223). No person whose name appears on the current tribal roll of the Miami Tribe of Oklahoma shall be eligible to be enrolled under this section. (Pub. L. 89–659, § 3, Oct. 14, 1966, 80 Stat. 909.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1114, 1116, 1119, 1120, 1121 of this title.

§ 1114. Miami Indians of Oklahoma; membership roll; preparation; eligibility for enrollment.

For the purpose of determining entitlement to the judgment awarded in Indian Claims Commission dockets numbered 67 and 124 and appropriated by the Act of May 17, 1963, the Secretary of the Interior shall prepare a roll of all persons of Miami Indian ancestry who meet the following requirements for eligibility:

(a) They were born on or prior to, and living on, October 14, 1966; and

(b) Their name or the name of an ancestor from whom they claim eligibility appears on any of the rolls cited in section 1113(b) of this title, or on the roll of the Western Miami Tribe of Indians of June 12, 1891, prepared and completed pursuant to the Act of March 3, 1891. (Pub. L. 89–659, § 4, Oct. 14, 1966, 80 Stat. 909.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1117, 1119, 1120, 1121 of this title.

§ 1115. Applications; place for filing; finality of determination.

Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility of an applicant shall be final. (Pub. L. 89–659, § 5, Oct. 14, 1966, 80 Stat. 909.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120, 1121 of this title.

§ 1116. Distribution of funds of Miami Indians of Indiana; persons entitled.

The funds on deposit in the Treasury of the United States to the credit of the Miami Indians of Indiana that were appropriated by the Act of September 30, 1961, to pay a judgment in Indian Claims Commission docket numbered 124–A, and the interest thereon, after payment of attorney fees and expenses, shall be distributed to the individuals whose names appear on the roll prepared pursuant to section 1113 of this title, and in accordance with the instructions contained in sections 1118 and 1119 of this title. (Pub. L. 89–659, § 6, Oct. 14, 1966, 80 Stat. 909.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120, 1121 of this title.

§ 1117. Distribution of funds of Miami Indians of Oklahoma; persons entitled.

The funds on deposit in the Treasury of the United States to the credit of the "Miami Tribe of Oklahoma" that were appropriated by the Act of May 17, 1963, to pay a judgment in Indian Claims Commission dockets numbered 67 and 124, and the interest thereon, after payment of attorney fees and expenses, shall be distributed to the persons whose names appear on the roll prepared pursuant to section 1114 of this title, and in accordance with the instructions contained in sections 1118 and 1119 of this title. (Pub. L. 89-659, § 7, Oct. 14, 1966, 80 Stat. 910.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120, 1121 of this title.

§ 1118. Per capita payments to enrollees, heirs or legatees; protection of minors and persons under legal disability.

(a) Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons. (Pub. L. 89-659, § 8, Oct. 14, 1966, 80 Stat. 910.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1116, 1117, 1119, 1120, 1121 of this title.

§ 1119. Reserve funds for expenses.

(a) Prior to making any distribution of the funds credited to the Miami Tribe or Nation and the Miami Tribe of Indiana or approving any expenditures of the funds credited to the Miami Tribe of Oklahoma, pursuant to sections 1111 to 1121 of this title, the Secretary is authorized to reserve in the Treasury of the United States a part of such funds sufficient, in his judgment, to meet the litigation expenses, exclusive of attorney fees, of the remaining cases which each has pending before the Indian Claims Commission.

(b) The funds reserved shall be available for appropriate withdrawal by the Secretary. (Pub. L. 89-659, § 9, Oct. 14, 1966, 80 Stat. 910.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1116, 1117, 1120, 1121 of this title.

§ 1120. Tax exemption; costs.

The funds distributed under the provisions of sections 1111 to 1121 of this title shall not be subject to Federal or State income taxes, and any costs incurred by the Secretary in the preparation of the rolls and in the distribution of per capita shares in accordance with the provisions of such sections shall be paid by appropriate withdrawals from the judgment funds. (Pub. L. 89-659, § 10, Oct. 14, 1966, 80 Stat. 910.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1121 of this title.

§ 1121. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1111 to 1121 of this title. (Pub. L. 89-659, § 11, Oct. 14, 1966, 80 Stat. 910.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120 of this title.

DUWAMISH TRIBE OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

§ 1131. Membership roll; preparation; eligibility for enrollment; applications; place for filing; finality of determination.

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and living on October 14, 1966, and (b) they are descendants of members of the Duwamish Tribe as it existed in 1855. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, on forms prescribed for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final. (Pub. L. 89-660, § 1, Oct. 14, 1966, 80 Stat. 910.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1132, 1134, 1135 of this title.

§ 1132. Equal share distribution; persons entitled.

After the deduction of attorney fees, litigation expenses, the costs of roll preparation, and such sums as may be required to distribute individual shares, the funds, including interest, remaining to the credit of the Duwamish Tribe, which were appropriated by the Act of June 9, 1964, shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1131 of this title. (Pub. L. 89-660, § 2, Oct. 14, 1966, 80 Stat. 911.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1134, 1135 of this title.

§ 1133. Payments to enrollees, heirs, or legatees; protection of minors and persons under legal disability; escheats.

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who

are under a legal disability shall be paid to the persons whom the Secretary determines will best protect their interests. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed, and shall escheat to the United States. In the event that the sum of money reserved by the Secretary to pay the costs of distributing the individual shares exceeds the amount actually necessary to accomplish this purpose, such funds shall also escheat to the United States. (Pub. L. 89-660, § 3, Oct. 14, 1966, 80 Stat. 911.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1134, 1135 of this title.

§ 1134. Tax exemption.

The funds distributed under the provisions of sections 1131 to 1135 of this title shall not be subject to Federal or State income taxes. (Pub. L. 89-660, § 4, Oct. 14, 1966, 80 Stat. 911.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 of this title.

§ 1135. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1131 to 1135 of this title. (Pub. L. 89-660, § 5, Oct. 14, 1966, 80 Stat. 911.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1134 of this title.

EMIGRANT NEW YORK INDIANS: DISTRIBUTION OF JUDGMENT FUND

§ 1141. Distribution of funds; attorney's fees and expenses.

The funds on deposit in the Treasury of the United States to the credit of the Emigrant New York Indians that were appropriated by the Act of May 29, 1967 (81 Stat. 50), to pay a judgment by the Indian Claims Commission in Docket Numbered 75, and the interest thereon, after payment of attorney fees and expenses, shall be distributed as determined in sections 1144 and 1145 of this title. (Pub. L. 90-93, § 1, Sept. 27, 1967, 81 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1147 of this title.

§ 1142. Membership rolls; Oneida Tribe of Wisconsin; Stockbridge-Munsee Indian Community of Wisconsin; Brotherton Indians of Wisconsin.

The Secretary of the Interior shall prepare rolls of all persons born on or prior to and living on September 27, 1967 (a) whose names appear on the membership roll of the Oneida Tribe of Indians of Wisconsin; or (b) whose names appear on the membership roll of the Stockbridge-Munsee Indian Community of Wisconsin; or (c) who are Brotherton Indians of Wisconsin of at least one-fourth degree Emigrant New York Indian blood and not members of either of the organized groups mentioned in (a) or (b). (Pub. L. 90-93, § 2, Sept. 27, 1967, 81 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1144, 1145, 1147 of this title.

§ 1143. Assistance of Secretary in preparing membership rolls; applications for enrollment.

For the purposes of expediting the enrollment of persons referred to in section 1142 (a) and (b) of this title, the governing bodies of the Oneida Tribe of Wisconsin and the Stockbridge-Munsee Indian Community of Wisconsin shall, with the assistance of the Secretary, prepare membership rolls of their respective bands. Applications for enrollment under section 1142(c) of this title must be filed with the Superintendent of the Great Lakes Agency, Ashland, Wisconsin 54806, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility of the applicant shall be final. (Pub. L. 90-93, § 3, Sept. 27, 1967, 81 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1147 of this title.

§ 1144. Apportionment; ratio of apportioned shares.

The Secretary of the Interior shall apportion to each group mentioned in section 1142 of this title so much of the aforementioned judgment and accrued interest as the ratio of its enrollees bears to the total enrollees of all of said groups. (Pub. L. 90-93, § 4, Sept. 27, 1967, 81 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1147 of this title.

§ 1145. Disposition of apportioned shares.

The funds apportioned to the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Indian Community of Wisconsin shall be placed to their credit and may be used, advanced, expended, deposited, invested, or reinvested for any purposes that are authorized by the tribal governing bodies thereof and approved by the Secretary of the Interior. The funds apportioned to the group mentioned in section 1142(c) of this title shall be available for distribution in equal shares to the enrollees or their heirs or legatees. Payment may be made directly to each enrollee except that a share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons. (Pub. L. 90-93, § 5, Sept. 27, 1967, 81 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1147 of this title.

§ 1146. Federal and State income taxes.

None of the funds that may be distributed per capita shall be subject to Federal or State income taxes. (Pub. L. 90-93, § 6, Sept. 27, 1967, 81 Stat. 230.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1147 of this title.

§ 1147. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1141 to 1147 of this title. (Pub. L. 90-93, § 7, Sept. 27, 1967, 81 Stat. 230.)

UPPER AND LOWER CHEHALIS TRIBES: DISTRIBUTION OF JUDGMENT FUND

§ 1151. Membership roll; preparation; eligibility for enrollment; applications; finality of determination.

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were alive on October 24, 1967, and (b) they are descendants of members of the Upper and Lower Chehalis Tribes as they existed in 1855. Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Everett, Washington, on forms prescribed for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final. (Pub. L. 90–114, § 1, Oct. 24, 1967, 81 Stat. 335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1154, 1155 of this title.

§ 1152. Distribution in equal shares.

After the deduction of attorney fees, litigation expenses, the costs of roll preparation, and such sums as may be required to distribute individual shares, the funds, including interest, remaining to the credit of the Upper and Lower Chehalis Tribes, which were appropriated by the Act of June 9, 1964 (78 Stat. 213), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1151 of this title. (Pub. L. 90–114, § 2, Oct. 24, 1967, 81 Stat. 335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1155 of this title.

§ 1153. Payments to minors and persons under legal disabilities; escheats.

Sums payable to enrollees or to their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be held in trust by the Secretary of the Interior with use limited to emergency medical care and direct educational expenses, until such minor becomes of age or disability ceases. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed, and shall escheat to the United States. In the event that the sum of money reserved by the Secretary to pay the costs of distributing the individual shares exceeds the amount actually necessary to accomplish this purpose, the money remaining shall also be distributed per capita unless individual shares would have a value of less than $5. Individual shares or proportional shares of heirs or legatees amounting to $5 or less shall not be distributed, but shall escheat to the United States. (Pub. L. 90–114, § 3, Oct. 24, 1967, 81 Stat. 335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1155 of this title.

§ 1154. Tax exemption.

The funds distributed under the provisions of sections 1151 to 1155 of this title shall not be subject to Federal or State income taxes. (Pub. L. 90–114, § 4, Oct. 24, 1967, 81 Stat. 335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1155 of this title.

§ 1155. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1151 to 1155 of this title, including appropriate deadline for filing enrollment applications. (Pub. L. 90–114, § 5, Oct. 24, 1967, 81 Stat. 335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1154 of this title.

CHEYENNE-ARAPAHO INDIANS OF OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1161. Authorization for distribution of funds.

The Secretary of the Interior is authorized and directed to distribute and expend the funds on deposit in the Treasury of the United States to the credit of the Cheyenne-Arapaho Tribes of Oklahoma that were appropriated by the Act of October 31, 1965 (79 Stat. 1133), in satisfaction of the settlement and compromise of claims of said tribes against the United States in the Indian Claims Commission in dockets numbered 329A and 329B, together with the interest accrued thereon, as herein provided. (Pub. L. 90–117, § 1, Oct. 31, 1967, 81 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165 to 1167 of this title.

§ 1162. Trust; education and scholarships; approval of agreement.

Five hundred thousand dollars of said funds shall be held in trust for the purpose of providing education and scholarships for members of said tribes pursuant to a trust agreement to be made and entered into by and between said tribes, as grantor, and a national banking association located in the State of Oklahoma, as trustee, which trust agreement shall be authorized and approved by the tribal governing body and approved by the Secretary of the Interior. (Pub. L. 90–117, § 2, Oct. 31, 1967, 81 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165 to 1167 of this title.

§ 1163. Payments to enrollees, heirs or legatees; trust for minors and persons under legal disability; approval of agreement.

The Secretary of the Interior shall distribute remaining funds per capita to all persons alive on October 31, 1967, whose names appear on the membership roll of the Cheyenne-Arapaho Tribes of Oklahoma or who, on October 31, 1967, were eligible for membership, hereinafter referred to as "enrollees", as follows:

(a) a share payable to an enrollee not less than twenty-one years of age shall be paid directly in one payment to such enrollee, except as provided in subsections (b) and (c) of this section;

(b) a share payable to an enrollee dying after October 31, 1967, shall be distributed to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the

Interior, or his authorized representative, whose findings and determinations upon such proof shall be final and conclusive: *Provided,* That if a share of such deceased enrollee, or a portion thereof, is payable to an heir or legatee under twenty-one years of age or under legal disability, the same shall be paid and held in trust pursuant to subsection (c) of this section;

(c) a share or proportional share payable to an enrollee or person under twenty-one years of age or to an enrollee or person under legal disability shall be paid and held in trust for such enrollee or person pursuant to a trust agreement to be made and entered into by and between the Cheyenne-Arapaho Tribes of Oklahoma, as grantor, and a national banking association located in the State of Oklahoma, as trustee, which trust agreement shall be authorized and approved by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 90–117, § 3, Oct. 31, 1967, 81 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165 to 1167 of this title.

§ 1164. Claims; time for filing; bar of unfiled claims; use of reverted funds.

(a) All claims for per capita shares, whether by a living enrollee or by the heirs or legatees of a deceased enrollee, shall be filed with the area director of the Bureau of Indian Affairs, Anadarko, Oklahoma, not later than three years from October 31, 1967. Thereafter, all claims and the right to file same shall be forever barred and the unclaimed shares shall revert to the tribes.

(b) Tribal funds that revert to the tribes pursuant to subsection (a) of this section, including interest and income therefrom, may be advanced or expended for any purpose that is authorized by the tribal governing body. (Pub. 90–117, § 4, Oct. 31, 1967, 81 Stat. 338.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165 to 1167 of this title.

§ 1165. Tax exemption.

No part of any funds distributed or held in trust under the provisions of sections 1161 to 1167 of this title shall be subject to Federal or State income taxes. (Pub. L. 90–117, § 5, Oct. 31, 1967, 81 Stat. 338.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1166, 1167 of this title.

§ 1166. Costs; use of reverted funds.

(a) All costs incident to making the payments authorized by sections 1161 to 1167 of this title including the costs of payment roll preparation and such sums as may be required to distribute said funds, shall be paid by appropriate withdrawals from the judgment fund and interest on the judgment fund, using the interest fund first.

(b) In the event that the sum of money reserved by the Secretary of the Interior to pay the costs of distributing said funds exceeds the amount actually necessary to accomplish this purpose, the money remaining shall revert to the tribes and may be advanced or expended for any purpose that is authorized and approved by the tribal governing body. (Pub. L. 90–117, § 6, Oct. 31, 1967, 81 Stat. 338).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165, 1167 of this title.

§ 1167. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1161 to 1167 of this title. (Pub. L. 90–117, § 7, Oct. 31, 1967, 81 Stat. 338.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165, 1166 of this title.

IOWA TRIBES OF KANSAS AND NEBRASKA AND OF OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1171. Distribution of funds; authorized spending; per capita payment; tax exemption.

The funds on deposit in the United States Treasury to the credit of the Iowa Tribes of Kansas and Nebraska and of Oklahoma that were appropriated by the Act of April 30, 1965 (79 Stat. 81), to pay a judgment by the Indian Claims Commission in dockets numbered 138 and 79, and the interest thereon, after payment of attorney fees and other litigation expenses, shall be divided on the basis of 171/279ths (61.29 per centum) to the Iowas of Kansas and Nebraska and 108/279ths (38.71 per centum) to the Iowas of Oklahoma, and the funds so divided, including interest accruing thereon, may be invested or expanded for any purpose that is authorized by the respective tribal governing bodies and approved by the Secretary of the Interior. Any per capita distribution of any part of the funds placed to the credit of the Iowa Tribes of Kansas and Nebraska and of Oklahoma shall be payable only to those persons who meet the membership requirements specified in the respective tribal constitutions, and such per capita payments shall not be subject to Federal or State income tax. (Pub. L. 90–199, Dec. 14, 1967, 81 Stat. 583.)

DELAWARE NATION OF INDIANS

§ 1181. Distribution of judgment fund; preparation of Indian roll; eligibility.

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and living on September 21, 1968; (b) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or (c) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary of the Interior, or (d) they are lineal descendants of Delaware Indians who were members of the Delaware Nation of Indians as constituted at

the time of the Treaty of October 3, 1818 (7 Stat. 188), and their name or the name of a lineal ancestor appears on any available census roll or any other records acceptable to the Secretary. No person shall be eligible to be enrolled under this section who is not a citizen of the United States. Applications for enrollment must be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, or the Area Director of the Bureau of Indian Affairs, Anadarko, Oklahoma, on forms prescribed for that purpose. All applications filed shall be reviewed and a judgment of the eligibility of each applicant will be made and recommendation given in writing to the respective area directors by a committee composed of representatives of the two Oklahoma Delaware groups prior to submission of names to the Secretary of the Interior for acceptance on the distribution roll. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final. (Pub. L. 90–508, § 1, Sept. 21, 1968, 82 Stat. 861.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1185, 1186 of this title.

§ 1182. Division between Cherokee Delawares and the Delaware Tribe of Indians of Western Oklahoma.

There shall be withdrawn from the funds on deposit in the Treasury of the United States to the credit of the Delaware Nation that were appropriated by the Act of October 7, 1964 (78 Stat. 1033), and the interest accrued thereon, using the interest fund first, $7,000, which shall be divided equally between the Cherokee Delawares and the Delaware Tribe of Indians of Western Oklahoma, and shall be available for claims expenses incurred by the duly authorized personnel of the two tribal groups, as set forth in their joint resolution numbered 4—68 adopted on September 9, 1967. (Pub. L. 90–508, § 2, Sept. 21, 1968, 82 Stat. 861.)

REFERENCES IN TEXT

The Act of October 7, 1964 (78 Stat. 1033), referred to in text, is the Supplemental Appropriation Act, 1965, Pub. L. 88–635. The portion of Pub. L. 88–635 which appropriated the funds referred to was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1185, 1186 of this title.

§ 1183. Equal share distribution.

After the deduction of attorney fees and expenses, litigation expenses, all costs incident to the provisions of sections 1181 to 1186 of this title, and to making the payments authorized by sections 1181 to 1186 of this title, including the cost of roll preparation, which shall be paid by appropriate withdrawals from the judgment fund, the unexpended balance of the funds on deposit in the Treasury shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1181 of this title. No person shall be entitled to more than one per capita share of the funds. (Pub. L. 90–508, § 3, Sept. 21, 1968, 82 Stat. 862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1185, 1186 of this title.

§ 1184. Heirs of deceased enrollees.

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee. The Secretary shall distribute the per capita share of a decreased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures as the Secretary determines will best protect their interests. (Pub. L. 90–508, § 4, Sept. 21, 1968, 82 Stat. 862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1185, 1186 of this title.

§ 1185. Tax exemption.

The funds distributed under the provisions of sections 1181 to 1186 of this title shall not be subject to Federal or State income tax. (Pub. L. 90–508, § 5, Sept. 21, 1968, 82 Stat. 862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1186 of this title.

§ 1186. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1181 to 1186 of this title, including a deadline for filing enrollment applications. (Pub. L. 90–508, § 6, Sept. 21, 1968, 82 Stat. 862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1185 of this title.

CONFEDERATED TRIBES OF THE UMATILLA RESERVATION: DISTRIBUTION OF JUDGMENT FUND

§ 1191. Per capita distribution; trusts for minors and incompetents; payments to heirs or legatees.

The entire unexpended balance of funds that were appropriated by the Act of May 13, 1966 (80 Stat. 141) to pay a judgment by the Indian Claims Commission entered in docket numbers 264, 264A, and 264B in favor of the Confederated Tribes of the Umatilla Indian Reservation, and the interest thereon, less litigation expenses, estimated costs of distribution, and $200,000 to be used as provided in sections 1195 of this title, shall be distributed, per capita, in equal shares to all eligible members of the Confederated Tribes as defined in sections 1191 to 1195 of this title under such terms and conditions as are authorized by the tribal governing body and approved by the Secretary of the Interior, including the establishment of trusts for minors and incompetents. Payments to heirs or legatees shall be made upon proof of death and inheritance satisfactory to the Secretary, whose findings shall be final and conclusive. Such per capita distribution shall be made in three installments of approximately

equal amount, the first installment to be made as soon as possible after May 21, 1970, and the next two installments to be made at six-month intervals. (Pub. L. 91–259, § 1, May 21, 1970, 84 Stat. 253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1195 of this title.

§ 1192. Eligibility for per capita payments.

The persons eligible to receive such per capita payments shall be all persons who were living on December 17, 1965, and whose names appear on any of the following:

(a) The membership roll of the Confederated Tribes as of June 15, 1957, as approved by the Bureau of Indian Affairs on January 10, 1958, or

(b) The supplemental membership roll as of April 12, 1960, approved by the Bureau of Indian Affairs on January 27, 1961, and also any other persons born after July 1, 1949, and living on or at any time between December 17, 1965, and May 21, 1970, who were either enrolled as of May 21, 1970, or became entitled to enrollment under section (b), article IV of the constitution and bylaws of the Confederated Tribes adopted November 4, 1949, as determined by the Secretary of the Interior or his authorized representative. (Pub. L. 91–259, § 2, May 21, 1970, 84 Stat. 254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1191 of this title.

§ 1193. Status of funds pending distribution.

Until distributed such funds shall remain tribal funds and the shares herein designated for the eligible members shall constitute inheritable property from and after December 17, 1965. (Pub. L. 91–259, § 3, May 21, 1970, 84 Stat. 254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1191 of this title.

§ 1194. Per capita distributions as exempt from taxation.

The per capita distributions of such funds shall not be subject to Federal or State income tax. (Pub. L. 91–259, § 4, May 21, 1970, 84 Stat. 254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1191 of this title.

§ 1195. Disposition of funds withheld from per capita distribution.

The $200,000 withheld from per capita distribution pursuant to section 1191 of this title shall be invested or placed in trust with an institutional trustee by the Secretary of the Interior, under terms and conditions approved by the tribal governing body. The income from the investment or trust, together with such invasions of the principal or trust corpus as the Secretary deems desirable, shall be used for the education of members of the tribe until such time as the tribal governing body, with the approval of the Secretary, determines that the funds should be used in some other manner. (Pub. L. 91–259, § 5, May 21, 1970, 84 Stat. 254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1191 of this title.

SIOUX TRIBE OF MONTANA: DISTRIBUTION OF JUDGMENT FUND

§ 1201. Per capita distributions to tribal members; attorney's fees, expenses, and other deductions; eligibility of members.

The funds appropriated by the Act of October 21, 1968 (82 Stat. 1190, 1198), to pay a judgment to the Sioux Tribe of the Fort Peck Reservation, Montana, in Indian Claims Commission Docket Numbered 279A and the interest thereon, after payment of attorney's fees and all appropriate expenses, and after deducting $50,000 to be used as provided in section 1205 of this title, and after deducting the estimated costs of distribution, shall be distributed per capita to each person born on or before, and living on, June 19, 1970, who is a citizen of the United States and duly enrolled, on a roll approved by the Secretary of the Interior, as a member of the Sioux Tribe of the Fort Peck Reservation, in accordance with eligibility requirements and procedures agreed upon by the Secretary of the Interior and the tribe, or its authorized representatives. (Pub. L. 91–283, § 1, June 19, 1970, 84 Stat. 313.)

REFERENCES IN TEXT

Act Oct. 21, 1968 (82 Stat. 1190, 1198), referred to in the text, is the Supplemental Appropriation Act, 1969, Pub. L. 90–608, Chapter XII of which, relating to claims and judgments, was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1205 of this title.

§ 1202. Per capita shares; reversion to tribe; use of reverted funds.

The per capita shares shall be determined on the basis of the number of persons eligible for per capitas and the number of persons rejected for per capitas who have taken a timely appeal. The shares of those persons whose appeals are denied shall revert to the Sioux Tribe of the Fort Peck Reservation, Montana, to be expended for any purpose designated by the tribe and approved by the Secretary. (Pub. L. 91–283, § 2, June 19, 1970, 84 Stat. 313.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1204 of this title.

§ 1203. Protection of minors and persons under legal disability.

Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons. (Pub. L. 91–283, § 3, June 19, 1970, 84 Stat. 313.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1204 of this title.

§ 1204. Tax exemption.

The funds distributed under the provisions of sections 1201 to 1205 of this title shall not be subject to Federal or State income taxes. (Pub. L. 91–283, § 4, June 19, 1970, 84 Stat. 313.)

§ 1205. Amount of agreed contribution to joint account for expenditure for official salaries and expenses of Fort Peck Tribes; discretionary per capita distributions.

Upon agreement by the Fort Peck Sioux Tribe and the Fort Peck Assinibone Tribe on the amount each agrees to contribute from any award to each tribe in Indian Claims Commission Docket No. 279A, the agreed contribution of the Fort Peck Sioux Tribe shall be withdrawn from the $50,000, and interest thereon, withheld from per capita distribution pursuant to section 1201 of this title, and credited to the joint account for expenditure pursuant to the Act of June 29, 1954 (68 Stat. 329): *Provided*, That upon request of the Fort Peck Sioux Tribe the Secretary of the Interior in his discretion may distribute all or part of the aforesaid $50,000 and interest thereon per capita to each person eligible under section 1201 of this title. (Pub. L. 91–283, § 5, June 19, 1970, 84 Stat. 313.)

REFERENCES IN TEXT

Act June 29, 1954 [c. 421] (68 Stat. 329), referred to in the text, which authorized payment of salaries and expenses of officials of the Fort Peck Tribes, was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1204 of this title.

TLINGIT AND HAIDA INDIANS OF ALASKA: DISTRIBUTION OF JUDGMENT FUND

§ 1211. Distribution of fund; authorized spending; tax exemption.

The unexpended funds and interest thereon on deposit in the Treasury of the United States to the credit of and otherwise invested by the Secretary of the Interior for the account of the Tlingit and Haida Indians of Alaska which were appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims in the case entitled. The Tlingit and Haida Indians of Alaska, et al. versus The United States, numbered 47900, after payment of attorney fees and expenses, may be advanced, expended, invested or used for any purpose and in any manner authorized by the Central Council of the Tlingit and Haida Indians of Alaska and approved by the Secretary of the Interior. Any of such funds that may be distributed under the provisions of this section shall not be subject to Federal or State income taxes. (Pub. L. 91–335, July 13, 1970, 84 Stat. 431.)

CONFEDERATED TRIBES OF WEAS, PIANKASHAWS, PEORIAS, AND KASKASKIAS: DISTRIBUTION OF JUDGMENT FUND

§ 1221. Membership roll; preparation; eligibility for enrollment; applications; finality of determination.

(a) The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (1) they were born on or prior to and were living on July 31, 1970; (2) their names or the name of a lineal ancestor from whom they claim eligibility appears on (a) the final roll of the Peoria Tribe of Indians of Oklahoma, pursuant to the Act of August 2, 1956 (70 Stat. 937), or (b) the January 1, 1937, census of the Peoria Tribe, or (c) the 1920 census of the Peoria Tribe, or (d) the Indian or Citizen Class lists pursuant to the Treaty of February 23, 1867 (15 Stat. 520), or (e) the Schedule of Persons or Families composing the United Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, annexed to the Treaty of May 30, 1854.

(b) Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner and within the time limits prescribed for that purpose by the Secretary of the Interior. The determination of the Secretary regarding the eligibility of an applicant shall be final. (Pub. L. 91–364, § 1, July 31, 1970, 84 Stat. 688.)

REFERENCES IN TEXT

The Act of August 2, 1956 (70 Stat. 937), referred to in subsec. (a), is classified to section 821 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1222, 1224, 1225, 1227 of this title.

§ 1222. Disposition of funds: improvement and maintenance of Peoria Indian Cemetery; distribution of balance in equal shares.

After the deduction of attorneys' fees and expenses and the administrative costs involved in the preparation of the roll and the distribution of the individual shares, the remaining funds on deposit in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea Nation that were appropriated by the Acts of May 13, 1966 (80 Stat. 141, 150), and June 19, 1968 (82 Stat. 239), in satisfaction of judgments that were obtained by the Peoria Tribe on behalf of the Wea Nation in Indian Claims Commission dockets numbered 314, amended, and 314–E, respectively, and the funds to the credit of the Peoria Tribe of Oklahoma on behalf of the Wea, Piankashaw, Peoria, and Kaskaskia Nations that were appropriated by the Act of July 22, 1969 (83 Stat. 49, 62), in satisfaction of a judgment in docket numbered 65, shall be disposed of in the following manner: The Secretary shall pay $3,000 of such funds to the Peoria Tribe of Oklahoma for improvement and maintenance of the Peoria Indian Cemetery located approximately ten miles northeast of Miami, Oklahoma, and shall distribute the balance of such funds in equal shares to those persons whose names appear on the roll prepared pursuant to section 1221 of this title. (Pub. L. 91–364, § 2, July 31, 1970, 84 Stat. 688.)

REFERENCES IN TEXT

The Acts of May 13, 1966 (80 Stat. 141, 150), June 19, 1968 (82 Stat. 239), and July 22, 1969 (83 Stat. 49, 62), referred to in text, are, respectively, Pub. L. 89–426, The Second Supplemental Appropriation Act, 1966, Pub. L. 90–352, Joint Resolution making supplemental appropriations, and Pub. L. 91–47, Second Supplemental Appropriations Act, 1969. None of the parts of such Acts appropriating the funds referred to were classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1225, 1227 of this title.

§ 1223. Disposition of apportioned shares; payments to minors and persons under legal disabilities.

(a) Except as provided is subsection (b) of this section, the Secretary shall distribute a share payable to a living enrollee directly to such enrollee

and the Secretary shall distribute a per capita share of a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will adequately protest the best interest of such person. (Pub. L. 91–364, § 3, July 31, 1970, 84 Stat. 688.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1224, 1225, 1227 of this title.

§ 1224. Subsequent judgment funds; distribution; preparation of current membership roll.

Funds that may hereafter be deposited in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea, Kaskaskia, Piankashaw, or Peoria Nation, to pay any judgment arising out of proceedings presently pending before the Indian Claims Commission in dockets numbered 99, 289, 313, 314–A, B, C, and D, and 338 and the interest accrued thereon, after payment of attorneys' fees and expenses and all costs incident to bringing the roll current as provided is[1] this section and distributing the shares, shall be distributed on a per capita basis in accordance with section 1223 of this title to persons whose names appear on the roll prepared under section 1221 of this title after the roll has been brought current to the date the funds are appropriated by adding names of persons to the roll who were born after July 31, 1970, but on or prior to and living on the date the funds are appropriated, and by deleting names of enrollees who died between July 31, 1970, and the date the funds are appropriated. (Pub. L. 91–364, § 4, July 31, 1970, 84 Stat. 688.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1225, 1227 of this title.

§ 1225. Tax exemption.

The funds distributed under the provisions of sections 1221 to 1227 of this title shall not be subject to Federal or State income taxes. (Pub. L. 91–364, § 5, July 31, 1970, 84 Stat. 689.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1227 of this title.

§ 1226. Shares not distributed within two years; unexpended funds; reversion; bar of claims.

Any per capita share, whether payable to a living enrollee or to the heirs or legatees of a deceased enrollee, which the Secretary of the Interior is unable to deliver within two years after the date the check is issued, and all unexpended tribal and judgment funds set aside for tribal roll preparation and distribution shall revert to the Peoria Tribe, and all claims for such per capita shall thereafter be barred forever. (Pub L. 91–364, § 6, July 31, 1970, 84 Stat. 689.)

[1] So in original.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1225, 1227 of this title.

§ 1227. Rules and regulations.

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1221 to 1227 of this title. (Pub. L. 91–364, § 7, July 31, 1970, 84 Stat. 689.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1225 of this title.

CHEMEHUEVI TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 1231. Persons eligible for equal share payments.

The funds on deposit in the Treasury of the United States to the credit of the Chemehuevi Tribe of Indians which were appropriated (by the Act entitled "An Act making supplemental appropriations for the fiscal year ending June 30, 1965, and for other purposes", approved April 30, 1965 (79 Stat. 81)), to pay the judgment awarded by the Indian Claims Commission (dockets numbered 351 and 351–A), together with interest thereon, shall be distributed by the Secretary of the Interior (hereafter in sections 1231 to 1236 of this title referred to as "Secretary") in equal shares to those persons whose names appear on the roll prepared in accordance with section 1232 of this title. (Pub. L. 91–417, § 1, Sept. 25, 1970, 84 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1232, 1234, 1235, 1236 of this title.

§ 1232. Enrollment; preparation of roll; applications; finality of determination; dual awards.

(a) (1) The Secretary shall prepare a roll of all persons—

(A) who were born on or prior to and living on September 25, 1970;

(B) who are lineal descendants of members of the Chemehuevi Tribe as it existed in 1860; and

(C) whose name or the name of a lineal ancestor appears as a Chemehuevi Indian on any available census roll or other record or evidence acceptable to the Secretary.

(2) Applications for enrollment must be filed in the manner and within the time limits prescribed by the Secretary for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(b) Any person who has applied for and has been determined as eligible to share in the awards granted by the Indian Claims Commission in dockets numbered 88, 330, and 330–A, to the Southern Paiute Indian Nation or in dockets numbered 31, 37, 80, 80–D, 176, 215, 333, and 347, to "Certain Indians of California" shall not be entitled to share in the awards granted under sections 1231 to 1236 of this title. (Pub. L. 91–417, § 2, Sept. 25, 1970, 84 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1234, 1235, 1236 of this title.

§ 1233. Payments to enrollees; per capita shares to heirs or legatees; trusts and other procedures for protection of minors and persons under legal disability.

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be appropriate to protect their best interests. (Pub. L. 91–417, § 3, Sept. 25, 1970, 84 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1232, 1234, 1235, 1236 of this title.

§ 1234. Tax exemption.

No part of any funds distributed under sections 1231 to 1236 of this title shall be subject to Federal or State income taxes. (Pub. L. 91–417, § 4, Sept. 25, 1970, 85 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1232, 1235, 1236 of this title.

§ 1235. Identity of eligibility roll and membership roll.

The roll prepared by the Secretary of the Interior pursuant to sections 1231 to 1236 of this title shall not be deemed to constitute the membership roll of the Chemehuevi Tribe. (Pub. L. 91–417, § 5, Sept. 25, 1970, 84 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1232, 1234, 1236 of this title.

§ 1236. Costs.

The Secretary may make appropriate withdrawals from the judgment funds and interest thereon, using interest funds first, to pay costs incident to carrying out the provisions of sections 1231 to 1236 of this title. (Pub. L. 91–417, § 6, Sept. 25, 1970, 84 Stat. 868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1231, 1232, 1234, 1235 of this title.

Chapter 15.—CONSTITUTIONAL RIGHTS OF INDIANS

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SUBCHAPTER I.—GENERALLY

§ 1301. Definitions.

For purposes of this subchapter, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense. (Pub. L. 90–284, title II, § 201, Apr. 11, 1968, 82 Stat. 77.)

§ 1302. Constitutional rights.

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusa-

tion, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less that six persons.

(Pub. L. 90–284, title II, § 202, Apr. 11, 1968, 82 Stat. 77.)

§ 1303. Habeas corpus.

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. (Pub. L. 90–284, title II, § 203, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER II.—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

§ 1311. Model code.

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States. (Pub. L. 90–284, title III, § 301, Apr. 11, 1968, 82 Stat. 78.)

§ 1312. Authorization of appropriations.

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter. (Pub. L. 90–284, title III, § 302, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER III.—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

§ 1321. Assumption by State of criminal jurisdiction.

(a) Consent of United States; force and effect of criminal laws.

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing.

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof. (Pub. L. 90–284, title IV, § 401, Apr. 11, 1968, 82 Stat. 78.)

§ 1322. Assumption by State of civil jurisdiction.

(a) Consent of United States; force and effect of civil laws.

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, use, and probate of property.

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to

any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinances or customs.

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section. (Pub. L. 90–284, title IV, § 402, Apr. 11, 1968, 82 Stat. 79.)

§ 1323. Retrocession of jurisdiction by State.

(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal. (Pub. L. 90–284, title IV, § 403, Apr. 11, 1968, 82 Stat. 79.)

REFERENCES IN TEXT

Section 7 of the Act of August 15, 1953 (67 Stat. 588), referred to in text, was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure.

EX. ORD. NO. 11435. DESIGNATING SECRETARY OF INTERIOR TO ACCEPT RETROCESSION OF JURISDICTION BY STATE

Ex. Ord. No. 11435, Nov. 21, 1968, 33 F.R. 17339, provided: By virtue of the authority vested in me by section 465 of the Revised Statutes (25 U.S.C. 9) and as President of the United States, the Secretary of the Interior is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President or of any other officer of the United States, any and all authority conferred upon the United States by Section 403(a) of the Act of April 11, 1968, 82 Stat. 79 (25 U.S.C. 1323(a)): *Provided,* That acceptance of retrocession of all or any measure of civil or criminal jurisdiction, or both, by the Secretary hereunder shall be effected by publication in the FEDERAL REGISTER of a notice which shall specify the jurisdiction retroceded and the effective date of the retrocession: *Provided further,* That acceptance of such retrocession of criminal jurisdiction shall be effected only after consultation by the Secretary with the Attorney General.

LYNDON B. JOHNSON.

§ 1324. Amendment of State constitutions or statutes to remove legal impediment; effective date.

Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdictioin in accordance with the provisions of this subchapter. The provisions of this subchapter shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be. (Pub. L. 90–284, title IV, § 404, Apr. 11, 1968, 82 Stat. 79.)

§ 1325. Abatement of actions.

(a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this subchapter shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this subchapter shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action. (Pub. L. 90–284, title IV, § 405, Apr. 11, 1968, 82 Stat. 80.)

§ 1326. Special election.

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults. (Pub. L. 90–284, title IV, § 406, Apr. 11, 1968, 82 Stat. 80.)

SUBCHAPTER IV.—EMPLOYMENT OF LEGAL COUNSEL

§ 1331. Approval.

Notwithstanding any other provision of law, if any application made by an Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted. (Pub. L. 90–284, title VI, § 601, Apr. 11, 1968, 82 Stat. 80.)

SUBCHAPTER V.—MATERIALS AND PUBLICATIONS

§ 1341. Authorization of Secretary.

(a) Revision of document on "Indian Affairs, Laws and Treaties" and treatise on "Federal Indian Laws"; compilation of official opinions; printing and republication.

In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

(1) have the document entitled "Indian Affairs, Laws and Treaties" (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress), revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treatise entitled "Federal Indian Law"; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) Current services.

With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (a) of this section, and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) Authorization of appropriations; limitation.

There is authorized to be appropriated for carrying out the provisions of this subchapter, with respect to the preparation but not including printing, such sum as may be necessary. (Pub. L. 90–284, title VII, § 701, Apr. 11, 1968, 82 Stat. 80.)

TITLE 26.—INTERNAL REVENUE CODE

Act Aug. 16, 1954, ch. 736, 68A Stat. 3

An Act to revise the internal revenue laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) Citation.

(1) The provisions of this Act set forth under the heading "Internal Revenue Title" may be cited as the "Internal Revenue Code of 1954".

(2) The Internal Revenue Code enacted on February 10, 1939, as amended, may be cited as the "Internal Revenue Code of 1939".

(b) Publication.

This Act shall be published as volume 68A of the United States Statutes at Large, with a comprehensive table of contents and an appendix; but without an index or marginal references. The date of enactment, bill number, public law number, and chapter number, shall be printed as a headnote.

(c) Cross reference.

For saving provisions, effective date provisions, and other related provisions, see chapter 80 (sec. 7801 and following) of the Internal Revenue Code of 1954.

(d) Enactment of Internal Revenue Title into law.

The Internal Revenue Title referred to in subsection (a) (1) is as follows: * * *.

(Aug. 16, 1954, ch. 736, 68A Stat. 3.)

INTERNAL REVENUE TITLE

Subtitle

A. Income taxes §§ 1—1552.
B. Estate and gift taxes §§ 2001—2524.
C. Employment taxes §§ 3101—3504.
D. Miscellaneous excise taxes §§ 4001—4907.
E. Alcohol, tobacco, and certain other excise taxes §§ 5001—5862.
F. Procedure and administration §§ 6001—7852.
G. The Joint Committee on Internal Revenue Taxation §§ 8001—8023.

Subtitle A.—Income Taxes

Chapter

1. Normal taxes and surtaxes.
2. Tax on self-employment income.
3. Withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds.
4. Rules applicable to recovery of excessive profits on government contracts.
5. Tax on transfers to avoid income tax.
6. Consolidated returns.

Chapter 1.—NORMAL TAXES AND SURTAXES

Subchapter

A. Determination of tax liability.
B. Computation of taxable income.
C. Corporate distributions and adjustments.
D. Deferred compensation, etc.
E. Accounting periods and methods of accounting.
F. Exempt organizations.
G. Corporations used to avoid income tax on shareholders.
H. Banking institutions.
I. Natural resources.
J. Estates, trusts, beneficiaries, and decedents.
K. Partners and partnerships.
L. Insurance companies.
M. Regulated investment companies and real estate investment trusts.
N. Tax based on income from sources within or without the United States.
O. Gain or loss on disposition of property.
P. Capital gains and losses.
Q. Readjustment of tax between years and special limitations.
S. Election of certain small business corporations as to taxable status.
T. Cooperatives and their patrons.

AMENDMENTS

1966—Pub. L. 89-389, § 4(b)(2), Apr. 14, 1966, 80 Stat. 116, struck out Subchapter R effective January 1, 1969.

1962—Pub. L. 87-834, § 17(b)(4), Oct. 16, 1962, 76 Stat. 1051, added subchapter T.

1960—Pub. L. 86-779, § 10(c), Sept. 14, 1960, 74 Stat. 1009, added to Subchapter M the words "and real estate investment trusts."

1958—Pub. L. 85-866, title I § 64(d)(1), Sept. 2, 1958, 72 Stat. 1656, added subchapter S.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3402, 6103, 6401, 6654, 6682, of this title; title 7 section 1926; title 12 section 1134*l*; title 22 section 277d-23; title 42 sections 291j-7, 401, 411.

Subchapter A.—Determination of Tax Liability

Part

I. Tax on individuals.
II. Tax on corporations.
III. Changes in rates during a taxable year.
IV. Credits against tax.
V. Tax Surcharge.
VI. Minimum tax for tax preferences.

AMENDMENTS

1969—Pub. L. 91-172, title III, § 301(b)(1), Dec. 30, 1969, 83 Stat. 585, added Part VI.

1968—Pub. L. 90-364, title I, § 102(d), June 28, 1968, 82 Stat. 259, added Part V.

PART I.—TAX ON INDIVIDUALS

Sec.

1. Tax imposed.
2. Definitions and special rules.
3. Optional tax tables for individuals.
4. Rules for optional tax.
5. Cross references relating to tax on individuals.

AMENDMENTS

1969—Pub. L. 91-172, title VIII, § 803(d)(9), Dec. 30, 1969, 83 Stat. 685, substituted "Definitions and special rules" and "Optional tax tables for individuals" for "Tax in case of joint return or return of surviving spouse" and "Optional tax if adjusted gross income is less than $5,000" in items 2 and 3, respectively.

§ 1. Tax imposed.

(a) Married individuals filing joint returns and surviving spouses.

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2(a)),

A tax determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over $1,000	14% of the taxable income.
Over $1,000 but not over $2,000.	$140, plus 15% of excess over $1,000.
Over $2,000 but not over $3,000.	$290, plus 16% of excess over $2,000.
Over $3,000 but not over $4,000.	$450, plus 17% of excess over $3,000.
Over $4,000 but not over $8,000.	$620, plus 19% of excess over $4,000.
Over $8,000 but not over $12,000.	$1,380, plus 22% of excess over $8,000.
Over $12,000 but not over $16,000.	$2,260, plus 25% of excess over $12,000.
Over $16,000 but not over $20,000.	$3,260, plus 28% of excess over $16,000.
Over $20,000 but not over $24,000.	$4,380, plus 32% of excess over $20,000.
Over $24,000 but not over $28,000.	$5,660, plus 36% of excess over $24,000.
Over $28,000 but not over $32,000.	$7,100, plus 39% of excess over $28,000.
Over $32,000 but not over $36,000.	$8,660, plus 42% of excess over $32,000.
Over $36,000 but not over $40,000.	$10,340, plus 45% of excess over $36,000.
Over $40,000 but not over $44,000.	$12,140, plus 48% of excess over $40,000.
Over $44,000 but not over $52,000.	$14,060, plus 50% of excess over $44,000.
Over $52,000 but not over $64,000.	$18,060, plus 53% of excess over $52,000.
Over $64,000 but not over $76,000.	$24,420, plus 55% of excess over $64,000.
Over $76,000 but not over $88,000.	$31,020, plus 58% of excess over $76,000.
Over $88,000 but not over $100,000.	$37,980, plus 60% of excess over $88,000.
Over $100,000 but not over $120,000.	$45,180, plus 62% of excess over $100,000.
Over $120,000 but not over $140,000.	$57,580, plus 64% of excess over $120,000.
Over $140,000 but not over $160,000.	$70,380, plus 66% of excess over $140,000.
Over $160,000 but not over $180,000.	$83,580, plus 68% of excess over $160,000.
Over $180,000 but not over $200,000.	$97,180, plus 69% of excess over $180,000.
Over $200,000	$110,980, plus 70% of excess over $200,000.

(b) Heads of households.

There is hereby imposed on the taxable income of every individual who is the head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over $1,000	14% of the taxable income.
Over $1,000 but not over $2,000.	$140, plus 16% of excess over $1,000.
Over $2,000 but not over $4,000.	$300, plus 18% of excess over $2,000.
Over $4,000 but not over $6,000.	$600, plus 19% of excess over $4,000.
Over $6,000 but not over $8,000.	$1,040, plus 22% of excess over $6,000.
Over $8,000 but not over $10,000.	$1,480, plus 23% of excess over $8,000.
Over $10,000 but not over $12,000.	$1,940, plus 25% of excess over $10,000.
Over $12,000 but not over $14,000.	$2,440, plus 27% of excess over $12,000.
Over $14,000 but not over $16,000.	$2,980, plus 28% of excess over $14,000.
Over $16,000 but not over $18,000.	$3,540, plus 31% of excess over $16,000.
Over $18,000 but not over $20,000.	$4,160, plus 32% of excess over $18,000.
Over $20,000 but not over $22,000.	$4,800, plus 35% of excess over $20,000.
Over $22,000 but not over $24,000.	$5,500, plus 36% of excess over $22,000.
Over $24,000 but not over $26,000.	$6,220, plus 38% of excess over $24,000.
Over $26,000 but not over $28,000.	$6,980, plus 41% of excess over $26,000.
Over $28,000 but not over $32,000.	$7,800, plus 42% of excess over $28,000.
Over $32,000 but not over $36,000.	$9,480, plus 45% of excess over $32,000.
Over $36,000 but not over $38,000.	$11,280, plus 48% of excess over $36,000.
Over $38,000 but not over $40,000.	$12,240, plus 51% of excess over $38,000.
Over $40,000 but not over $44,000.	$13,260, plus 52% of excess over $40,000.
Over $44,000 but not over $50,000.	$15,340, plus 55% of excess over $44,000.
Over $50,000 but not over $52,000.	$18,640, plus 56% of excess over $50,000.
Over $52,000 but not over $64,000.	$19,760, plus 58% of excess over $52,000.
Over $64,000 but not over $70,000.	$26,720, plus 59% of excess over $64,000.
Over $70,000 but not over $76,000.	$30,260, plus 61% of excess over $70,000.
Over $76,000 but not over $80,000.	$33,920, plus 62% of excess over $76,000.
Over $80,000 but not over $88,000.	$36,400, plus 63% of excess over $80,000.
Over $88,000 but not over $100,000.	$41,440, plus 64% of excess over $88,000.
Over $100,000 but not over $120,000.	$49,120, plus 66% of excess over $100,000.
Over $120,000 but not over $140,000.	$62,320, plus 67% of excess over $120,000.

If the taxable income is:	The tax is:
Over $140,000 but not over $160,000.	$75,720, plus 68% of excess over $140,000.
Over $160,000 but not over $180,000.	$89,320, plus 69% of excess over $160,000.
Over $180,000	$103,120, plus 70% of excess over $180,000.

(c) Unmarried individuals (other than surviving spouses and heads of households).

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over $500	14% of the taxable income.
Over $500 but not over $1,000.	$70, plus 15% of excess over $500.
Over $1,000 but not over $1,500.	$145, plus 16% of excess over $1,000.
Over $1,500 but not over $2,000.	$225, plus 17% of excess over $1,500.
Over $2,000 but not over $4,000.	$310, plus 19% of excess over $2,000.
Over $4,000 but not over $6,000.	$690, plus 21% of excess over $4,000.
Over $6,000 but not over $8,000.	$1,110 plus 24% of excess over $6,000.
Over $8,000 but not over $10,000.	$1,590, plus 25% of excess over $8,000.
Over $10,000 but not over $12,000.	$2,090, plus 27% of excess over $10,000.
Over $12,000 but not over $14,000.	$2,630, plus 29% of excess over $12,000.
Over $14,000 but not over $16,000.	$3,210, plus 31% of excess over $14,000.
Over $16,000 but not over $18,000.	$3,830, plus 34% of excess over $16,000.
Over $18,000 but not over $20,000.	$4,510, plus 36% of excess over $18,000.
Over $20,000 but not over $22,000.	$5,230, plus 38% of excess over $20,000.
Over $22,000 but not over $26,000.	$5,990, plus 40% of excess over $22,000.
Over $26,000 but not over $32,000.	$7,590, plus 45% of excess over $26,000.
Over $32,000 but not over $38,000.	$10,290, plus 50% of excess over $32,000.
Over $38,000 but not over $44,000.	$13,290, plus 55% of excess over $38,000.
Over $44,000 but not over $50,000.	$16,590, plus 60% of excess over $44,000.
Over $50,000 but not over $60,000.	$20,190, plus 62% of excess over $50,000.
Over $60,000 but not over $70,000.	$26,390, plus 64% of excess over $60,000.
Over $70,000 but not over $80,000.	$32,790, plus 66% of excess over $70,000.
Over $80,000 but not over $90,000.	$39,390, plus 68% of excess over $80,000.
Over $90,000 but not over $100,000.	$46,490, plus 69% of excess over $90,000.
Over $100,000	$53,090, plus 70% of excess over $100,000.

(d) Married individuals filing separate returns; estates and trusts.

There is hereby imposed on the taxable income of every married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013, and of every estate and trust taxable under this subsection, a tax determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over $500	14% of the taxable income.
Over $500 but not over $1,000.	$70, plus 15% of excess of $500.
Over $1,000 but not over $1,500.	$145, plus 16% of excess over $1,000.
Over $1,500 but not over $2,000.	$225, plus 17% of excess over $1,500.
Over $2,000 but not over $4,000.	$310, plus 19% of excess over $2,000.
Over $4,000 but not over $6,000.	$690, plus 22% of excess over $4,000.
Over $6,000 but not over $8,000.	$1,130, plus 25% of excess over $6,000.
Over $8,000 but not over $10,000.	$1,630, plus 28% of excess over $8,000.
Over $10,000 but not over $12,000.	$2,190, plus 32% of excess over $10,000.
Over $12,000 but not over $14,000.	$2,830, plus 36% of excess over $12,000.
Over $14,000 but not over $16,000.	$3,550, plus 39% of excess over $14,000.
Over $16,000 but not over $18,000.	$4,330, plus 42% of excess over $16,000.
Over $18,000 but not over $20,000.	$5,170, plus 45% of excess over $18,000.
Over $20,000 but not over $22,000.	$6,070, plus 48% of excess over $20,000.
Over $22,000 but not over $26,000.	$7,030, plus 50% of excess over $22,000.
Over $26,000 but not over $32,000.	$9,030, plus 53% of excess over $26,000.
Over $32,000 but not over $38,000.	$12,210, plus 55% of excess over $32,000.
Over $38,000 but not over $44,000.	$15,510, plus 58% of excess over $38,000.
Over $44,000 but not over $50,000.	$18,990, plus 60% of excess over $44,000.
Over $50,000 but not over $60,000.	$22,590, plus 62% of excess over $50,000.
Over $60,000 but not over $70,000.	$28,790, plus 64% of excess over $60,000.
Over $70,000 but not over $80,000.	$35,190, plus 66% of excess over $70,000.
Over $80,000 but not over $90,000.	$41,790, plus 68% of excess over $80,000.
Over $90,000 but not over $100,000.	$48,590, plus 69% of excess over $90,000.
Over $100,000	$55,490, plus 70% of excess over $100,000.

(Aug. 16, 1954, ch. 736, 68A Stat. 5; Feb. 26, 1964, Pub. L. 88–272, title I, § 111, 78 Stat. 19; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(a)(2), 80 Stat. 1550; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(a), 83 Stat. 678.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted a table of rates of tax for married individuals filing joint returns and surviving spouses for the tables of rates of tax on individuals. For rates of taxes on unmarried individuals and married persons filing separate returns, see subsecs. (c) and (d) of this section.

Subsec. (b). Pub. L. 91–172 generally revised the rates of tax of heads of household downwards and struck out provisions defining head of household, determination of status, and limitations. For definition of head of household, determination of status, and limitations, see section 2(b) of this title.

Subsec. (c). Pub. L. 91–172 substituted rates of tax on umarried individuals (other than surviving spouses and heads of household) for special rules explaining the rates of tax imposed under former subsecs. (a) and (b)(1) and prescribing a maximum limit of 87 percent of the taxable year.

Subsec (d). Pub. L. 91–172 substituted a table of rates of tax for married individuals filing separate returns for provision prescribing the applicability of the rates to nonresident aliens. For applicability of rates of tax to nonresident aliens, see section 2(d) of this title.

Subsec. (e). Pub. L. 91–172 struck out cross reference to section 63. Such cross reference is now set out as section 2(e) of this title.

1966—Subsec. (d). Pub. L. 89–809 added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 89–809 redesignated former subsec. (d) as (e).

1964—Pub. L. 88–272 amended section generally by splitting the former first bracket which started at $2,000 into four new brackets, the 14 percent bracket representing a 30 percent reduction, the 15 percent bracket a 25 percent cut, and the 16 percent bracket a 20 percent cut, and reducing all other brackets by cuts averaging about 20 percent and effectuated these cuts in two steps, one in 1964, and one in 1965.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 803(f) of Pub. L. 91–172 provided that: "The amendments made by subsections (a) [amending this section], (b) [amending section 2 of this title], and (d) (other than paragraphs (1) and (8)) [amending sections 511(b)(1), 641(a), 632, 1347, 5(b) (1), (5) and 6015(a)(1)] shall apply to taxable years beginning after December 31, 1970, except that section 2(c) of the Internal Revenue Code of 1954 [section 2(c) of this title], as amended by subsection (b), shall also apply to taxable years beginning after December 31, 1969. The amendments made by subsections (c) [amending section 3 of this title], (d)(1) [amending section 6014(a) of this title], and (d)(8) [amending section 1304(b)(1) of this title] shall apply to taxable years beginning after December 31, 1969".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 131 of Pub. L. 88–272 provided that: "Except for purposes of section 21 of the Internal Revenue Code of 1954 (relating to effect of changes in rates during a taxable year), the amendments made by parts I and II of this title [to this section, and sections 2, 11, 37, 141, 144, 242, 821, 871, 963, 6016, 6074, 6154, 6212, 6504 and 6655 of this title] shall apply with respect to taxable years beginning after December 31, 1963."

SHORT TITLE OF 1969 AMENDMENT

Section 1(a) of Pub. L. 91–172 provided that: "This Act [enacting sections 49, 56 to 58, 82, 83, 123, 169, 183, 184 to 187, 249, 278, 279, 385, 585, 586, 596, 636, 638, 664, 844, 1039, 1251 to 1253, 1348, 1379, 1564 and 7463 of this title, amending this section and sections 2 to 5, 11, 12, 21, 46 to 48, 51, 62, 72, 103, 124, 141 to 143, 151, 152, 162, 163, 166, 167, 170, 172, 179, 216, 217, 243, 246, 263, 301, 305, 311, 312, 341, 381, 402 to 407, 443, 451, 453, 481, 501, 511, 535, 537, 545, 563, 582, 593, 613 to 617, 632, 641, 642, 663, 665 to 669, 673, 677, 703, 751, 802, 804, 805, 809, 810, 815, 823, 825, 851, 852, 857, 861, 901, 904, 954, 963, 964, 1001, 1011, 1016, 1031, 1033, 1082, 1201, 1211, 1212, 1221, 1222, 1231, 1232, 1243, 1245, 1248, 1250, 1301 to 1304, 1314, 1347, 1373, 1375, 1378, 1382, 1388, 1441, 1561 to 1563, 2055, 2104, 2106, 2522, 3102, 3121, 3402, 4061, 4065, 4216, 4251, 5684, 6013 to 6015, 6049, 6051, 6212, 6214, 6334, 6401, 6411, 6412, 6501, 6511, 6601, 6611, 6653, 6654, 6656, 7441, 7447, 7448, 7453, 7456, 7471, 7481, 7485, 7487 and 7701 of this title, and sections 401 to 403, 415, 427 and 428 of Title 42, repealing sections 270, 1562, and 4251 to 4254 of this title, and enacting provisions set out as notes under this section and sections 4, 51, 56, 83, 103, 123, 141, 151, 152, 162, 163, 167, 169, 170, 183, 184, 186, 187, 216, 217, 249, 252, 263, 278, 279, 305, 311, 333, 402, 451, 453, 537, 563, 582, 585, 593, 596, 613, 615, 636, 665, 677, 805, 851, 861, 901, 954, 101, 1031, 1033, 1039, 1201, 1211, 1212, 1221, 1231, 1232, 1245, 1251, 1301, 1348, 1379, 1382, 1561, 1562, 3402, 4063, 4216, 6012 to 6015, 6153, 6334, 6601, 6651, 7441, 7443, 7447, 7463, and 7483 of this title and sections 401 to 403, 415 and 427 of Title 42] may be cited as the 'Tax Reform Act of 1969'."

SHORT TITLE

Section 2(a) of Pub. L. 88–272 provided that Pub. L. 88–272, which enacted sections 79, 121, 217, 275, 406, 407, 422—425, 483, 1022, 1250, 1301—1305, 1561—1563, 6039, 6052, amended this section, and sections 2—5, 11, 12, 21, 34, 35, 37, 46, 48, 62, 72, 105, 116, 141, 144, 163—165, 170, 172, 213, 214, 242—244, 246, 264, 265, 269, 272, 274, 301, 312, 316, 331, 333, 341, 368, 381, 401—403, 421, 441, 453, 461, 535, 541—545, 551, 553, 554, 556, 562, 584, 614, 631, 642, 691, 702, 751, 802, 804, 809, 818, 821, 822, 832, 852—857, 871, 901, 903, 904, 911, 963, 1016, 1033, 1034, 1212, 1222, 1231, 1245, 1341, 1361, 1371, 1375, 1402, 1441, 1503, 1551, 1552, 3121, 3401, 3402, 6012, 6014, 6016, 6074, 6154, 6163, 6212, 6323, 6324, 6501, 6504, 6511, 6652, 6655, 6678, and 7701 of this title, and sections 409 and 411 of Title 42, The Public Health and Welfare, omitted sections 1301—1307, and repealed section 181 of this title, and enacted provisions set out as notes under this section, and sections 3, 21, 34, 35, 37, 38, 48, 62, 79, 105, 121, 163—165, 170, 172, 213, 214, 243, 264, 265, 272, 274, 316, 333, 368, 401, 406, 421, 453, 461, 614, 809, 852, 911, 1212, 1250, 1301, 1371, 1503, 1551, 3402, 6163, and 6323 of this title, may be cited as the "Revenue Act of 1964."

CONGRESSIONAL DECLARATION RELATING TO THE 1964 AMENDMENTS

Section 1 of Pub. L. 88–272 provided that: "It is the sense of Congress that the tax reduction provided by this Act [Pub. L. 88–272; see short title note under this section] through stimulation of the economy, will, after a brief transitional period, raise (rather than lower) revenues and that such revenue increases should first be used to eliminate the deficits in the administrative budgets and then to reduce the public debt. To further the objective of obtaining balanced budgets in the near future, Congress by this action, recognizes the importance of taking all reasonable means to restrain Government spending and urges the President to declare his accord with this objective."

CROSS REFERENCES

Deductions for individuals,
- Additional itemized allowable, see section 211 et seq. of this title.
- Individuals not eligible for standard deduction, see section 142 of this title.
- Itemized deductions, see section 161 et seq. of this title.
- Personal exemptions, see section 151 et seq. of this title.
- Standard, see section 141 et seq. of this title.

Dependent defined, see section 152 of this title.

Effect of change of rate of tax, see section 21 of this title

Head of household,
- Declaration of estimated tax, see section 6015 of this title.
- Medical expenses, etc., deduction, see section 213 of this title.

Imposition of net income taxes by State on income derived from interstate commerce, see chapter 10B of Title 15, Commerce and Trade.

Income exempt under treaty, see section 894 of this title.

Income tax collected at source, see section 3402 of this title.

Nonresident aliens, see section 871 et seq. of this title.

Optional tax if adjusted gross income is less than $10,000, see section 3 of this title.

Partners subject to income tax in individual capacities, see section 701 of this title.

Rate of tax under Federal Insurance Contributions Act, see section 3101 of this title.

Treaty obligations observed, see section 7852 (d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 3, 51, 72, 142, 511, 632, 641, 871, 876, 877, 891, 1201, 1347, 1348 of this title.

§ 2. Definitions and special rules.

(a) Definition of surviving spouse.

(1) In general.

For purposes of section 1, the term "surviving spouse" means a taxpayer—

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Limitations.

Notwithstanding paragraph (1), for purposes of section 1 a taxpayer shall not be considered to be a surviving spouse—

(A) if the taxpayer has remarried at any time before the close of the taxable year, or

(B) unless, for the taxpayer's taxable year during which his spouse died, a joint return could have been made under the provisions of section 6013 (without regard to subsection (a) (3) thereof).

(b) Definition of head of household.

(1) In general.

For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either—

(A) maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of—

(i) a son, stepson, daughter, or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer, but if such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(B) maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such father or mother under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Determination of status.

For purposes of this subsection—

(A) a legally adopted child of a person shall be considered a child of such person by blood;

(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

(C) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

(D) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (C)) died during the taxable year.

(3) Limitations.

Notwithstanding paragraph (1), for purposes of this subtitle a taxpayer shall not be considered to be a head of a household—

(A) if at any time during the taxable year he is a nonresident alien; or

(B) by reason of an individual who would not be a dependent for the taxable year but for—

(i) paragraph (9) of section 152(a),

(ii) paragraph (10) of section 152(a), or

(iii) subsection (c) of section 152.

(c) Certain married individuals living apart.

For purposes of this part, an individual who, under section 143(b), is not to be considered as married shall not be considered as married.

(d) Nonresident aliens.

In the case of a nonresident alien individual, the tax imposed by section 1 shall apply only as provided by section 871 or 877.

(e) Cross reference.

For definition of taxable income, see section 63.

(Aug. 16, 1954, ch. 736, 68A Stat. 8; Feb. 26, 1964, Pub. L. 88-272, title I, § 112(b), 78 Stat. 24; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 803(b), 83 Stat. 682.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172 redesignated the provisions of former subsec. (b) as subsec. (a). The provisions of former subsec. (a) are now covered by sec. 1(a) of this title.

Subsec. (b). Pub. L. 91-172 redesignated the provisions of former section 1(b)(2)-(4) of this title as subsec. (b). Former subsec. (b) was redesignated, with minor changes, as subsec. (a).

Subsec (c). Pub. L. 91–172 added subsec. (c).

Subsec. (d). Pub. L. 91–172 redesignated as subsec. (d) the provisions of former section 1(d) in this subsec. with minor changes.

Subsec. (e). Pub. L. 91–172 redesignated as subsec. (e) the provisions of former section 1(e).

1964—Subsec. (a). Pub. L. 88–272 inserted the reference to section 141.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, except that subsec. (c) is applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

CROSS REFERENCES

Joint returns of income tax by husband and wife, see section 6013 of this title.

Optional tax if adjusted gross income is less than $10,000, see section 3 of this title.

Rate of tax on individuals, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 1304, 3402, 6015 of this title.

§ 3. Optional tax tables for individuals.

In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year beginning after December 31, 1969, on the taxable income of every individual whose adjusted gross income for such year is less than $10,000 and who has elected for such year to pay the tax imposed by this section, a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary or his delegate. In the tables so prescribed, the amounts of tax shall be computed on the basis of the taxable income computed by taking the standard deduction and on the basis of the rates prescribed by section 1. (Aug. 16, 1954, ch. 736, 68A Stat. 8; Feb. 26, 1964, Pub. L. 88–272, title III, § 301(a), 78 Stat. 129; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(c), 83 Stat. 684.)

AMENDMENTS

1969—Pub.L. 91–172 raised the individual gross income limit of $5,000 to $10,000 for exercising the option and substituted provision that the tax has to be determined under tables to be prescribed by the Secretary or his delegate for tables of tax rates for single persons, heads of household, married persons filing joint returns, married persons filing separate returns with 10 per cent standard deduction and married persons filing separate returns with minimum standard deduction.

1964—Pub. L. 88–272 substituted optional tax tables covering five categories for taxable years beginning on or after Jan. 1, 1964, and before Jan. 1, 1965, and for years beginning after Dec. 31, 1964, for a single general table.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 301(c) of Pub. L. 88–272 provided that: "Except for purposes of section 21 of the Internal Revenue Code of 1954 (relating to effect of changes in rates during a taxable year), the amendments made by this section [to this section and sections 4 and 6014 of this title] shall apply to taxable years beginning after December 31, 1963."

CROSS REFERENCES

Credits not allowed to individuals paying optional tax, see section 36 of this title.

Election of standard deduction, see section 144 of this title.

Income tax return, tax not computed by taxpayer, see section 6014 (a) of this title.

Personal exemptions, see section 151 et seq. of this title.

Rate of tax on individuals, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

section is referred to in sections 4, 36, 72, 144, 891, ., 6014 of this title.

§ 4. Rules for optional tax.

(a) Number of exemptions.

For purposes of the tables prescribed by the Secretary or his delegate pursuant to section 3, the term "number of exemptions" means the number of exemptions allowed under section 151 as deductions in computing taxable income.

(b) Manner of election.

The election referred to in section 3 shall be made in the manner provided in regulations prescribed by the Secretary or his delegate.

(c) Husband or wife filing separate return.

(1) A husband or wife may not elect to pay the optional tax imposed by section 3 if the tax of the other spouse is determined under section 1 on the basis of taxable income computed without regard to the standard deduction.

(2) Except as otherwise provided in this subsection, in the case of a husband or wife filing a separate return the tax imposed by section 3 shall be the lesser of the tax shown in—

(A) the table prescribed under section 3 applicable in the case of married persons filing separate returns which applies the percentage standard deduction, or

(B) the table prescribed under section 3 applicable in the case of married persons filing separate returns which applies the low income allowance.

(3) The table referred to in paragraph (2)(B) shall not apply in the case of a husband or wife filing a separate return if the tax of the other spouse is determined with regard to the percentage standard deduction; except that an individual described in section 141(d)(2) may elect (under regulations prescribed by the Secretary of his delegate) to pay the tax shown in the table referred to in paragraph (2)(B) in lieu of the tax shown in the table referred to in paragraph (2)(A). For purposes of this title, an election under the preceding sentence shall be treated as an election made under section 141(d)(2).

(4) For purposes of this subsection, determination of marital status shall be made under section 143.

(d) Certain other taxpayers ineligible.

Section 3 shall not apply to—

(1) a nonresident alien individual;

(2) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States);

(3) an individual making a return under section 443 (a) (1) for a period of less than 12 months on account of a change in his accounting period; or

(4) an estate or trust.

(e) Taxable income computed with standard deduction.

Whenever it is necessary to determine the taxable income of a taxpayer who made the election referred to in section 3, the taxable income shall be determined under section 63 (b) (relating to definition of taxable income for individuals electing standard deduction).

(f) Cross references.

(1) For other applicable rules (including rules as to the change of an election under section 3), see section 144.

(2) For disallowance of certain credits against tax, see section 36.

(3) For rule that optional tax is not to apply if individual chooses the benefits of income averaging, see section 1304(b).

(4) For computation of tax by Secretary or his delegate, see section 6014.

(Aug. 16, 1954, ch. 736, 68A Stat. 10; Feb. 26, 1964, Pub. L. 88–272, title II, § 232(f)(1), title III, § 301(b)(1), (3), 78 Stat. 111, 140; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 802(c)(1)—(3), 83 Stat. 677, 678.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 802(c)(1), substituted reference to tables prescribed by the Secretary or his delegate pursuant to section 3, for reference to tables in section 3.

Subsec. (c)(2). Pub. L. 91–172, § 802(c)(2), substituted reference to tables of percentage standard deduction and low income allowance applicable in the case of married persons filing separate returns for reference to Tables IV and V of former section 3(a), (b).

Subsec. (c)(3). Pub. L. 91–172, § 802(c)(2), substituted reference to the table referred to in par. (2)(B) (applicable to low income allowance) for reference to Tables V of section 3 (a), (b) and percentage standard deduction for 10-per cent standard deduction.

Subsec. (f)(4). Pub. L. 91–172, § 802(c)(3), substituted "For computation of tax by Secretary or his delegate, see section 6014" for "For nonapplicability of Table V in section 3(a) and Table V in section 3(b) in case where tax is not computed by taxpayer, see section 6014(a)".

1964—Subsec. (a). Pub. L. 88–272, § 301(b)(3)(A), substituted "tables" for "table."

Subsec. (c). Pub. L. 88–272, § 301(b)(1), designated existing provisions as pars. (1) and (4), and inserted pars. (2) and (3).

Subsec. (f)(3). Pub. L. 88–272, § 232(f)(1), added par. (3).

Subsec. (f)(4). Pub. L. 88–272, § 301(b)(3)(B), added par. (4).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 802(d) of Pub. L. 91–172 provided that: "The amendments made by subsections (a) [amending section 141 of this title], (b) [amending section 143 of this title], and (c) [amending sections 4 (a), (c), (f)(4), 141(d) and 1304(c)(4) of this title] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsecs. (a), (c) and (f)(4) of this section by Pub. L. 88–272 applicable, except for purpose of section 21, to taxable years beginning after Dec. 31, 1963, see section 301(c) set out as a note under section 3 of this title.

Amendment of subsec. (f) of this section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

CROSS REFERENCES

Individuals electing standard deduction, see section 63 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 144 of this title.

§ 5. Cross references relating to tax on individuals.

(a) Other rates of tax on individuals, etc.

(1) For rates of tax on nonresident aliens, see section 871.

(2) For doubling of tax on citizens of certain foreign countries, see section 891.

(3) For alternative tax in case of capital gain, see section 1201 (b).

(4) For rate of withholding in the case of nonresident aliens, see section 1441.

(5) For minimum tax for tax preferences, see section 56.

(b) Special limitations on tax.

(1) For limitation on tax attributable to sales of oil or gas properties, see section 632.

(2) For limitation on tax in case of income of members of Armed Forces on death, see section 692.

(3) For limitation on tax where an individual chooses the benefits of income averaging, see section 1301.

(4) For computation of tax where taxpayer restores substantial amount held under claim of right, see section 1341.

(5) For limitation on tax attributable to claims against the United States involving acquisitions of property, see section 1347.

(Aug. 16, 1954, ch. 736, 68A Stat. 10; Feb. 26, 1964, Pub. L. 88–272, title II, § 232(f)(2), 78 Stat. 111; Dec. 30, 1969, Pub. L. 91–172, title III, § 301(b)(2), title VIII, § 803(d)(6), 83 Stat. 585, 684.)

AMENDMENTS

1969—Subsec. (a)(5). Pub. L. 91–172, § 301(b)(2), added par. (5).

Subsec. (b). Pub. L. 91–172, § 803(d)(6), substituted "tax" for "surtax" in pars. (1) and (5).

1964—Subsec. (b). Pub. L. 88–272 redesignated pars. (2), (3), (4), (7) and (8) as pars. (1)—(5), substituted "where an individual chooses the benefits of income averaging" for "with respect to compensation for long-term services" in par. (3), and eliminated former pars. (1), (5) and (6) which referred to tax attributable to receipt of lump sum under annuity, endowment, or life insurance contract, to income from artistic work or inventions, and to back pay, respectively.

EFFECTIVE DATE OF 1969 AMENDMENT

Subsec. (a)(5) of this section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

Amendment of subsec. (b)(1), (5) by section 803 (d)(6) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

PART II.—TAX ON CORPORATIONS

Sec.
11. Tax imposed.
12. Cross references relating to tax on corporations.

§ 11. Tax imposed.

(a) Corporations in general.

A tax is hereby imposed for each taxable year on the taxable income of every corporation. The tax shall consist of a normal tax computed under subsection (b) and a surtax computed under subsection (c).

(b) Normal tax.

The normal tax is equal to the following percentage of the taxable income:

(1) 30 percent, in the case of a taxable year beginning before January 1, 1964, and

(2) 22 percent, in the case of a taxable year beginning after December 31, 1963.

(c) Surtax.

The surtax is equal to the following percentage of the amount by which the taxable income exceeds the surtax exemption for the taxable year:

(1) 22 percent, in the case of a taxable year beginning before January 1, 1964,

(2) 28 percent, in the case of a taxable year beginning after December 31, 1963, and before January 1, 1965, and

(3) 26 percent, in the case of a taxable year beginning after December 31, 1964.

(d) Surtax exemption.

For purposes of this subtitle, the surtax exemption for any taxable year is $25,000, except that, with respect to a corporation to which section 1561 or 1564 (relating to surtax exemptions in case of certain controlled corporations) applies for the taxable year, the surtax exemption for the taxable year is the amount determined under such section.

(e) Exceptions.

Subsection (a) shall not apply to a corporation subject to a tax imposed by—

(1) section 594 (relating to mutual savings banks conducting life insurance business),

(2) subchapter L (sec. 801 and following, relating to insurance companies), or

(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts).

(f) Foreign corporations.

In the case of a foreign corporation, the tax imposed by subsection (a) shall apply only as provided by section 882. (Aug. 16, 1954, ch. 736, 68A Stat. 11; Mar. 30, 1955, ch. 18, § 2, 69 Stat. 14; Mar. 29, 1956, ch. 115, § 2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 2, 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 2, 72 Stat. 259; June 30, 1959, Pub. L. 86–75, § 2, 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II, § 201, 74 Stat. 290; Sept. 14, 1960, Pub. L. 86–779, § 10(d), 74 Stat. 1009; June 30, 1961, Pub. L. 87–72, § 2, 75 Stat. 193; June 28, 1962, Pub. L. 87–508, § 2, 76 Stat. 114; June 29, 1963, Pub. L. 88–52, § 2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, § 121, 78 Stat. 25; Nov. 13, 1966, Pub. L. 89–809, title I, § 104(b)(2), 80 Stat. 1557; Dec. 30, 1969, Pub. L. 91–172, title IV, § 401(b)(2)(B), 83 Stat. 602.)

AMENDMENTS

1969—Subsec. (d). Pub. L. 91–172 substituted "section 1561 or 1564" for "section 1561."

1966—Subsec. (e). Pub. L. 89–809, § 104(b)(2)(A), struck out par. (4) which made reference to section 881 (a) (relating to foreign corporations not engaged in business in United States).

Subsec. (f). Pub. L. 89–809, § 104(b)(2)(B), added subsec. (f).

1964—Subsec. (b). Pub. L. 88–272 applied the 30 percent tax to years beginning before Jan. 1, 1964 instead of July 1, 1964 in par. (1), and in par. (2), reduced the rate from 25 percent to 22 percent, and applied it to years beginning after Dec. 31, 1963, instead of June 30, 1964.

Subsec. (c). Pub. L. 88–272 increased the percentage from 22 to 28 for taxable years beginning after Dec. 31, 1963, and before Jan. 1, 1965, and to 26 percent for taxable years beginning after Dec. 31, 1964. The surtax exemption previously carried in subsec. (c), is now stated in subsec. (d).

Subsec. (d). Pub. L. 88–272 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 88–272 redesignated former subsec. (d) as (e).

1963—Subsec. (b). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" and "June 30, 1964" for "June 30, 1963", wherever appearing.

1962—Subsec. (b). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" and "June 30, 1963" for "June 30, 1962", wherever appearing.

1961—Subsec. (b). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" and "June 30, 1962" for "June 30, 1961", wherever appearing.

1960—Subsec. (b). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" and "June 30, 1961" for "June 30, 1960" wherever appearing.

Subsec. (d)(3). Pub. L. 86–779 inserted "and real estate investment trusts" following "regulated investment companies."

1959—Subsec. (b). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" and "June 30, 1960" for "June 30, 1959" wherever appearing.

1958—Subsec. (b). Pub. L. 85–475 substituted "July 1, 1959" for "July 1, 1958" and "June 30, 1959" for "June 30, 1958" wherever appearing.

1957—Subsec. (b). Pub. L. 85–12 substituted "July 1, 1958" for "April 1, 1957" and "June 30, 1958" for "March 31, 1957" wherever appearing.

1956—Subsec. (b). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" and "March 31, 1957" for "March 31, 1956" wherever appearing.

1955—Subsec. (b). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" and "March 31, 1956" for "March 31, 1955" wherever appearing.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (d) by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 104(n) of Pub. L. 89–809 provided that: "The amendments made by this section (other than subsection (k)) [adding section 6683 to this title and amending this section and sections 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 881, 882, 884, 952, 953, 1249, 1442, and 6016 of this title] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by subsection (k) [amending section 1248(d)(4) of this title] shall apply with respect to sales or exchanges occurring after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

SHORT TITLE

Section 1 of Pub. L. 88–52 provided: "That this Act [amending this section, sections 821, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707, and 6412 of this title, section 5(e) of the Tax Rate Extension Act of 1962 (set out as note under section 4261 of this title) and section 497 of the Revenue Act of 1951 (set out as note under section 5701 of this title)] may be cited as the 'Tax Rate Extension Act of 1963'."

Section 1 of Pub. L. 87–508 provided: "That this Act [amending this section and sections 821, 4061, 4251—4253, 4261—4264, 5001, 5002, 5041, 5051, 5063, 5701, 6707, 6412, 6416, and 6421 of this title, enacting provisions set out as notes under section 4261, 6416, and 6421 of this title, and amending provisions set out as a note under section 5701 of this title] may be cited as the 'Tax Rate Extension Act of 1962'."

Section 1 of Pub. L. 87–72 provided: "That this Act [amending this section, sections 821, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707 and 6412 of this title, and section 497 of the Revenue Act of 1951, which is set out as a note under section 5701 of this title] may be cited as the 'Tax Rate Extension Act of 1961'."

Section 1 of Pub. L. 86–75 provided that Pub. L. 86–75, which amended this section, sections 821, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707 and 6412 of this title, and section 497 of the Revenue Act of 1951, which is set out as a note under section 5701 of this title, may be cited as the "Tax Rate Extension Act of 1959."

Section 1 of Pub. L. 85–475 provided that Pub. L. 85–475, which amended this section and sections 821, 4061, 4292, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5707, 6412, 6415, 6416, 7012 and 7272 of this title, repealed sections 4271—4273 and 4281—4283 of this title, and amended section 497 of the Revenue Act of 1951, should be popularly known as the "Tax Rate Extension Act of 1958."

CROSS REFERENCES

Computation of taxable income, see section 61 et seq. of this title.

Corporate distributions and adjustments, see section 301 et seq. of this title.

Declaration of estimated income tax by corporations, see section 6016 of this title.

Deduction for dividends paid, see section 561 et seq. of this title.

Definitions—

Corporation, see section 7701 (a) (3) of this title.

Taxable income, see section 63 of this title.

Effect of change of rate of tax, see section 21 of this title.

Exempt corporations, see section 501 of this title.

Imposition of net income taxes by State on income derived from interstate commerce, see chapter 10B of Title 15, Commerce and Trade.

Special deductions for corporations, see section 241 et seq. of this title.

Tax on—

Foreign corporations not engaged in business in United States, see section 881 of this title.

Resident foreign corporations as provided in this section, see section 882 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 80, 511, 594, 802, 804, 821, 826, 831, 852, 857, 882, 891, 962, 1201, 1351, 1378, 1381, 1551, 1562, 4942, 6016, 6154, 6425, 6655 of this title.

§ 12. Cross references relating to tax on corporations.

(1) For tax on the unrelated business income of certain charitable and other corporations exempt from tax under this chapter, see section 511.

(2) For accumulated earnings tax and personal holding company tax, see parts I and II of subchapter G (sec. 531 and following).

(3) For doubling of tax on corporations of certain foreign countries, see section 891.

(4) For alternative tax in case of capital gains, see section 1201 (a).

(5) For rate of withholding in case of foreign corporations, see section 1442.

(6) For withholding of tax on tax-free covenant bonds, see section 1451.

(7) For limitation on the $25,000 exemption from surtax provided in section 11 (c) see section 1551.

(8) For minimum tax for tax preferences, see section 56.

(Aug. 16, 1954, ch. 736, 68A Stat. 11; Feb. 26, 1964, Pub. L. 88–272, title II, § 234(b)(4), 78 Stat. 115; Dec. 30, 1969, Pub. L. 91–172, title III, § 301(b(3), 83 Stat. 585.)

AMENDMENTS

1969—Par. (8). Pub. L. 91–172 added par. (8).

1964—Par. (8). Pub. L. 88–272 deleted par. (8) which referred to section 1503 for additional tax for corporations filing consolidated returns.

EFFECTIVE DATE OF 1969 AMENDMENT

Par. (8) of this section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

PART III.—CHANGES IN RATES DURING A TAXABLE YEAR

Sec.
21. Effect of changes.

§ 21. Effect of changes.

(a) General rule.

If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then—

(1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(b) Repeal of tax.

For purposes of subsection (a)—

(1) if a tax is repealed, the repeal shall be considered a change of rate; and

(2) the rate for the period after the repeal shall be zero.

(c) Effective date of change.

For purposes of subsections (a) and (b)—

(1) if the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) if a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change.

(d) Changes made by Tax Reform Act of 1969 in case of individuals.

In applying subsection (a) to a taxable year of an individual which is not a calendar year, each change made by the Tax Reform Act of 1969 in part I or in the application of part IV or V of subchapter B for purposes of the determination of taxable income shall be treated as a change in a rate of tax. (Aug. 16, 1954, ch. 736, 68A Stat. 12; Feb. 26, 1964, Pub. L. 88–272, title I, § 132, 78 Stat. 30; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(e), 83 Stat. 685.)

REFERENCES IN TEXT

Tax Reform Act of 1969, referred to in subsec. (d), is Pub. L. 91–172, Dec. 30, 1969, 83 Stat. 487.

AMENDMENTS

1969—Subsec. (d). Pub. L. 91–172 substituted provisions covering changes made by the Tax Reform Act of 1969 in case of individuals for provisions covering changes made by Revenue Act of 1964.

1964—Subsec. (d). Pub. L. 88–272 amended subsection generally by substituting provisions relating to changes made by the Revenue Act of 1964, for provisions relating to taxable years beginning before Jan. 1, 1954, and ending after Dec. 31, 1953.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 132 of Pub. L. 88–272 provided in part that subsec. (d) of this section was amended by such section 132 effective with respect to taxable years ending after Dec. 31, 1963.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6013 of this title.

PART IV.—CREDITS AGAINST TAX

Subpart
A. Credits allowable.
B. Rules for computing credit for investment in certain depreciable property.

SUBPART A—CREDITS ALLOWABLE

Sec.
31. Tax withheld on wages.
32. Tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds.
33. Taxes of foreign countries and possessions of the United States.
35. Partially tax-exempt interest received by individuals.
36. Credits not allowed to individuals paying optional tax or taking standard deduction.
37. Retirement income.
38. Investment in certain depreciable property.
39. Certain uses of gasoline, special fuels, and lubricating oil.
40. Overpayments of tax.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 207(d)(10), May 21, 1970, 84 Stat. 249, inserted ", special fuels," after "gasoline" in item 39.

1965—Pub. L. 89–44, title VIII, § 809(d)(1), June 21, 1965, 79 Stat. 167, added item 39 and redesignated former item 39 as 40.

1964—Pub. L. 88–272, title II, § 201(d)(1), Feb. 26, 1964, 78 Stat. 32, deleted item 34.

1962—Pub. L. 87–834, § 2(g) (1), (2), Oct. 16, 1962, 76 Stat. 972, 973, added the headings of subparts A and B and item 38, and redesignated former item 38 as 39.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6154, 6425, 6455 of this title.

§ 31. Tax withheld on wages.

(a) Wage withholding for income tax purposes.

(1) In general.

The amount withheld under section 3402 as tax on the wages of any individual shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(2) Year of credit.

The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) Credit for special refunds of social security tax.

(1) In general.

The Secretary or his delegate may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary (or his delegate) to be allowable under section 6413 (c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) Year of credit.

Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(Aug. 16, 1954, ch. 736, 68A Stat. 12.)

CROSS REFERENCES

Amount allowable as credit under this section exceeding taxes imposed by chapter 1 considered as overpayment, see section 6401 (b) of this title.

Time tax collected at source deemed paid, see section 6513 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 874, 6211, 6401, 6413, 6513, 6654 of this title.

§ 32. Tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds.

There shall be allowed as credits against the tax imposed by this chapter—

(1) the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations), and

(2) the amount of tax withheld at source under subchapter B of chapter 3 (relating to interest on tax-free covenant bonds).

(Aug. 16, 1954, ch. 736, 68A Stat. 13.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 37, 874, 882, 6096, 6211 of this title.

§ 33. Taxes of foreign countries and possessions of the United States.

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901. (Aug. 16, 1954, ch. 736, 68A Stat. 13.)

CROSS REFERENCES

Foreign tax credit, see section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 36, 37, 56, 1351, 1851, 6096 of this title.

§ 34. Repealed. Pub. L. 88–272, title II, § 201(b), Feb. 26, 1964, 78 Stat. 31.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 13; June 25, 1959, Pub. L. 86–69, § 3(a)(1), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, § 10(e), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, § 201(a), 78 Stat. 31, related to dividends received by individuals.

EFFECTIVE DATE OF REPEAL

Section 201(b) of Pub. L. 88–272 provided in part that this section is repealed effective with respect to dividends received after Dec. 31, 1964.

§ 35. Partially tax-exempt interest received by individuals.

(a) In general.

There shall be allowed to an individual, as a credit against the tax imposed by this subtitle for the taxable year, an amount equal to 3 percent of the amount received as interest on obligations of the

United States or on obligations of corporations organized under Act of Congress which are instrumentalities of the United States, but only if—

(1) such interest is included in gross income; and

(2) such interest is exempt from normal tax under the Act authorizing the issuance of such obligations.

(b) Limitation on amount of credit.

The credit allowed by subsection (a) shall not exceed whichever of the following is the lesser:

(1) the amount of the tax imposed by this chapter for the taxable year, reduced by the credit allowable under section 33; or

(2) 3 percent of the taxable income for the taxable year.

(c) Certain nonresident aliens ineligible for credit.

No credit shall be allowed under subsection (a) to a nonresident alien individual with respect to whom a tax is imposed for the taxable year under section 871 (a).

(d) Cross reference.

For reduction of credit under this section on account of amortizable bond premium, see section 171.

(Aug 16, 1954, ch. 736, 68A Stat. 14; Sept. 2, 1958, Pub. L. 85-866, title I, § 41(b), 72 Stat. 1639; Feb. 26, 1964, Pub. L. 88-272, title II, § 201(d)(2), 78 Stat. 32.)

AMENDMENTS

1964—Subsec. (b)(1). Pub. L. 88-272 substituted "the credit allowable under section 33" for "the sum of the credits allowable under sections 33 and 34."

1958—Subsec. (c). Pub. L. 85-866 added subsec. (c). Former subsec. (c) redesignated as (d).

Subsec. (d). Pub. L. 85-866 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 201(e) of Pub. L. 88-272 provided that: "The amendments made by subsection (a) [to section 34 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [repealing section 34 of this title] shall apply with respect to taxable years ending after December 31, 1964. The amendment made by subsection (c) [to section 116(a) of this title] shall apply with respect to taxable years beginning after December 31, 1963. The amendments made by subsection (d) [to this section, the analysis preceding section 31, and sections 37, 46, 116(c)(3), 584, 642, 702, 854, 857, 871, 1375 and 6014 of this title] shall apply with respect to dividends received after December 31, 1964, in taxable years ending after such date".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (c) and (d) by Pub. L. 85-866 applicable only to taxable years beginning after Dec. 31, 1957, see section 41(c) of Pub. L. 85-866, set out as a note under section 871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 37, 171, 551, 584, 642, 702, 1402, 6096 of this title.

§ 36. Credits not allowed to individuals paying optional tax or taking standard deduction.

If an individual elects to pay the optional tax imposed by section 3, or if he elects under section 144 to take the standard deduction, the credits provided by sections 32, 33, and 35 shall not be allowed. (Aug. 16, 1954, ch. 736, 68A Stat. 15.)

§ 37. Retirement income.

(a) General rule.

In the case of an individual who has received earned income before the beginning of the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 17 percent, in the case of a taxable year beginning in 1964, or 15 percent, in the case of a taxable year beginning after December 31, 1964, of the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)); but this credit shall not exceed such tax reduced by the credits allowable under section 32(2) (relating to tax withheld at source on tax-free covenant bonds), section 33 (relating to foreign tax credit), and section 35 (relating to partially tax exempt interest).

(b) Individual who has received earned income.

For purposes of subsection (a), an individual shall be considered to have received earned income if he has received, in each of any 10 calendar years before the taxable year, earned income (as defined in subsection (g)) in excess of $600. A widow or widower whose spouse had received such earned income shall be considered to have received earned income.

(c) Retirement income.

For purposes of subsection (a), the term "retirement income" means—

(1) in the case of an individual who has attained the age of 65 before the close of the taxable year, income from—

(A) pensions and annuities (including in the case of an individual who is, or has been, an employee within the meaning of section 401 (c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501 (a)),

(B) interest,

(C) rents,

(D) dividends, and

(E) bonds described in section 405(b)(1) which are received under a qualified bond purchase plan described in section 405(a) or in a distribution from a trust described in section 401(a) which is exempt from tax under section 501(a), or

(2) in the case of an individual who has not attained the age of 65 before the close of the taxable year, income from pensions and annuities under a public retirement system (as defined in subsection (f)),

to the extent included in gross income without reference to this section, but only to the extent such income does not represent compensation for personal services rendered during the taxable year.

(d) Limitation on retirement income.

For purposes of subsection (a), the amount of retirement income shall not exceed $1,524 less—

(1) in the case of any individual, any amount received by the individual as a pension or annuity—

(A) under title II of the Social Security Act,

(B) under the Railroad Retirement Acts of 1935 or 1937, or

(C) otherwise excluded from gross income, and

(2) in the case of any individual who has not attained age 72 before the close of the taxable year—

(A) if such individual has not attained age 62 before the close of the taxable year, any amount of earned income (as defined in subsection (g) in excess of $900 received by such individual in the taxable year, or

(B) if such individual has attained age 62 before the close of the taxable year, the sum of (i) one-half the amount of earned income received by such individual in the taxable year in excess of $1,200 but not in excess of $1,700, and (ii) the amount of earned income so received in excess of $1,700.

(e) Rule for application of subsection (d) (1).

Subsection (d) (1) shall not apply to any amount excluded from gross income under section 72 (relating to annuities), 101 (relating to life insurance proceeds), 104 (relating to compensation for injuries or sickness), 105 (relating to amounts received under accident and health plans), 402 (relating to taxability of beneficiary of employees' trust), or 403 (relating to taxation of employee annuities).

(f) Public retirement system defined.

For purposes of subsection (c) (2), the term "public retirement system" means a pension, annuity, retirement, or similar fund or system established by the United States, a State, a Territory, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

(g) Earned income defined.

For purposes of subsections (b) and (d) (2), the term "earned income" has the meaning assigned to such term in section 911 (b), except that such term does not include any amount received as a pension or annuity.

(h) Nonresident alien ineligible for credit.

No credit shall be allowed under subsection (a) to any nonresident alien.

(i) Special rules for certain married couples.

(1) Election.

A husband and wife who make a joint return for the taxable year and both of whom have attained the age of 65 before the close of the taxable year may elect (at such time and in such manner as the Secretary or his delegate by regulations prescribes) to determine the amount of the credit allowed by subsection (a) by applying the provisions of paragraph (2).

(2) Special rules.

If an election is made under paragraph (1) for the taxable year, for purposes of subsection (a)—

(A) if either spouse is an individual who has received earned income within the meaning of subsection (b), the other spouse shall be considered to be an individual who has received earned income within the meaning of such subsection; and

(B) subsection (d) shall be considered as providing that the amount of the combined retirement income of both spouses shall not exceed $2,286, less the sum of the amounts specified in paragraphs (1) and (2) of subsection (d) for each spouse.

(j) Cross reference.

For disallowance of credit where tax is computed by Secretary or his delegate, see section 6014 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 15; Aug. 9, 1955, ch. 659, § 1, 69 Stat. 591; Jan. 28, 1956, ch. 17, § 1, 70 Stat. 8; Oct. 10, 1962, Pub. L. 87–792; § 7(a), 76 Stat. 828; Oct. 24, 1962, Pub. L. 87–876, § 1, 76 Stat. 1199; Feb. 26, 1964, Pub. L. 88–272, title I, § 113(a), title II, §§ 201(d)(3), 202(a), 78 Stat. 24, 32, 33.)

REFERENCES IN TEXT

Title II of the Social Security Act, referred to in subsec. (d), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

The Railroad Retirement Act of 1935, referred to in subsec. (d), was classified to former sections 215—228 of Title 45, Railroads, and was amended by, and incorporated in, the Railroad Retirement Act of 1937.

The Railroad Retirement Act of 1937, referred to in subsec. (d), is classified to section 228a et seq. of Title 45, Railroads.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–272, §§ 113(a), 201(d)(3), substituted "an amount equal to 17 percent, in the case of a taxable year beginning in 1964, or 15 percent, in the case of a taxable year beginning after December 31, 1964, of the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d));" for "an amount equal to the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)), multiplied by the rate provided in section 1 for the first $2,000 of taxable income;", and eliminated "section 34 (relating to credit for dividends received by individuals)", preceding "and section 35."

Subsec. (i). Pub. L. 88–272, § 202(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 88–272, § 202(a), redesignated former subsec. (i) as (j).

1962—Subsec. (c)(1). Pub. L. 87–792 inserted provisions in subpar. (A) requiring inclusion, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a), and added subpar. (E).

Subsec. (d). Pub. L. 87–876 increased the limit on retirement income from $1,200 to $1,524, lowered the age requirement in par. (2)(A) from 65 to 62, and substituted provisions in par. (2)(B) which reduce the amount of retirement income for individuals who reach age 62, by one-half the amount of earned income in excess of $1,200 but not in excess of $1,700, and by the amount received over $1,700, for provisions which reduced such income by the amount earned over $1,200 by persons having reached age 65, and which defined income as in subsec. (g) of this section.

1956—Subsec. (d)(2). Act Jan. 28, 1956, reduced from 75 to 72 the age at which there will be no limitation on earned income and increased from $900 to $1,200 the amount that an individual over 65 can earn without reducing the $1,200 on which the retirement credit is computed.

1955—Subsec. (f). Act Aug. 9, 1955, extended the retirement income tax credit to members of the Armed Forces.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (a) by section 113(a) of Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment of subsec. (a) by section 201(d)(3) of Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272 set out as a note under section 35 of this title.

Section 202(b) of Pub. L. 88-272 provided that: "The amendments made by subsection (a) [to this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2 of Pub. L. 87-876 provided that: "The amendment made by the first section of this Act [to subsec. (d) of this section] shall apply only to taxable years ending after the date of the enactment of this Act [Oct. 24, 1962]."

Section 8 of Pub. L. 87-792 provided that: "The amendments made by this Act [enacting sections 405 and 6047 of this title, and amending this section and sections 62, 72, 101, 104, 105, 172, 401—404, 503, 805, 1361, 2039, 2517, 3306, 3401 and 7207 of this title] shall apply to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: "The amendment made by the first section of this Act [to subsec. (d) (2)] shall apply only with respect to taxable years beginning after December 31, 1955."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 9, 1955, provided that: "The amendment made by this Act [to subsec. (f)] shall be applicable to taxable years beginning after December 31, 1954."

CROSS REFERENCES

Dividends received credit not allowed on distributions of electing small business corporations, see section 1375 of this title.

Disallowance of credit where tax is computed by Secretary or his delegate, see section 6014 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 56, 1375, 6014, 6096 of this title.

§ 38. Investment in certain depreciable property.

(a) General rule.

There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart B of this part.

(b) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart B. (Added Pub. L. 87-834, § 2(a), Oct. 16, 1962, 76 Stat. 962.)

EFFECTIVE DATE

Section 2(h) of Pub. L. 87-834 provided that: "The amendments made by this section [adding this section and sections 46—48 and 181 of this title, amending sections 381, 1016, 6501, 6511, 6601 and 6611 of this title, and redesignating former section 38 as section 39 of this title] shall apply with respect to taxable years ending after December 31, 1961."

SHORT TITLE

Section 1(a) of Pub. L. 87-834 provided that: "This Act [adding this section and sections 46—48, 78, 181, 182, 274, 595, 669, 823—826, 951—964, 970—972, 1245—1249, 1381—1383, 1385, 1388, 6048, 6049 and 6677—6679 of this title, amending sections 72, 162, 167, 170, 179, 216, 245, 263, 301, 312, 318, 341, 381, 453, 501, 521, 535, 545, 591, 593, 613, 642, 643, 665, 666, 668, 751, 821, 822, 831, 832, 841, 861, 901, 902, 904, 911, 1016, 1201, 1223, 1307, 2031, 2033—2038, 2040, 2041, 4382, 6038, 6041, 6042, 6044, 6046, 6072, 6501, 6511, 6601, 6611, 6652 and 7701 of this title, and section 1464 of Title 12, Banks and Banking, redesignating section 38 as section 39 of this title and section 823 as section 822(f) of this title, repealing section 522 of this title, enacting provisions set out as notes under this section and sections 72, 162, 170, 216, 301, 593, 595, 643, 821, 902, 904, 911, 951, 1245, 1246, 1248, 1249, 1307, 1371, 1374, 1381, 2031, 4382, 6038, 6042, 6046, 7701 and 7852 of this title and under section 1984 of Title 50, Appendix, War and National Defense, and amending section 188 of the Internal Revenue Code of 1939] may be cited as the 'Revenue Act of 1962'."

TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES

Pub. L. 88-272, title II, § 203(e), Feb. 26, 1964, 78 Stat. 35, provided that:

"It was the intent of the Congress in providing an investment credit under section 38 of the Internal Revenue Code of 1954, and it is the intent of the Congress in repealing the reduction in basis required by section 48(g) of such Code, to provide an incentive for modernization and growth of private industry (including that portion thereof which is regulated). Accordingly, Congress does not intend that any agency or instrumentality of the United States having jurisdiction with respect to a taxpayer shall, without the consent of the taxpayer, use—

"(1) in the case of public utility property (as defined in section 46(c)(3)(B) of the Internal Revenue Code of 1954), more than a proportionate part (determined with reference to the average useful life of the property with respect to which the credit was allowed) of the credit against tax allowed for any taxable year by section 38 of such Code, or

"(2) in the case of any other property, any credit against tax allowed by section 38 of such Code,

to reduce such taxpayer's Federal income taxes for the purpose of establishing the cost of service of the taxpayer or to accomplish a similar result by any other method."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 48, 49, 51, 56, 167, 169, 185, 381, 1016, 1351, 6096, 6601 of this title.

§ 39. Certain uses of gasoline, special fuels, and lubricating oil.

(a) General rule.

There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(h)),

(2) under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)),

(3) under section 6424 with respect to lubricating oil used during the taxable year otherwise than in a highway motor vehicle (determined without regard to section 6424(g)), and

(4) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(f)).

(b) Transitional rules.

For purposes of paragraphs (1) and (2) of subsection (a), a taxpayer's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year. For purposes of paragraph (3) of subsection (a), a taxpayer's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

(c) Exception.

Credit shall not be allowed under subsection (a) for any amount payable under section 6421, 6424, or 6427, if a claim for such amount is timely filed, and

under section 6421(i), 6424(g), or 6427(f) is payable, under such section. (Added Pub. L. 89–44, title VIII, § 809(c), June 21, 1965, 79 Stat. 167, and amended Pub. L. 91–258, title II, § 207(c), May 21, 1970, 84 Stat. 248.)

AMENDMENTS

1970—Pub. L. 91–258, § 207(c)(1), inserted reference to special fuels in the catchline.

Subsec. (a). Pub. L. 91–258, § 207(c)(2), added par. (4).

Subsec. (c). Pub. L. 91–258, § 207(c)(3), (4), inserted references to sections 6427 and 6427(f), respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

SHORT TITLE

Section 1(a) of Pub. L. 89–44 provided that: "This Act [adding this section and sections 4094 and 6424 of this title, amending sections 72, 874, 1314, 1481, 4041, 4055, 4057, 4061, 4063, 4082, 4091, 4101, 4161, 4216, 4218, 4221, 4222, 4227, 4251, 4252, 4253, 4254, 4261, 4261 note, 4262, 4291, 4361, 4371, 4374, 4402, 4461, 4462, 4901, 4905, 4914, 5001, 5002, 5004, 5008, 5022, 5025, 5041, 5051, 5053, 5062, 5083, 5215, 5223, 5234, 5382, 5383, 5384, 5385, 5392, 5608, 5701, 5701 note, 5702, 5704, 5705, 5711, 5741, 5753, 5762, 5763, 6011, 6040, 6103, 6201, 6206, 6211, 6213, 6334, 6401, 6412, 6415, 6416, 6420, 6421, 6501, 6675, 6802, 6806, 6808, 7012, 7103, 7210, 7232, 7272, 7326, 7603, 7604, 7605, and 7652 of this title and section 120 note of Title 23, redesignating section 39 of this title as section 40 and subchapters E, F, and G of chapter 52 of this title as subchapters D, E, and F respectively, repealing sections 4001—4003, 4011—4013, 4021, 4022, 4031, 4051—4053, 4111, 4121, 4131, 4141—4143, 4151, 4171—4173, 4191, 4192, 4201, 4211, 4224, 4231—4234, 4241—4243, 4286, 4287, 4301—4305, 4311—4315, 4321—4324, 4331—4333, 4341—4346, 4351—4354, 4381, 4451—4457, 4712—4474, 5063, 5707, 5731, 5732, and 7275 of this title, and enacting provisions set out as notes under sections 501, 4041, 4061, 4063, 4082, 4251, 4261, 4262, 4287, 4291, 4361, 4374, 4402, 4461, 4905, 5002, 5008, 5025, 5041, 5383, 5701, 5702, 5705, 6103, 6334, 6412, 6420, and 6501 of this title] may be cited as the 'Excise Tax Reduction Act of 1965'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 874, 882, 1378, 6201, 6211, 6401 of this title.

§ 40. Overpayments of tax.

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, § 40, formerly § 38, renumbered § 39, Oct. 16, 1962, Pub. L. 87–834, § 2(a), 76 Stat. 962; renumbered § 40, June 21, 1965, Pub. L. 89–44, title VIII, § 809(c), 79 Stat. 167.)

SUBPART B—RULES FOR COMPUTING CREDIT FOR INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY

Sec.
46. Amount of credit.
47. Certain dispositions, etc., of section 38 property.
48. Definitions; special rules.
49. Termination of credit.

AMENDMENTS

1969—Pub. L. 91–172, title VII, § 703(d), Dec. 30, 1969, 83 Stat. 667, added item 49.

1962—Pub. L. 87–834, § 2(b), Oct. 16, 1962, 76 Stat. 963, added subpart B.

§ 46. Amount of credit.

(a) Determination of amount.

(1) General rule.

The amount of the credit allowed by section 38 for the taxable year shall be equal to 7 percent of the qualified investment (as defined in subsection (c)).

(2) Limitation based on amount of tax.

Notwithstanding paragraph (1), the credit allowed by section 38 for the taxable year shall not exceed—

(A) so much of the liability for tax for the taxable year as does not exceed $25,000, plus

(B) for taxable years ending on or before the last day of the suspension period (as defined in section 48(j)), 25 percent of so much of the liability for tax for the taxable year as exceeds $25,000, or

(C) for taxable years ending after the last day of such suspension period, 50 percent of so much of the liability for tax for the taxable year as exceeds $25,000.

In applying subparagraph (C) to a taxable year beginning on or before the last day of such suspension period and ending after the last day of such suspension period, the percent referred to in such subparagraph shall be the sum of 25 percent plus the percent which bears the same ratio to 25 percent as the number of days in such year after the last day of the suspension period bears to the total number of days in such year. The amount otherwise determined under this paragraph shall be reduced (but not below zero) by the credit which would have been allowable under paragraph (1) for such taxable year with respect to suspension period property but for the application of section 48(h)(1).

(3) Liability for tax.

For purposes of paragraph (2), the liability for tax for the taxable year shall be the tax imposed by this chapter for such year, reduced by the sum of the credits allowable under—

(A) section 33 (relating to foreign tax credit),

(B) section 35 (relating to partially tax-exempt interest), and

(C) section 37 (relating to retirement income).

For purposes of this paragraph, any tax imposed for the taxable year by section 56 (relating to minimum tax for tax preferences), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax) and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), or section 1378 (relating to tax on certain capital gains of subchapter S corporation), and shall not be considered tax imposed by this chapter for such year.

(4) Married individuals.

In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (2) shall be $12,500 in lieu of $25,000. This paragraph shall

not apply if the spouse of the taxpayer has no qualified investment for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(5) Controlled groups.

In the case of a controlled group, the $25,000 amount specified under paragraph (2) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary or his delegate shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to such term by section 1563(a).

(b) Carryback and carryover of unused credits.

(1) Allowance of credit.

If the amount of the credit determined under subsection (a)(1) for any taxable year exceeds the limitation provided by subsection (a)(2) for such taxable year (hereinafter in this subsection referred to as "unused credit year"), such excess shall be—

(A) an investment credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) an investment credit carryover to each of the 7 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by section 38 for such years, except that such excess may be a carryback only to a taxable year ending after December 31, 1961. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(2) Limitation.

The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a)(2) for such taxable year exceeds the sum of—

(A) the credit allowable under subsection (a)(1) for such taxable year, and

(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and attributable to taxable years preceding the unused credit year.

(3) Repealed. Pub. L. 90-225, § 2(a), Dec. 27, 1967, 81 Stat. 731.

(4) Taxable year beginning before January 1, 1962.

For purposes of determining the amount of an investment credit carryback that may be added under paragraph (1) for a taxable year beginning before January 1, 1962, and ending after December 31, 1961, the amount of the limitation provided by subsection (a)(2) is the amount which bears the same ratio to such limitation as the number of days in such year after December 31, 1961, bears to the total number of days in such year.

(5) Taxable years beginning after December 31, 1968, and ending after April 18, 1969.

The amount which may be added under this subsection for any taxable year beginning after December 31, 1968, and ending after April 18, 1969, shall not exceed 20 percent of the higher of—

(A) the aggregate of the investment credit carrybacks and investment credit carryovers to the taxable year, or

(B) the highest amount computed under subparagraph (A) for any preceding taxable year which began after December 31, 1968, and ended after April 18, 1969.

(6) Additional 3-year carryover period in certain cases.

Any portion of an investment credit carryback or carryover to any taxable year beginning after December 31, 1968, and ending after April 18, 1969, which—

(A) may be added under this subsection under the limitations provided by paragraph (2), and

(B) may not be added under the limitation provided by paragraph (5),

shall be an investment credit carryover to each of the 3 taxable years following the last taxable year for which such portion may be added under paragraph (1), and shall (subject to the provisions of paragraphs (1), (2), and (5)) be added to the amount allowable as a credit by section 38 for such years.

(c) Qualified investment.

(1) In general.

For purposes of this subpart, the term "qualified investment" means, with respect to any taxable year, the aggregate of—

(A) the applicable percentage of the basis of each new section 38 property (as defined in section 48(b)) placed in service by the taxpayer during such taxable year, plus

(B) the applicable percentage of the cost of each used section 38 property (as defined in section 48(c)(1)) placed in service by the taxpayer during such taxable year.

(2) Applicable percentage.

For purposes of paragraph (1), the applicable percentage for any property shall be determined under the following table:

If the useful life is—	The applicable percentage is—
4 years or more but less than 6 years	33⅓
6 years or more but less than 8 years	66⅔
8 years or more	100

For purposes of this paragraph, the useful life of any property shall be determined as of the time such property is placed in service by the taxpayer.

(3) Public utility property.

(A) In the case of section 38 property which is public utility property, the amount of the qualified investment shall be 3/7 of the amount determined under paragraph (1)

(B) For purposes of subparagraph (A), the term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(i) electrical energy, water, or sewage disposal services,

(ii) gas through a local distribution system,

(iii) telephone service, or

(iv) telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C., sec. 222(a)(5)),

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(4) Certain replacement property.

For purposes of paragraph (1), if section 38 property is placed in service by the taxpayer to replace property which was—

(A) destroyed or damaged by fire, storm, shipwreck, or other casualty, or

(B) stolen,

the basis of such section 38 property (in the case of new section 38 property), or the cost of such section 38 property (in the case of used section 38 property), which (but for this paragraph) would be taken into account under paragraph (1) shall be reduced by an amount equal to the amount received by the taxpayer as compensation, by insurance or otherwise, for the property so destroyed, damaged, or stolen, or to the adjusted basis of such property, whichever is the lesser. No reduction in basis or cost shall be made under the preceding sentence in any case in which the reduction in qualified investment attributable to the substitution required by section 47(a)(1) with respect to the property so destroyed, damaged, or stolen (determined without regard to section 47(a)(4)) is greater than the reduction described in the preceding sentence.

(d) Limitations with respect to certain persons.

(1) In general.

In the case of—

(A) an organization to which section 593 applies,

(B) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (sec. 851 and following), and

(C) a cooperative organization described in section 1381(a),

the qualified investment and the $25,000 amount specified under subparagraphs (A) and (B) of subsection (a)(2) shall equal such person's ratable share of such items.

(2) Ratable share.

For purposes of paragraph (1), the ratable share of any person for any taxable year of the items described therein shall be—

(A) in the case of an organization referred to in paragraph (1)(A), 50 percent thereof,

(B) in the case of a regulated investment company or a real estate investment trust, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income computed without regard to the deduction for dividends paid provided by section 852(b)(2)(D) or 857(b)(2)(C), as the case may be, and

(C) in the case of a cooperative organization, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income increased by amounts to which section 1382(b) or (c) applies and similar amounts the tax treatment of which is determined without regard to subchapter T (sec. 1381 and following).

For purposes of subparagraph (B) of the preceding sentence, the term "taxable income" means in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b)(2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b)(2)).

(Added Pub. L. 87–834, § 2(b), Oct. 16, 1962, 76 Stat. 963, and amended Pub. L. 88–272, title II, § 201(d)(4), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89–384, § 1(c)(1), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–389, § 2(b)(5), Apr. 14, 1966, 80 Stat. 114; Pub. L. 89–800, § 3, Nov. 8, 1966, 80 Stat. 1514; Pub. L. 90–225, § 2(a), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–172, title III, § 301(b)(4), title IV, § 401(e)(1), title VII, § 703(b), Dec. 30, 1969, 83 Stat. 585, 603, 666.)

AMENDMENTS

1969—Subsec. (a)(3). Pub. L. 91–172, § 301(b)(4), inserted reference to "section 56 (relating to minimum tax for tax preference),".

Subsec. (a)(5). Pub. L. 91–172, § 401(e)(1), reenacted subsection with minor changes and substituted reference to section 1563(a) for reference to section 1504.

Subsec. (b). Pub. L. 91–172, § 703(b), added pars. (5) and (6).

1967—Subsec. (b). Pub. L. 90–225 struck out par. (3), which provided that to the extent that the excess described in par. (1) of this subsection arises by reason of net operating loss carryback, subpar. (A) of par. (1) of this subsection shall not apply.

1966—Subsec. (a)(2). Pub. L. 89–800, § 3(a), added "for taxable years ending on or before the last day of the suspension period (as defined in section 48(j))," at the beginning of subpar. (B), and added subpar. (C) and the provisions following subpar. (C) covering the application of subpar. (C) and the reduction of the amount otherwise determined under par. (2) by the credit allowable but for the application of section 48(h)(1).

Subsec. (a)(3). Pub. L. 89–389 inserted reference to tax imposed for the taxable year by section 1378 (relating to tax on certain capital gains of subchapter S corporations) in the list of taxes not to be considered tax imposed by this chapter for purposes of par. (3).

Pub. L. 89–384 added any additional tax imposed for the taxable year by section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes not to be considered a tax imposed by this chapter for purposes of par. (3).

Subsec. (b)(1). Pub. L. 89-800, § 3(b), substituted "7 taxable years" for "5 taxable years" in subpar. (B) and "10 taxable years" and "other 9 taxable years" for "8 taxable years" and "other 7 taxable years" respectively in the material following subpar. (B).

1964—Subsec. (a)(3). Pub. L. 88-272 deleted subpar. (B) relating to section 34, and redesignated subpars. (C) and (D) as (B) and (C), respectively.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(3) of this section by section 301(b)(4) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91-172, set out as a note under section 56 of this title.

Amendment of subsec. (a)(5) of this section by section 401(e)(1) of Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2(g) of Pub. L. 90-225 provided that: "The amendments made by this section [amending subsec. (b)(3) of this section and sections 6411(a), 6501(j), 6511(d)(4)(A), 6601(e)(2), and 6611(f)(2) of this title] shall apply with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967."

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 4 of Pub. L. 89-800 provided that: "The amendments made by this Act [amending subsec. (a)(2) of this section and sections 48 and 167 of this title] shall apply to taxable years ending after October 9, 1966, except that the amendments made by section 3(b) [amending subsec. (b)(1) of this section] shall apply only if the fifth taxable year following the unused credit year ends after December 31, 1966."

Amendment of subsec. (a)(3) of this section by Pub. L. 89-389 applicable with respect to taxable years of electing small business corporations beginning after April 14, 1966, but not applicable with respect to sales or exchanges occurring before February 24, 1966, see section 2(c) of Pub. L. 89-389, set out as a note under section 1378 of this title.

Amendment of subsec. (a)(3) by Pub. L. 89-384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89-384, set out as a note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 35 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as a note under section 38 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48, 6411 of this title.

§ 47. Certain dispositions, etc., of section 38 property.

(a) General rule.

Under regulations prescribed by the Secretary or his delegate—

(1) Early disposition, etc.

If during any taxable year any property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, before the close of the useful life which was taken into account in computing the credit under section 38, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from substituting, in determining qualified investment, for such useful life the period beginning with the time such property was placed in service by the taxpayer and ending with the time such property ceased to be section 38 property.

(2) Property becomes public utility property.

If during any taxable year any property taken into account in determining qualified investment becomes public utility property (within the meaning of section 46(c)(3)(B)), then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from treating the property, for purposes of determining qualified investment, as public utility property (after giving due regard to the period before such change in use). If the application of this paragraph to any property is followed by the application of paragraph (1) to such property, proper adjustment shall be made in applying paragraph (1).

(3) Carrybacks and carryovers adjusted.

In the case of any cessation described in paragraph (1) or any change in use described in paragraph (2), the carrybacks and carryovers under section 46(b) shall be adjusted by reason of such cessation (or change in use).

(4) Property destroyed by casualty, etc.

No increase shall be made under paragraph (1) and no adjustment shall be made under paragraph (3) in any case in which—

(A) any property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, on account of its destruction or damage by fire, storm, shipwreck, or other casualty, or by reason of its theft,

(B) section 38 property is placed in service by the taxpayer to replace the property described in subparagraph (A), and

(C) the reduction in basis or cost of such section 38 property described in the first sentence of section 46(c)(4) is equal to or; greater than the reduction in qualified investment which (but for this paragraph) would be made by reason of the substitution required by paragraph (1) with respect to the property described in subparagraph (A).

Subparagraphs (B) and (C) shall not apply with respect to any casualty or theft occurring after April 18, 1969.

(5) Certain property replaced after April 18, 1969.

In any case in which—

(A) section 38 property is disposed of, and

(B) property which would be section 38 property but for section 49 is placed in service by the taxpayer to replace the property disposed of,

the increase under paragraph (1) and the adjustment under paragraph (3) shall not be greater than the increase or adjustment which would result if the qualified investment of the property described in subparagraph (B) (determined as if

such property were section 38 property) were substituted for the qualified investment of the property disposed of (as determined under paragraph (1)). Except in the case of a disposition by reason of a casualty or theft occurring before April 19, 1969, the preceding sentence shall apply only if the section 38 property disposed of is replaced within 6 months after the date of such disposition.

(6) Aircraft used outside the United States after April 18, 1969.

(A) General rule.—

Any aircraft which was new section 38 property for the taxable year in which it was placed in service and which is used outside the United States under a qualifying lease or leases shall be treated as not ceasing to be section 38 property by reason of such use until such aircraft has been so used for a period or periods exceeding 4 years in total. For purposes of the preceding sentence, the registration of such aircraft under the laws of a foreign country shall be treated as use outside the United States.

(B) Computation of qualified investment.—

If an aircraft described in subparagraph (A) is disposed of or otherwise ceases to be section 38 property, the increase under paragraph (1) and the adjustment under paragraph (3) shall not be greater than the increase or adjustment which would result if the qualified investment of such aircraft were based upon a useful life equal to the lesser of (i) the actual useful life of such aircraft with respect to the taxpayer, or (ii) twice the number of full calendar months during which such aircraft was registered by the Administrator of the Federal Aviation Agency and was used in the United States, operated to and from the United States, or operated under contract with the United States. For purposes of the preceding sentence, an aircraft shall be treated as used in the United States for any calendar month beginning after such aircraft was placed in service, if such month is included in a taxable year ending before January 1, 1971, for which such aircraft was section 38 property (determined without regard to this paragraph).

(C) Qualifying lease defined.—

For purposes of subparagraph (A) the term "qualifying lease" means a lease from an air carrier (as defined in section 101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301)) which complies with the provisions of the Federal Aviation Act of 1958, as amended, and the rules and regulations promulgated by the Civil Aeronautics Board thereunder, but only if such lease was executed after April 18, 1969.

(b) Section not to apply in certain cases.

Subsection (a) shall not apply to—

(1) a transfer by reason of death, or

(2) a transaction to which section 381(a) applies.

For purposes of subsection (a), property shall not be treated as ceasing to be section 38 property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as section 38 property and the taxpayer retains a substantial interest in such trade or business.

(c) Special rule.

Any increase in tax under subsection (a) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A. (Added Pub. L. 87-834, § 2(b), Oct. 16, 1962, 76 Stat. 966, and amended Pub. L. 91-172, title VII, § 703(c), Dec. 30, 1969, 83 Stat. 666; Pub. L. 91-676, § 1, Jan. 12, 1971, 84 Stat. 2060.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 91-676 added par. (6).

1969—Subsec. (a). Pub. L. 91-172, § 703(c)(2), added par. (5).

Subsec. (a)(4). Pub. L. 91-172, § 703(c)(1), added provision making subpars. (B) and (C) inapplicable to any casualty or theft occurring after April 18, 1969.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 91-676 provided that: "The amendment made by the first section of this Act [enacting subsec. (a)(6) of this section] shall apply to taxable years ending after April 18, 1969."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as a note under section 38 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 49, 51 of this title.

§ 48. Definitions; special rules.

(a) Section 38 property.

(1) In general.

Except as provided in this subsection, the term "section 38 property" means—

(A) tangible personal property, or

(B) other tangible property (not including a building and its structural components) but only if such property—

(i) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) constitutes a research or storage facility used in connection with any of the activities referred to in clause (i), or

(C) elevators and escalators, but only if—

(i) the construction, reconstruction, or erection of the elevator or escalator is completed by the taxpayer after June 30, 1963, or

(ii) the elevator or escalator is acquired after June 30, 1963, and the original use of such elevator or escalator commences with the taxpayer and commences after such date.

Such term includes only property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and having a useful life (determined as of the time such property is placed in service) of 4 years or more.

(2) Property used outside the United States.

(A) In general.

Except as provided in subparagraph (B), the term "section 38 property" does not include property which is used predominantly outside the United States.

(B) Exceptions.

Subparagraph (A) shall not apply to—

(i) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(ii) rolling stock, of a domestic railroad corporation subject to part I of the Interstate Commerce Act, which is used within and without the United States;

(iii) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(iv) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(v) any container of a United States person which is used in the transportation of property to and from the United States;

(vi) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C., sec. 1331); and

(vii) any property which is owned by a domestic corporation (other than a corporation entitled to the benefits of section 931 or 934 (b)) or by a United States citizen (other than a citizen entitled to the benefits of section 931, 932, 933, or 934(c)) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States.

(3) Property used for lodging.

Property which is used predominantly to furnish lodging or in connection with the furnishing of lodging shall not be treated as section 38 property. The preceding sentence shall not apply to—

(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities, and

(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients.

(4) Property used by certain tax-exempt organizations.

Property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter shall be treated as section 38 property only if such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(c)), the basis or cost of such property for purposes of computing qualified investment under section 46(c) shall include only that percentage of the basis or cost which is the same percentage as is used under section 514(b), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property.

(5) Property used by governmental units.

Property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing shall not be treated as section 38 property.

(6) Livestock.

Livestock shall not be treated as section 38 property.

(b) New section 38 property.

For purposes of this subpart, the term "new section 38 property" means section 38 property—

(1) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1961, or

(2) acquired after December 31, 1961, if the original use of such property commences with the taxpayer and commences after such date.

In applying section 46(c)(1)(A) in the case of property described in paragraph (1), there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1961.

(c) Used section 38 property.

(1) In general.

For purposes of this subpart, the term "used section 38 property" means section 38 property acquired by purchase after December 31, 1961, which is not new section 38 property. Property shall not be treated as "used section 38 property" if, after its acquisition by the taxpayer, it is used by a person who used such property before such acquisition (or by a person who bears a relationship described in section 179(d)(2) (A) or (B) to a person who used such property before such acquisition).

(2) Dollar limitation.

(A) In general.

The cost of used section 38 property taken into account under section 46(c)(1)(B) for any taxable year shall not exceed $50,000. If such cost exceeds $50,000, the taxpayer shall select (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe) the items to be taken into account, but only to the extent of an aggregate cost of $50,000. Such a selection, once made, may be changed only in the manner, and to the extent, provided by such regulations.

(B) Married individuals.

In the case of a husband or wife who files a separate return, the limitation under subparagraph (A) shall be $25,000 in lieu of $50,000. This subparagraph shall not apply if the spouse of the taxpayer has no used section 38 property which may be taken into account as qualified

investment for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(C) Controlled groups.

In the case of a controlled group, the $50,000 amount specified under subparagraph (A) shall be reduced for each component member of the group by apportioning $50,000 among the component members of such group in accordance with their respective amounts of used section 38 property which may be taken into account.

(D) Partnerships.

In the case of a partnership, the limitation contained in subparagraph (A) shall apply with respect to the partnership and with respect to each partner.

(3) Definitions.

For purposes of this subsection—

(A) Purchase.

The term "purchase" has the meaning assigned to such term by section 179(d) (2).

(B) Cost.

The cost of used section 38 property does not include so much of the basis of such property as is determined by reference to the adjusted basis of other property held at any time by the person acquiring such property. If property is disposed of (other than by reason of its destruction or damage by fire, storm, shipwreck, or other casualty, or its theft) and used section 38 property similar or related in service or use is acquired as a replacement therefor in a transaction to which the preceding sentence does not apply, the cost of the used section 38 property acquired shall be its basis reduced by the adjusted basis of the property replaced. The cost of used section 38 property shall not be reduced with respect to the adjusted basis of any property disposed of if, by reason of section 47, such disposition involved an increase of tax or a reduction of the unused credit carrybacks or carryovers described in section 46(b).

(C) Controlled group.

The term "controlled group" has the meaning assigned to such term by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(d) Certain leased property.

A person (other than a person referred to in section 46(d)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary or his delegate) elect with respect to any new section 38 property to treat the lessee as having acquired such property for an amount equal to—

(1) except as provided in paragraph (2), the fair market value of such property, or

(2) if such property is leased by a corporation which is a component member of a controlled group (within the meaning of section 46(a)(5)) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

The election provided by the preceding sentence may be made only with respect to property which would be new section 38 property if acquired by the lessee. For purposes of the preceding sentence and section 46(c), the useful life of property in the hands of the lessee is the useful life of such property in the hands of the lessor. If a lessor makes the election provided by this subsection with respect to any property, the lessee shall be treated for all purposes of this subpart as having acquired such property. In the case of suspension period property which is leased and is property of a kind which the lessor ordinarily leases to one lessee for a substantial portion of the useful life of the property, the lessor of the property shall be deemed to have elected to treat the first such lessee as having acquired such property for purposes of applying the last sentence of section 46(a)(2). In the case of section 38 property which (i) is leased after October 9, 1966 (other than pursuant to a binding contract to lease entered into before October 10, 1966), (ii) is not suspension period property with respect to the lessor but is suspension period property if acquired by the lessee, and (iii) is property of the same kind which the lessor ordinarily sold to customers before October 10, 1966, or ordinarily leased before such date and made an election under this subsection, the lessor of such property shall be deemed to have made an election under this subsection with respect to such property.

(e) Subchapter S corporations.

In the case of an electing small business corporation (as defined in section 1371)—

(1) the qualified investment for each taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year; and

(2) any person to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be.

(f) Estates and trusts.

In the case of an estate or trust—

(1) the qualified investment for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each,

(2) any beneficiary to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be, and

(3) the $25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(2) applicable to such estate or trust shall be reduced

to an amount which bears the same ratio to $25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) bears to the entire amount of the qualified investment.

(g) Repealed. Pub. L. 88–272, title II, § 203(a)(1), Feb. 26, 1964, 78 Stat. 33.

(h) Suspension of investment credit.

For purposes of this subpart—

(1) General rule.

Section 38 property which is suspension period property shall not be treated as new or used section 38 property.

(2) Suspension period property defined.

Except as otherwise provided in this subsection and subsection (i), the term "suspension period property" means section 38 property—

(A) the physical construction, reconstruction, or erection of which (i) is begun during the suspension period, or (ii) is begun, pursuant to an order placed during such period, before May 24, 1967, or

(B) which (i) is acquired by the taxpayer during the suspension period, or (ii) is acquired by the taxpayer, pursuant to an order placed during such period, before May 24, 1967.

In applying subparagraph (A) to any section 38 property, there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection before May 24, 1967.

(3) Binding contracts.

To the extent that any property is constructed, reconstructed, erected, or acquired pursuant to a contract which was, on October 9, 1966, and at all times thereafter, binding on the taxpayer, such property shall not be deemed to be suspension period property.

(4) Equipped building rule.

If—

(A) pursuant to a plan of the taxpayer in existence on October 9, 1966 (which plan was not substantially modified at any time after such date and before the taxpayer placed the equipped building in service), the taxpayer has constructed, reconstructed, erected, or acquired a building and the machinery and equipment necessary to the planned use of the building by the taxpayer, and

(B) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such building as so equipped is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date,

then all section 38 property comprising such building as so equipped (and any incidental section 38 property adjacent to such building which is necessary to the planned use of the building) shall be treated as section 38 property which is not suspension period property. For purposes of subparagraph (B) of the preceding sentence, the rules of paragraphs (3) and (6) shall be applied. For purposes of this paragraph, a special purpose structure shall be treated as a building.

(5) Plant facility rule.

(A) General rule.

If—

(i) pursuant to a plan of the taxpayer in existence on October 9, 1966 (which plan was not substantially modified at any time after such date and before the taxpayer placed the plant facility in service), the taxpayer has constructed, reconstructed, or erected a plant facility, and either

(ii) the construction, reconstruction, or erection of such plant facility was commenced by the taxpayer before October 10, 1966, or

(iii) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facility is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date.

then all section 38 property comprising such plant facility shall be treated as section 38 property which is not suspension period property. For purposes of clause (iii) of the preceding sentence, the rules of paragraphs (3) and (6) shall be applied.

(B) Plant facility defined.

For purposes of this paragraph, the term "plant facility" means a facility which does not include any building (or of which buildings constitute an insignificant portion) and which is—

(i) a self-contained, single operating unit or processing operation,

(ii) located on a single site, and

(iii) identified, on October 9, 1966, in the purchasing and internal financial plans of the taxpayer as a single unitary project.

(C) Special rule.

For purposes of this subsection, if—

(i) a certificate of convenience and necessity has been issued before October 10, 1966, by a Federal regulatory agency with respect to two or more plant facilities which are included under a single plan of the taxpayer to construct, reconstruct, or erect such plant facilities, and

(ii) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facilities is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date,

such plant facilities shall be treated as a single plant facility.

(D) Commencement of construction

For purposes of subparagraph (A)(ii), the construction, reconstruction, or erection of a plant facility shall not be considered to have commenced until construction, reconstruction,

or erection has commenced at the site of such plant facility. The preceding sentence shall not apply if the site of such plant facility is not located on land.

(6) Machinery or equipment rule.

Any piece of machinery or equipment—

(A) more than 50 percent of the parts and components of which (determined on the basis of cost) were held by the taxpayer on October 9, 1966, or are acquired by the taxpayer pursuant to a binding contract which was in effect on such date, for inclusion or use in such piece of machinery or equipment, and

(B) the cost of the parts and components of which is not an insignificant portion of the total cost,

shall be treated as property which is not suspension period property.

(7) Certain lease-back transactions, etc.

Where a person who is a party to a binding contract described in paragraph (3) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains a right to use the property under a lease with such other person, then to the extent of the transferred rights such other person shall, for purposes of paragraph (3), succeed to the position of the transferor with respect to such binding contract and such property. The preceding sentence shall apply, in any case in which the lessor does not make an election under subsection (d), only if a party to such contract retains a right to use the property under a long-term lease.

(8) Certain lease and contract obligations.

Where, pursuant to a binding lease or contract to a binding lease or contract in effect on October 9, 1966, a lessor or lessee is obligated to construct, reconstruct, erect, or acquire property specified in such lease or contract, any property so constructed, reconstructed, erected, or acquired by the lessor or lessee which is section 38 property shall be treated as property which is not suspension period property. In the case of any project which includes property other than the property to be leased to such lessee, the preceding sentence shall be applied, in the case of the lessor, to such other property only if the binding leases and contracts with all lessees in effect on October 9, 1966, cover real property constituting 25 percent or more of the project (determined on the basis of rental value). For purposes of the preceding sentences of this paragraph, in the case of any project where one or more vendor-vendee relationships exist, such vendors and vendees shall be treated as lessors and lessees. Where, pursuant to a binding contract in effect on October 9, 1966, (i) the taxpayer is required to construct, reconstruct, erect, or acquire property specified in the contract, to be used to produce one or more products, and (ii) the other party is required to take substantially all of the products to be produced over a substantial portion of the expected useful life of the property, then such property shall be treated is property which is not suspension period property. Clause (ii) of the preceding sentence shall not apply if a political subdivision of a State is the other party to the contract and is required by the contract to make substantial expenditures which benefit the taxpayer.

(9) Certain transfers to be disregarded.

(A) If property or rights under a contract are transferred in—

(i) a transfer by reason of death, or

(ii) a transaction as a result of which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of sections 332, 351, 371(a), 374(a), 721, or 731,

and such property (or the property acquired under such contract) would not be treated as suspension period property in the hands of the decedent or the transferor, such property shall not be treated as suspension period property in the hands of the transferee.

(B) If—

(i) property or rights under a contract are acquired in a transaction to which section 334(b)(2) applies,

(ii) the stock of the distributing corporation was acquired before October 10, 1966, or pursuant to a binding contract in effect October 9, 1966, and

(iii) such property (or the property acquired under such contract) would not be treated as suspension period property in the hands of the distributing corporation,

such property shall not be treated as suspension period property in the hands of the distributee.

(10) Property acquired from affiliated corporation.

For purposes of this subsection, in the case of property acquired by a corporation which is a member of an affiliated group from another member of the same group—

(A) such corporation shall be treated as having acquired such property on the date on which it was acquired by such other member,

(B) such corporation shall be treated as having entered into a binding contract for the construction, reconstruction, erection, or acquisition of such property on the date on which such other member entered into a contract for the construction, reconstruction, erection, or acquisition of such property, and

(C) such corporation shall be treated as having commenced the construction, reconstruction, or erection of such property on the date on which such other member commenced such construction, reconstruction, or erection.

For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to it by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(11) Certain tangible property constructed during suspension period and leased new thereafter.

Tangible personal property constructed or reconstructed by a person shall not be suspension period property if—

(A) such person leases such property after the close of the suspension period and the original use of such property commences after the close of such period,

(B) such construction or reconstruction, and such lease transaction, was not pursuant to an order placed during the suspension period, and

(C) an election is made under subsection (d) with respect to such property which satisfies the requirements of such subsection.

(12) Water and air pollution control facilities.

(A) In general.

Any water pollution control facility or air pollution control facility shall be treated as property which is not suspension period property.

(B) Water pollution control facility.

For purposes of subparagraph (A), the term "water pollution control facility" means any section 38 property which—

(i) is used primarily to control water pollution by removing, altering, or disposing of wastes, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances; and

(ii) is certified by the State water pollution control agency (as defined in section 13(a) of the Federal Water Pollution Control Act) as being in conformity with the State program or requirements for control of water pollution and is certified by the Secretary of Interior as being in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act.

(C) Air pollution control facility.

For purposes of subparagraph (A), the term "air pollution control facility" means any section 38 property which—

(i) is used primarily to control atmospheric pollution or contamination by removing, altering, or disposing of atmospheric pollutants or contaminants; and

(ii) is certified by the State air pollution control agency (as defined in section 302(b) of the Clean Air Act) as being in conformity with the State program or requirements for control of air pollution and is certified by the Secretary of Health, Education, and Welfare as being in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of air pollution under the Clean Air Act.

(D) Standards for facility.

Subparagraph (A) shall apply in the case of any facility only if the taxpayer constructs, reconstructs, erects, or acquires such facility in furtherance of Federal, State, or local standards for the control of water pollution or atmospheric pollution or contaminants.

(13) Certain replacement property.

Section 38 property constructed, reconstructed, erected, or acquired by the taxpayer shall be treated as property which is not suspension period property to the extent such property is placed in service to replace property which was—

(A) destroyed or damaged by fire, storm, shipwreck, or other casualty, or

(B) stolen,

but only to the extent the basis (in the case of new section 38 property) or cost (in the case of used section 38 property) of such section 38 property does not exceed the adjusted basis of the property destroyed, damaged, or stolen.

(i) Exemption from suspension of $20,000 of investment.

(1) In general.

In the case of property acquired by the taxpayer by purchase for use in his trade or business which would (but for this subsection) be suspension period property, the taxpayer may select items to which this subsection applies, to the extent of an aggregate cost, for the suspension period, of $20,000. Any item so selected shall be treated as property which is not suspension period property for purposes of this subpart (other than for purposes of paragraphs (4), (5), (6), (7), (8), (9), and (10) of subsection (h)).

(2) Applicable rules.

Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided by paragraphs (2) and (3) of subsection (c) shall be applied for purposes of this subsection. Subsection (d) shall not apply with respect to any item to which this subsection applies.

(j) Suspension period.

For purposes of this subpart, the term "suspension period" means the period beginning on October 10, 1966, and ending on March 9, 1967.

(k) Cross reference.

For application of this subpart to certain acquiring corporations, see section 381(c)(23).

(Added Pub. L. 87-834, § 2(b), Oct. 16, 1962, 76 Stat. 967, and amended Pub. L. 88-272, title II, § 203(a)(1), (3) (A), (b), (c), Feb. 26, 1964, 78 Stat. 33, 34; Pub. L. 89-800, § 1 Nov. 8, 1966, 80 Stat. 1508; Pub. L. 89-809, title II, § 201(a), Nov. 13, 1966, 80

Stat. 1575; Pub. L. 90–26, §§ 1, 2(a), 3, June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title I, § 121(d)(2)(A), title IV, § 401(e)(2)–(4), Dec. 30, 1969, 83 Stat. 547, 603.)

REFERENCES IN TEXT

Part I of the Interstate Commerce Act, referred to in subsec. (a)(2), is classified to chapter 1 of Title 49, Transportation.

The Federal Water Pollution Control Act, referred to in subsec. (h)(12)(B)(ii), is classified to section 1151 et seq. of Title 33, Navigation and Navigable Waters, and section 13(a) of the Act is classified to section 1163 of Title 33.

The Clean Air Act, referred to in subsec. (h)(12)(C)(ii), is classified to chapter 15B of Title 42, Public Health and Welfare, and section 302(b) of the Act is classified to section 1857h(b) of Title 42.

AMENDMENTS

1969—Subsec. (a)(4). Pub. L. 91–172, § 121(d)(2)(A), added provision relating to the percentage of the basis or cost of debt-financed property that may be considered in computing qualified investment under section 46(c) of this title.

Subsec. (c)(2)(C). Pub. L. 91–172, § 401(e)(2), reenacted subsection with minor changes and substituted reference to controlled group for reference to affiliated group.

Subsec. (c)(3)(C). Pub. L. 91–172, § 401(e)(3), substituted definition of controlled group for definition of affiliated group.

Subsec. (d)(2). Pub. L. 91–172, § 401(e)(4), substituted reference to a component member of a controlled group for reference to a member of an affiliated group.

1967—Subsec. (a)(2)(B)(i). Pub. L. 90–26, § 3, added "or is operated under contract with the United States" following "the United States".

Subsec. (h)(2). Pub. L. 90–26, § 2(a), limited the definition of suspension period property to section 38 property where the physical construction, reconstruction or erection was begun before May 24, 1967, pursuant to an order placed during the suspension period, subject to the proviso that in applying the definition to property the physical construction, reconstruction or erection of which was begun before May 24, 1967, only that portion of the basis properly attributable to construction, reconstruction or erection before May 24, 1967 be taken into account.

Subsec. (j). Pub. L. 90–26, § 1, substituted "March 9, 1967" for "December 31, 1967."

1966—Subsec. (a)(2)(B). Pub. L. 89–809 added clause (vii).

Subsec. (d). Pub. L. 89–800, § 1(b), added provisions covering the treatment of suspension period property, and the elections to be deemed made in connection therewith.

Subsec. (h). Pub. L. 89–800, § 1(a), added subsec. (h). Former subsec. (h) redesignated as subsec. (k).

Subsecs. (i), (j). Pub. L. 89–800, § 1(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 89–800, § 1(a), redesignated former subsec. (h) as subsec. (k).

1964—Subsec. (a)(1)(C). Pub. L. 88–272, § 203(c)(2), added subpar. (C).

Subsec. (d). Pub. L. 88–272, § 203(a)(3)(A), (b), substituted "except as provided in paragraph (2)" for "if such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c))" in par. (1), "if such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5) to another corporation which is a member of the same affiliated group" for "if paragraph (1) does not apply" in par. (2), and deleted provisions which stated that if a lessor made an election under this subsection, subsec. (g) would not apply with respect to such property, and deductions otherwise allowable under section 162 to the lessee for amounts paid the lessor would be adjusted consistent with subsec. (g).

Subsec. (g). Pub. L. 88–272, § 203(a)(1), repealed subsec. (g) which required that the basis of section 38 property be reduced by 7 percent of the qualified investment.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(4) by section 121(d)(2)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

Amendment of subsecs. (c)(2)(C), (c)(3)(C) and (d)(2) of this section by section 401(e)(2)–(4) of Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4 of Pub. L. 90–26 provided that: "The amendments made by the first three sections of this Act [amending subsecs. (a)(2), (h)(2), and (j) of this section, and subsecs. (i)(1) and (i)(3) of section 167 of this title] shall apply to taxable years ending after March 9, 1967."

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 201(b) of Pub. L. 89–809 provided that: "The amendments made by subsection (a) [adding subsec. (a)(2)(B)(vii) of this section] shall apply to taxable years ending after December 31, 1965, but only with respect to property placed in service after such date. In applying section 46(b) of the Internal Revenue Code of 1954 (relating to carryback and carryover of unused credits) [section 46(b) of this title], the amount of any investment credit carryback to any taxable year ending on or before December 31, 1965, shall be determined without regard to the amendments made by this section."

Amendment of this section by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 203(a)(4) of Pub. L. 88–272 provided that:

"Paragraphs (1) [repealing subsec. (g) of this section] and (3) [amending subsec. (d) of this section, the analysis preceding section 161, and section 1016 of this title and repealing section 181 of this title] of this subsection shall apply—

"(A) in the case of property placed in service after December 31, 1963, with respect to taxable years ending after such date, and

"(B) in the case of property placed in service before January 1, 1964, with respect to taxable years beginning after December 31, 1963."

Section 203(f) of Pub. L. 88–272 provided that:

"(1) The amendments made by subsection (b) [to subsec. (d)(1)(2) of this section] shall apply with respect to property possession of which is transferred to a lessee on or after the date of enactment of this Act [Feb. 26, 1964].

"(2) The amendments made by subsection (c) [to subsec. (a)(1)(c) of this section] shall apply with respect to taxable years ending after June 30, 1963.

"(3) The amendments made by subsection (d) [to section 1245 of this title] shall apply with respect to dispositions after December 31, 1963, in taxable years ending after such date."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 38 of this title.

INCREASE IN BASIS OF PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1964

Section 203(a)(2) of Pub. L. 88–272 provided that:

"(A) The basis of any section 38 property (as defined in section 48(a) of the Internal Revenue Code of 1954) placed in service before January 1, 1964, shall be increased, under regulations prescribed by the Secretary of the

Treasury or his delegate, by an amount equal to 7 percent of the qualified investment with respect to such property under section 46(c) of the Internal Revenue Code of 1954. If there has been any increase with respect to such property under section 48(g)(2) of such Code, the increase under the preceding sentence shall be appropriately reduced therefor.

"(B) If a lessor made the election provided by section 48(d) of the Internal Revenue Code of 1954 with respect to property placed in service before January 1, 1964—

"(i) subparagraph (A) shall not apply with respect to such property, but

"(ii) under regulations prescribed by the Secretary of the Treasury or his delegate, the deductions otherwise allowable under section 162 of such Code to the lessee for amounts paid to the lessor under the lease (or, if such lessee has purchased such property, the basis of such property) shall be adjusted in a manner consistent with subparagraph (A).

"(C) The adjustments under this paragraph shall be made as of the first day of the taxpayer's first taxable year which begins after December 31, 1963."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 49, 167, 169, 185, 1016, 4914, 4915, 4920, 4931 of this title.

§ 49. Termination of credit.

(a) General rule.

For purposes of this subpart, the term "section 38 property" does not include property—

(1) the physical construction, reconstruction, or erection of which is begun after April 19, 1969, or

(2) which is acquired by the taxpayer after April 18, 1969, other than pre-termination property.

(b) Pre-termination property.

For purposes of this section—

(1) Binding contracts.

Any property shall be treated as pre-termination property to the extent that such property is constructed, reconstructed, erected, or acquired pursuant to a contract which was, on April 18, 1969, and at all times thereafter, binding on the taxpayer.

(2) Equipped building rule.

If—

(A) pursuant to a plan of the taxpayer in existence on April 18, 1969 (which plan was not substantially modified at any time after such date and before the taxpayer placed the equipped building in service), the taxpayer has constructed, reconstructed, erected, or acquired a building and the machinery and equipment necessary to the planned use of the building by the taxpayer, and

(B) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such building as so equipped is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before April 19, 1969, or property the acquisition of which by the taxpayer occurred before such date,

then all property comprising such building as so equipped (and any incidental property adjacent to such building which is necessary to the planned use of the building) shall be pre-termination property. For purposes of subparagraph (B) of the preceding sentence, the rules of paragraphs (1) and (4) shall be applied. For purposes of this paragraph, a special purpose structure shall be treated as a building.

(3) Plant facility rule.

(A) General rule.

If—

(i) pursuant to a plan of the taxpayer in existence on April 18, 1969 (which plan was not substantially modified at any time after such date and before the taxpayer placed the plant facility in service), the taxpayer has constructed, reconstructed, or erected a plant facility, and either

(ii) the construction, reconstruction, or erection of such plant facility was commenced by the taxpayer before April 19, 1969, or

(iii) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facility is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before April 19, 1969, or property the acquisition of which by the taxpayer occurred before such date,

then all property comprising such plant facility shall be pre-termination property. For purposes of clause (iii) of the preceding sentence, the rules of paragraphs (1) and (4) shall be applied.

(B) Plant facility defined.

For purposes of this paragraph, the term "plant facility" means a facility which does not include any building (or of which buildings constitute an insignificant portion) and which is—

(i) a self-contained, single operating unit or processing operation,

(ii) located on a single site, and

(iii) identified, on April 18, 1969, in the purchasing and internal financial plans of the taxpayer as a single unitary project.

(C) Special rule.

For purposes of this subsection, if—

(i) a certificate of convenience and necessity has been issued before April 19, 1969, by a Federal regulatory agency with respect to two or more plant facilities which are included under a single plan of the taxpayer to construct, reconstruct, or erect such plant facilities, and

(ii) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facilities is attributable to either property the construction, reconstruction, or erection of which was begun

by the taxpayer before April 19, 1969, or property the acquisition of which by the taxpayer occurred before such date,

such plant facilities shall be treated as a single plant facility.

(D) Commencement of construction.

For purposes of subparagraph (A)(ii), the construction, reconstruction, or erection of a plant facility shall not be considered to have commenced until construction, reconstruction, or erection has commenced at the site of such plant facility. The preceding sentence shall not apply if the site of such plant facility is not located on land.

(4) Machinery or equipment rule.

Any piece of machinery or equipment—

(A) more than 50 percent of the parts and components of which (determined on the basis of cost) were held by the taxpayer on April 18, 1969, or are acquired by the taxpayer pursuant to a binding contract which was in effect on such date, for inclusion or use in such piece of machinery or equipment, and

(B) the cost of the parts and components of which is not an insignificant portion of the total cost,

shall be treated as property which is pre-termination property.

(5) Certain lease-back transactions, etc.

(A) Where a person who is a party to a binding contract described in paragraph (1) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains a right to use the property under a lease with such other person, then to the extent of the transferred rights such other person shall, for purposes of paragraph (1), succeed to the position of the transferor with respect to such binding contract and such property. In any case in which the lessor does not make an election under section 48(d)—

(i) the preceding sentence shall apply only if a party to the contract retains the right to use the property under a lease for a term of at least 1 year; and

(ii) if such use is retained (other than under a long-term lease), the lessor shall be deemed for the purposes of section 47 as having made a disposition of the property at such time as the lessee loses the right to use the property.

For purposes of clause (ii), if the lessee transfers the lease in a transfer described in paragraph (7), the lessee shall be considered as having the right to use of the property so long as the transferee has such use.

(B) For purposes of subparagraph (A)—

(i) a person who holds property (or rights in property) which is pre-termination property by reason of the application of paragraph (4) shall, with respect to such property, be treated as a party to a binding contract described in paragraph (1), and

(ii) a corporation which is a member of the same affiliated group (as defined in paragraph (8)) as the transferor described in subparagraph (A) and which simultaneously with the transfer of property to another person acquires a right to use such property under a lease with such other person shall be treated as the transferor and as a party to the contract.

(6) Certain lease and contract obligations.

(A) Where, pursuant to a binding lease or contract to lease in effect on April 18, 1969, a lessor or lessee is obligated to construct, reconstruct, erect, or acquire property specified in such lease or contract or in a related document filed before April 19, 1969, with a Federal regulatory agency or property the specifications of which are readily ascertainable from the terms of such lease or contract or from such related document, any property so constructed, reconstructed, erected, or acquired by the lessor or lessee shall be pre-termination property. In the case of any project which includes property other than the property to be leased to such lessee, the preceding sentence shall be applied, in the case of the lessor, to such other property only if the binding leases and contracts with all lessees in effect on April 18, 1969, cover real property constituting 25 percent or more of the project (determined on the basis of rental value). For purposes of the preceding sentences of this paragraph, in the case of any project where one or more vendor-vendee relationships exist, such vendors and vendees shall be treated as lessors and lessees.

(B) Where in order to perform a binding contract or contracts in effect on April 18, 1969, (i) the taxpayer is required to construct, reconstruct, erect, or acquire property specified in any order of a Federal regulatory agency for which application was filed before April 19, 1969, (ii) the property is to be used to transport one or more products under such contract or contracts, and (iii) one or more parties to the contract or contracts are required to take or to provide more than 50 percent of the products to be transported over a substantial portion of the expected useful life of the property, then such property shall be pre-termination property.

(C) Where, in order to perform a binding contract in effect on April 18, 1969, the taxpayer is required to construct, reconstruct, erect, or acquire property specified in the contract to be used to produce one or more products and (unless the other party to the contract is a State or a political subdivision of a State which is required by the contract to make substantial expenditures which benefit the taxpayer) the other party to the contract is required to take substantially all of the products to be produced over

a substantial portion of the expected useful life of the property, then such property shall be pre-termination property. For purposes of applying the preceding sentence in the case of a contract for the extraction of minerals, property shall be treated as specified in the contract if (i) the specifications for such property are readily ascertainable from the location and characteristics of the mineral properties specified in such contract from which the minerals are to be extracted; (ii) such property is necessary for and is to be used solely in the extraction of minerals under such contract; (iii) the physical construction, reconstruction, or erection of such property is begun by the taxpayer before April 19, 1970, such property is acquired by the taxpayer before April 19, 1970, or such property is constructed, reconstructed, erected, or acquired pursuant to a contract which was, on April 18, 1970, and at all times thereafter, binding on the taxpayer; (iv) such property is placed in service on or before December 31, 1972; (v) such contract is a fixed price contract (except for provisions for price changes under which the loss of the credit allowed by section 38 would not result in a price change); and (vi) such property is not placed in service to replace other property used in extracting minerals under such contract.

(7) Certain transfers to be disregarded.

(A) If property or rights under a contract are transferred in—

(i) a transfer by reason of death,

(ii) a transaction as a result of which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371 (a), 374(a), 721, or 731, or

(iii) a sale of substantially all of the assets of the transferor pursuant to the terms of a contract, which was on April 18, 1969, and at all times thereafter, binding on the transferee,

and such property (or the property acquired under such contract) would be treated as pre-termination property in the hands of the decedent or the transferor, such property shall be treated as pre-termination property in the hands of the transferee.

(B) If—

(i) property or rights under a contract are acquired in a transaction to which section 334 (b)(2) applies,

(ii) the stock of the distributing corporation was acquired before April 19, 1969, or pursuant to a binding contract in effect April 18, 1969, and

(iii) such property (or the property acquired under such contract) would be treated as pre-termination property in the hands of the distributing corporation,

such property shall be treated as pre-termination property in the hands of the distributee.

(8) Property acquired from affiliated corporation.

In the case of property acquired by a corporation which is a member of an affiliated group from another member of the same group—

(A) such corporation shall be treated as having acquired such property on the date on which it was acquired by such other member,

(B) such corporation shall be treated as having entered into a binding contract for the construction, reconstruction, erection, or acquisition of such property on the date on which such other member entered into a contract for the construction, reconstruction, erection, or acquisition of such property, and

(C) such corporation shall be treated as having commenced the construction, reconstruction, or erection of such property on the date on which such other member commenced such construction, reconstruction, or erection.

For the purposes of this subsection and subsection (c), a contract between two corporations which are members of the same affiliated group shall not be treated as a binding contract as between such corporations, unless, at all times after June 30, 1969, and prior to the completion of performance of such contract, such corporations are not members of the same affiliated group. For purposes of the preceding sentences, the term "affiliated group" has the meaning assigned to it by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(9) Barges for ocean-going vessels.

Barges specifically designed and constructed, reconstructed, erected, or acquired for use with ocean-going vessels which are designed to carry barges and which are pre-termination property, but not in excess of—

(A) the number to be used with such vessels specified in applications for mortgage or construction loan insurance filed with the Secretary of Commerce on or before April 18, 1969, under title XI of the Merchant Marine Act, 1936, or

(B) if subparagraph (A) does not apply and if more than 50 percent of the barges which the taxpayer establishes as necessary to the initial planned use of such vessels are pre-termination property (determined without regard to this paragraph), the number which the taxpayer establishes as so necessary,

together with the machinery and equipment to be installed on such barges and necessary for their planned use, shall be treated as pre-termination property.

(10) Certain new-design products.

Where—

(A) on April 18, 1969, the taxpayer had undertaken a project to produce a product of a new design pursuant to binding contracts in effect on such date which—

(i) were fixed-price contracts (except for provisions requiring or permitting price changes resulting from changes in rates of pay or costs of materials), and

(ii) covered more than 50 percent of the entire production of such design to be delivered by the taxpayer before January 1, 1973, and

(B) on or before April 18, 1969, more than 50 percent of the aggregate adjusted basis of all property of a character subject to the allowance for depreciation required to carry out such binding contracts was property the construction, reconstruction, or erection of which had been begun by the taxpayer, or had been acquired by the taxpayer (or was under a binding contract for such construction, reconstruction, erection, or acquisition),

then all tangible personal property placed in service by the taxpayer before January 1, 1972, which is required to carry out such binding contracts shall be deemed to be pre-termination property. For purposes of subparagraph (B) of the preceding sentence, jigs, dies, templates, and similar items which can be used only for the manufacture or assembly of the production under the project and which were described in written engineering and internal financial plans of the taxpayer in existence on April 18, 1969, shall be treated as property which on such date was under a binding contract for construction.

(c) Leased property.

In the case of property which is leased after April 18, 1969 (other than pursuant to a binding contract to lease entered into before April 19, 1969), which is section 38 property with respect to the lessor but is property which would not be section 38 property because of the application of subsection (a) if acquired by the lessee, and which is property of the same kind which the lessor ordinarily sold to customers before April 19, 1969, or ordinarily leased before such date and made an election under section 48(d), such property shall not be section 38 property with respect to either the lessor or the lessee.

(d) Property placed in service after 1975.

For purposes of this subpart, the term "section 38 property" does not include any property placed in service after December 31, 1975. (Added Pub. L. 91–172, title VII, § 703(a), Dec. 30, 1969, 83 Stat 660.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47 of this title.

PART V.—TAX SURCHARGE

Sec.
51. Tax surcharge.

AMENDMENTS

1968—Pub. L. 90–364, title I, § 102(a), June 28, 1968, 82 Stat. 252, added the heading of Part V and item 51.

§ 51. Tax surcharge.

(a) Imposition of tax.

(1) Calendar years.

(A) Individuals (other than estates and trusts).

In addition to the other taxes imposed by this chapter, there is hereby imposed on the income of every individual (other than an estate or trust) whose taxable year is the calendar year a tax as follows:

CALENDAR YEAR 1968

TABLE 1.—*Single person (other than head of household) and married person filing separate return*

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$148	0	$380	$393	$29
$148	155	$1	393	407	30
155	162	2	407	420	31
162	168	3	420	433	32
168	175	4	433	447	33
175	182	5	447	460	34
182	188	6	460	473	35
188	195	7	473	487	36
195	202	8	487	500	37
202	208	9	500	513	38
208	215	10	513	527	39
215	222	11	527	540	40
222	228	12	540	553	41
228	235	13	553	567	42
235	242	14	567	580	43
242	248	15	580	593	44
248	255	16	593	607	45
255	262	17	607	620	46
262	268	18	620	633	47
268	275	19	633	647	48
275	282	20	647	660	49
282	288	21	660	673	50
288	298	22	673	687	51
298	313	23	687	700	52
313	327	24	700	713	53
327	340	25	713	727	54
340	353	26	727	734	55
353	367	27	734 and over, 7.5% of the adjusted tax.		
367	380	28			

TABLE 2.—*Head of household*

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$223	0	$410	$417	$29
$223	230	$1	417	423	30
230	237	2	423	430	31
237	243	3	430	437	32
243	250	4	437	447	33
250	257	5	447	460	34
257	263	6	460	473	35
263	270	7	473	487	36
270	277	8	487	500	37
277	283	9	500	513	38
283	290	10	513	527	39
290	297	11	527	540	40
297	303	12	540	553	41
303	310	13	553	567	42
310	317	14	567	580	43
317	323	15	580	593	44
323	330	16	593	607	45
330	337	17	607	620	46
337	343	18	620	633	47
343	350	19	633	647	48
350	357	20	647	660	49
357	363	21	660	673	50
363	370	22	673	687	51
370	377	23	687	700	62
377	383	24	700	713	53
383	390	25	713	727	54
390	397	26	727	734	55
397	403	27	734 and over, 7.5% of the adjusted tax.		
403	410	28			

TABLE 3.—*Married persons or surviving spouse filing joint return*

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$293	0	$420	$427	$20
$293	300	$1	427	433	21
300	307	2	433	440	22
307	313	3	440	447	23
313	320	4	447	453	24
320	327	5	453	460	25
327	333	6	460	467	26
333	340	7	467	473	27
340	347	8	473	480	28
347	353	9	480	487	29
353	360	10	487	493	30
360	367	11	493	500	31
367	373	12	500	507	32
373	380	13	507	513	33
380	387	14	513	520	34
387	393	15	520	527	35
393	400	16	527	533	36
400	407	17	533	540	37
407	413	18	540	547	38
413	420	19	547	553	39

TABLE 3.—*Married persons or surviving spouse filing joint return*—Con.

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
$553	$560	$40	$647	$660	$49
560	567	41	660	673	50
567	573	42	673	687	51
573	580	43	687	700	52
580	593	44	700	713	53
593	607	45	713	727	54
607	620	46	727	734	55
620	633	47	734 and over, 7.5% of the adjusted tax.		
633	647	48			

CALENDAR YEAR 1969

TABLE 1.—*Single person (other than head of household) and married person filing separate return*

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$148	0	$375	$385	$38
$148	153	$1	385	395	39
153	158	2	395	405	40
158	163	3	405	415	41
163	168	4	415	425	42
168	173	5	425	435	43
173	178	6	435	445	44
178	183	7	445	455	45
183	188	8	455	465	46
188	193	9	465	475	47
193	198	10	475	485	48
198	203	11	485	495	49
203	208	12	495	505	50
208	213	13	505	515	51
213	218	14	515	525	52
218	223	15	525	535	53
223	228	16	535	545	54
228	233	17	545	555	55
233	238	18	555	565	56
238	243	19	565	575	57
243	248	20	575	585	58
248	253	21	585	595	59
253	258	22	595	605	60
258	263	23	605	615	61
263	268	24	615	625	62
268	273	25	625	635	63
273	278	26	635	645	64
278	283	27	645	655	65
283	288	28	655	665	66
288	295	29	665	675	67
295	305	30	675	685	68
305	315	31	685	695	69
315	325	32	695	705	70
325	335	33	705	715	71
335	345	34	715	725	72
345	355	35	725	735	73
355	365	36	735 and over, 10% of the adjusted tax		
365	375	37			

TABLE 2.—*Head of household*

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$223	0	$363	$368	$29
$223	228	$1	368	373	30
228	233	2	373	378	31
233	238	3	378	383	32
238	243	4	383	388	33
243	248	5	388	393	34
248	253	6	393	398	35
253	258	7	398	403	36
258	263	8	403	408	37
263	268	9	408	413	38
268	273	10	413	418	39
273	278	11	418	423	40
278	283	12	423	428	41
283	288	13	428	433	42
288	293	14	433	438	43
293	298	15	438	445	44
298	303	16	445	455	45
303	308	17	455	465	46
308	313	18	465	475	47
313	318	19	475	485	48
318	323	20	485	495	49
323	328	21	495	505	50
328	333	22	505	515	51
333	338	23	515	525	52
338	343	24	525	535	53
343	348	25	535	545	54
348	353	26	545	555	55
353	358	27	555	565	56
358	363	28	565	575	57

TABLE 2.—*Head of household*—Continued

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
$575	$585	$58	$665	$675	$67
585	595	59	675	685	68
595	605	60	685	695	69
605	615	61	695	705	70
615	625	62	705	715	71
625	635	63	715	725	72
635	645	64	725	735	73
645	655	65	735 and over, 10% of the adjusted tax		
655	665	66			

TABLE 3.—*Married persons or surviving spouse filing joint return*

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$293	0	$478	$483	$38
$293	298	$1	483	488	39
298	303	2	488	493	40
303	308	3	493	498	41
308	313	4	498	503	42
313	318	5	503	508	43
318	323	6	508	513	44
323	328	7	513	518	45
328	333	8	518	523	46
333	338	9	523	528	47
338	343	10	528	533	48
343	348	11	533	538	49
348	353	12	538	543	50
353	358	13	543	548	51
358	363	14	548	553	52
363	368	15	553	558	53
368	373	16	558	563	54
373	378	17	563	568	55
378	383	18	568	573	56
383	388	19	573	578	57
388	393	20	578	585	58
393	398	21	585	595	59
398	403	22	595	605	60
403	408	23	605	615	61
408	413	24	615	625	62
413	418	25	625	635	63
418	423	26	635	645	64
423	438	27	645	655	65
428	433	28	655	665	66
433	438	29	665	675	67
438	443	30	675	685	68
443	448	31	685	695	69
448	453	32	695	705	70
453	458	33	705	715	71
458	463	34	715	725	72
463	468	35	725	735	73
468	473	36	735 and over, 10% of the adjusted tax		
473	478	37			

CALENDAR YEAR 1970

TABLE 1.—*Single person (other than head of household) and married persons filing separate returns*

If the adjusted tax is: At least—	But less than—	The tax is—	If the adjusted tax is: At least—	But less than—	The tax is—
0	$155	0	$1,060	$1,100	$27
$155	175	$1	1,100	1,140	28
175	195	2	1,140	1,180	29
195	215	3	1,180	1,220	30
215	235	4	1,220	1,260	31
235	255	5	1,260	1,300	32
255	275	6	1,300	1,340	33
275	300	7	1,340	1,380	34
300	340	8	1,380	1,420	35
340	380	9	1,420	1,460	36
380	420	10	1,460	1,500	37
420	460	11	1,500	1,540	38
460	500	12	1,540	1,580	39
500	540	13	1,580	1,620	40
540	580	14	1,620	1,660	41
580	620	15	1,660	1,700	42
620	660	16	1,700	1,740	43
660	700	17	1,740	1,780	44
700	740	18	1,780	1,820	45
740	780	19	1,820	1,860	46
780	820	20	1,860	1,900	47
820	860	21	1,900	1,940	48
860	900	22	1,940	1,980	49
900	940	23	1,980	2,020	50
940	980	24	2,020 and over, 2.5% of the adjusted tax.		
980	1,020	25			
1,020	1,060	26			

TABLE 2.—*Head of household*

If the adjusted tax is:		The tax is—	If the adjusted tax is:		The tax is—
At least—	But less than—		At least—	But less than—	
0	$230	0	$1,060	$1,100	$27
$230	250	$1	1,100	1,140	28
250	270	2	1,140	1,180	29
270	290	3	1,180	1,220	30
290	310	4	1,220	1,260	31
310	330	5	1,260	1,300	32
330	350	6	1,300	1,340	33
350	370	7	1,340	1,380	34
370	390	8	1,380	1,420	35
390	410	9	1,420	1,460	36
410	430	10	1,460	1,500	37
430	460	11	1,500	1,540	38
460	500	12	1,540	1,580	39
500	540	13	1,580	1,620	40
540	580	14	1,620	1,660	41
580	620	15	1,660	1,700	42
620	660	16	1,700	1,740	43
660	700	17	1,740	1,780	44
700	740	18	1,780	1,820	45
740	780	19	1,820	1,860	46
780	820	20	1,860	1,900	47
820	860	21	1,900	1,940	48
860	900	22	1,940	1,980	49
900	940	23	1,980	2,020	50
940	980	24	2,020 and over, 2.5% of the adjusted tax.		
980	1,020	25			
1,020	1,060	26			

TABLE 3.—*Married persons or surviving spouse filing joint return*

If the adjusted tax is:		The tax is—	If the adjusted tax is:		The tax is—
At least—	But less than—		At least—	But less than—	
0	$300	0	$1,060	$1,100	$27
$300	320	$1	1,100	1,140	28
320	340	2	1,140	1,180	29
340	360	3	1,180	1,220	30
360	380	4	1,220	1,260	31
380	400	5	1,260	1,300	32
400	420	6	1,300	1,340	33
420	440	7	1,340	1,380	34
440	460	8	1,380	1,420	35
460	480	9	1,420	1,460	36
480	500	10	1,460	1,500	37
500	520	11	1,500	1,540	38
520	540	12	1,540	1,580	39
540	560	13	1,580	1,620	40
560	580	14	1,620	1,660	41
580	620	15	1,660	1,700	42
620	660	16	1,700	1,740	43
660	700	17	1,740	1,780	44
700	740	18	1,780	1,820	45
740	780	19	1,820	1,860	46
780	820	20	1,860	1,900	47
820	860	21	1,900	1,940	48
860	900	22	1,940	1,980	49
900	940	23	1,980	2,020	50
940	980	24	2,020 and over, 2.5% of the adjusted tax.		
980	1,020	25			
1,020	1,060	26			

(B) Other persons.

In addition to the other taxes imposed by this chapter, there is hereby imposed on the income of every corporation, and on the income of every estate and trust, whose taxable year is the calendar year, a tax equal to the percent of the adjusted tax (as defined in subsection (b)) for the taxable year specified in the following table:

Calendar year	Percent	
	Estates and trusts	Corporations
1968	7.5	10.0
1969	10.0	10.0
1970	2.5	2.5

(2) Fiscal and short taxable years.

(A) In general.

In addition to the other taxes imposed by this chapter and except as provided in subparagraph (B), in the case of taxable years ending on or after the effective date of the surcharge and beginning before July 1, 1970, there is hereby imposed on the income of every person whose taxable year is other than the calendar year, a tax equal to—

(i) 10 percent of the adjusted tax for the taxable year, multiplied by

(ii) a fraction, the numerator of which is the sum of the number of days in the taxable year occurring on and after the effective date of the surcharge and before January 1, 1970, plus one-half times the number of days in the taxable year occurring after December 31, 1969, and before July 1, 1970, and the denominator of which is the number of days in the entire taxable year.

(B) Limitation.

In the case of—

(i) a husband and wife (or surviving spouse) who file a joint return under section 6013 and whose adjusted tax for the taxable year is less than $580,

(ii) an individual who is a head of a household to whom section 1(b) applies and whose adjusted tax for the taxable year is less than $440, and

(iii) any other individual (other than an estate or trust) whose adjusted tax for the taxable year is less than $290,

the tax imposed by subparagraph (A) shall not be greater than an amount equal to twice the tax which would be imposed by subparagraph (A) if the tax were imposed on the amount by which the adjusted tax exceeds $290, $220, or $145, respectively.

(C) Effective date defined.

For the purposes of subparagraph (A), the term "effective date of the surcharge" means—

(i) January 1, 1968, in the case of a corporation, and

(ii) April 1, 1968, in the case of any other taxpayer.

(b) Adjusted tax defined.

For purposes of this section, the term "adjusted tax" means, with respect to any taxable year, the tax imposed by this chapter for such taxable year, determined without regard to—

(1) the taxes imposed by this section, section 56, section 871(a), and section 881; and

(2) any increases in tax under section 47(a) (relating to certain dispositions, etc., of section 38 property) or section 614(c)(4)(C) (relating to increase in tax for deductions under section 615(a) prior to aggregation),

and reduced by an amount equal to the amount of any credit which would be allowable under section 37 (relating to retirement income) if no tax were imposed by this section for such taxable year.

(c) Estimated tax.

For purposes of applying the provisions of this title with respect to declarations, amended declarations, and payments of estimated tax the time prescribed for filing or payment of which is on or after—

(1) in the case of an individual, September 15, 1968, or

(2) in the case of a corporation, June 15, 1968,

sections 6654(d)(1) and 6655(d)(1) shall not apply with respect to any taxable year for which a tax is imposed by this section.

(d) Western Hemisphere trade corporations and dividends on certain preferred stock.

In computing, for a taxable year of a corporation, the fraction described in—

(1) section 244(a)(2), relating to deduction with respect to dividends received on the preferred stock of a public utility,

(2) section 247(a)(2), relating to deduction with respect to certain dividends paid by a public utility, or

(3) section 922(2), relating to special deduction for Western Hemisphere trade corporations,

the denominator shall, under regulations prescribed by the Secretary or his delegate, be increased to reflect the rate at which tax is imposed under subsection (a) for such taxable year.

(e) Shareholders of regulated investment companies.

In computing the amount of tax deemed paid under section 852(b)(3)(D)(ii) and the adjustment to basis described in section 852(b)(3)(D)(iii), the percentages set forth therein shall be adjusted under regulations prescribed by the Secretary or his delegate to reflect the rate at which tax is imposed under subsection (a).

(f) Special rule.

For purposes of this title, to the extent the tax imposed by this section is attributable (under regulations prescribed by the Secretary or his delegate) to a tax imposed by another section of this chapter, such tax shall be deemed to be imposed by such other section. (Added Pub. L. 90–364, title I, § 102(a), June 28, 1968, 82 Stat. 252, and amended Pub. L. 91–53, § 5(a), Aug. 7, 1969, 83 Stat. 93; Pub. L. 91–172, title III, § 301(b)(5), title VII, § 701(a), Dec. 30, 1969, 83 Stat. 585, 657.)

AMENDMENTS

1969—Subsec. (a)(1)(A). Pub. L. 91–172, § 701(a)(1), added tables 1, 2 and 3 for calendar year 1970.

Subsec. (a)(1)(A). Pub. L. 91–53, § 5(a)(1), revised generally tables 1, 2, and 3 for calendar year 1969, substituting a range in the tax surcharge from zero to $73 and 10% of the adjusted tax when $735 and over for prior range from zero to $36 and 5% of the adjusted tax when $730 and over.

Subsec. (a)(1)(B). Pub. L. 91–172, § 701(a)(2), added provision for the imposition of a 2.5 percent surcharge on estates and trusts and on corporations for calendar year 1970.

Subsec. (a)(1)(B). Pub. L. 91–53, § 5(a)(2), substituted in the table for calendar year 1969 10 percent for 5 percent as applicable to income of estates and trusts and corporations.

Subsec. (a)(2)(A). Pub. L. 91–172, § 701(a)(3), substituted "July 1, 1970" for "January 1, 1970" in provisions preceding cl. (i).

Subsec. (a)(2)(A). Pub. L. 91–53, § 5(a)(3), substituted "January 1, 1970" for "July 1, 1969", in two instances.

Subsec. (a)(2)(A)(ii). Pub. L. 91–172, § 701(a)(4), added provision requiring the addition of one-half the number of days in the taxable year occurring after Dec. 31, 1969 and before July 1, 1970, for the purposes of determining the number of days in the taxable year occurring on or after the effective date of the surcharge and before Jan. 1, 1970.

Subsec. (b)(1). Pub. L. 91–172, § 301(b)(5), inserted reference to section 56.

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 5(c) of Pub. L. 91–53 provided that:

"(1) In general.—The amendments made by subsections (a) and (b) [to subsec. (a)(1)(A), (B), (2)(A) of this section and section 963 (b) of this title] shall apply to taxable years ending after June 30, 1969, and beginning before January 1, 1970.

"(2) Declarations of estimated tax.—If any taxpayer is required to make a declaration or amended declaration of estimated tax, or to pay any amount or additional amount of estimated tax, by reason of the amendments made by this section [Aug. 7, 1969], such amount or additional amount shall be paid ratably on or before each of the remaining installment dates for the taxable year beginning with the first installment date on or after the 30th day after the date of enactment of this Act [this title]. With respect to any declaration or payment of estimated tax before such first installment date, sections 6015, 6154, 6654, and 6655 of the Internal Revenue Code of 1954 [this title] shall be applied without regard to the amendments made by this section [to subsec. (a)(1)(A), (B), (2)(A) of this section and section 963(b) of this title]. For purposes of this paragraph, the term installment date means any date on which, under section 6153 or 6154 of such Code (whichever is applicable), and installment payment of estimated tax is required to be made by the taxpayer."

Section 701(c) of Pub. L. 91–172 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 963 of this title] shall apply to taxable years ending after December 31, 1969, and beginning before July 1, 1970."

Amendment of subsec. (b)(1) of this section by section 301(b)(5) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section 102(e) of Pub. L. 90–364 provided that:

"Except as provided by section 104 [set out as notes under this section and section 6154 of this title], the amendments made by this (other than subsection (c)) [enacting this section and amending section 963 of this title], shall apply—

"(1) Insofar as they relate to taxpayers other than corporations, to taxable years ending after March 31, 1968, and beginning before July 1, 1969.

"(2) Insofar as they relate to corporations, to taxable years ending after December 31, 1967, and beginning before July 1, 1969."

SHORT TITLE

Section 1(a) of Pub. L. 90–364 provided that: "This Act [enacting this section and section 6425 of this title, amending sections 103, 243, 276, 501, 963, 3402, 4061, 4251, 6020, 6154, 6412, 6651, 6655, 7203, 7502, and 7701 of this title and sections 603, 607, and 1396b of Title 42, The Public Health and Welfare, repealing sections 6016, 6074, and 4251—4254 of this title, enacting provisions set out as notes under this section, sections 103, 276, 501, 4061, 6154, and 7502 of this title, section 3101 of Title 5, Government Organization and Employees, sections 11 and 757b of Title 31, Money and Finance, and section 1396b of Title 42, Public Health and Welfare, and amending notes under section 1396b of Title 42, The Public Health and Welfare] may be cited as the 'Revenue and Expenditure Control Act of 1968'."

PAYMENT OF TAX SURCHARGE FOR TAXABLE YEARS ENDING BEFORE JUNE 28, 1968

Section 104(b) of Pub. L. 90–364 provided that: "In the case of a taxable year ending before the date of the enactment of this Act [June 28, 1968], the time prescribed for payment of the tax imposed by section 51 of the Internal Revenue Code of 1954 [this section] shall not expire before September 15, 1968."

PART VI—MINIMUM TAX FOR TAX PREFERENCES

Sec.
56. Imposition of tax.
57. Items of tax preference.
58. Rules for application of this part.

AMENDMENTS

1969—Pub. L. 91-172, title III, § 301(a), Dec. 30, 1969, 83 Stat. 580, added Part VI and items 56 to 58.

§ 56. Imposition of tax.

(a) In general.

In addition to the other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every person, a tax equal to 10 percent of the amount (if any) by which—

(1) the sum of the items of tax preference in excess of $30,000, is greater than

(2) the sum of—

(A) the taxes imposed by this chapter for the taxable year (computed without regard to this part and without regard to the taxes imposed by sections 531 and 541) reduced by the sum of the credits allowable under—

(i) section 33 (relating to foreign tax credit),

(ii) section 37 (relating to retirement income), and

(iii) section 38 (relating to investment credit); and

(B) the tax carry overs to the taxable year.

(b) Deferral of tax liability in case of certain net operating losses.

(1) In general.

If for any taxable year a person—

(A) has a net operating loss any portion of which (under section 172) remains as a net operating loss carryover to a succeeding taxable year, and

(B) has items of tax preference in excess of $30,000,

then an amount equal to the lesser of the tax imposed by subsection (a) or 10 percent of the amount of the net operating loss carryover described in subparagraph (A) shall be treated as tax liability not imposed for the taxable year, but as imposed for the succeeding taxable year or years pursuant to paragraph (2).

(2) Year of liability.

In any taxable year in which any portion of the net operating loss carryover attributable to the excess described in paragraph (1)(B) reduces taxable income, the amount of tax liability described in paragraph (1) shall be treated as tax liability imposed in such taxable year in an amount equal to 10 percent of such reduction.

(3) Priority of application.

For purposes of paragraph (2), if any portion of the net operating loss carryover described in paragraph (1)(A) is not attributable to the excess described in paragraph (1)(B), such portion shall be considered as being applied in reducing taxable income before such other portion.

(c) Tax carry overs.

If for any taxable year—

(1) the taxes imposed by this chapter (computed without regard to this part and without regard to the taxes imposed by sections 531 and 541) reduced by the sum of the credits allowable under—

(A) section 33 (relating to foreign tax credit),

(B) section 37 (relating to retirement income), and

(C) section 38 (relating to investment credit),

exceed.

(2) the sum of the items of tax preference in excess of $30,000.

then the excess of the taxes described in paragraph (1) over the sum described in paragraph (2) shall be a tax carry over to each of the 7 taxable years following such year. The entire amount of the excess for a taxable year shall be carried to the first of such 7 taxable years, and then to each of the other such taxable years to the extent that such excess is not used to reduce the amount subject to tax under subsection (a) for a prior taxable year to which excess may be carried. (Added Pub. L. 91-172, title III, § 301(a), Dec. 30, 1969, 83 Stat. 580, and amended Pub. L. 91-614, title V, § 501(a), Dec. 31, 1970, 84 Stat. 1846.)

AMENDMENTS

1970—Subsec. (a)(2). Pub. L. 91-614, § 501(a)(1), substituted the sum of the taxes imposed by this chapter reduced by the sum of the credits allowable under sections 33, 37, and 38 of this title plus the tax carry overs to the taxable year for the taxes imposed by this chapter reduced by the sum of the credits allowable under sections 33, 37, and 38 of this title.

Subsec. (c). Pub. L. 91-614, § 501(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1970 AMENDMENT; DETERMINATION OF EXCESS REFERRED TO IN SUBSEC. (c) OF THIS SECTION IN THE CASE OF A TAXABLE YEAR BEGINNING IN 1969 AND ENDING IN 1970

Section 501(b) of Pub. L. 91-614 provided that:

"The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1969. In the case of a taxable year beginning in 1969 and ending in 1970, the excess referred to in section 56(c) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall be an amount equal to the excess determined under such section (without regard to the sentence) multiplied by a fraction—

"(1) the numerator of which is the number of days in the taxable year occurring after December 31, 1969, and

"(2) the denominator of which is the number of days in the entire taxable year."

EFFECTIVE DATE

Section 301(c) of Pub. L. 91-172 provided that:

"The amendments made by this section [enacting sections 5(a)(5), 12(8), 56 to 58, 443(d), and 511(d), and amending sections 46(a)(3), 51(b)(1), 453(c)(3), 901(a), 1373(c), 1375(a)(3), 6015(c)(1), and 6654(f)(1) of this title] shall apply to taxable years ending after December 31, 1969. In the case of a taxable year beginning in 1969 and ending in 1970, the tax imposed by section 56 of the Internal Revenue Code of 1954 [this section] (as added by subsection (a)) shall be an amount equal to the tax imposed by such section (determined without regard to this sentence) multiplied by a fraction—

"(1) the numerator of which is the number of days in the taxable year occurring after December 31, 1969, and

"(2) the denominator of which is the number of days in the entire taxable year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 12, 46, 51, 58, 453, 511, 901, 1373, 1375, 6015, 6654 of this title.

§ 57. Items of tax preference.

(a) In general.

For purposes of this part, the items of tax preference are—

(1) Excess investment interest.

The amount of the excess investment interest for the taxable year (as determined under subsection (b)).

(2) Accelerated depreciation on real property.

With respect to each section 1250 property (as defined in section 1250(c)), the amount by which the deduction allowable for the taxable year for exhaustion, wear and tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to section 167(k)) for which the taxpayer has held the property.

(3) Accelerated depreciation on personal property subject to a net lease.

With respect to each item of section 1245 property (as defined in section 1245(a)(3)) which is the subject of a net lease, the amount by which the deduction allowable for the taxable year for exhaustion, wear and tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life for which the taxpayer has held the property.

(4) Amortization of certified pollution control facilities.

With respect to each certified pollution control facility for which an election is in effect under section 169, the amount by which the deduction allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167.

(5) Amortization of railroad rolling stock.

With respect to each unit of railroad rolling stock for which an election is in effect under section 184, the amount by which the deduction allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167.

(6) Stock options.

With respect to the transfer of a share of stock pursuant to the exercise of a qualified stock option (as defined in section 422(b)) or a restricted stock option (as defined in section 424(b)), the amount by which the fair market value of the share at the time of exercise exceeds the option price.

(7) Reserves for losses on bad debts of financial institutions.

In the case of a financial institution to which section 585 or 593 applies, the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of actual experience.

(8) Depletion.

With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year).

(9) Capital gains.

(A) Individuals.

In the case of a taxpayer other than a corporation, an amount equal to one-half of the amount by which the net long-term capital gain exceeds the net short-term capital loss for the taxable year.

(B) Corporations.

In the case of a corporation, if the net long-term capital gain exceeds the net short-term capital loss for the taxable year, an amount equal to the product obtained by multiplying such excess by a fraction the numerator of which is the sum of the normal tax rate and the surtax rate under section 11, minus the alternative tax rate under section 1201(a), for the taxable year, and the denominator of which is the sum of the normal tax rate and the surtax rate under section 11 for the taxable year. In the case of a corporation to which section 1201 (a) does not apply, the amount under this subparagraph shall be determined under regulations prescribed by the Secretary or his delegate in a manner consistent with the preceding sentence.

Paragraph (1) shall apply only to taxable years beginning before January 1, 1972. Paragraphs (1) and (3) shall not apply to a corporation other than an electing small business corporation (as defined in section 1371(b)) and a personal holding company (as defined in section 542).

(b) Excess investment interest.

(1) In general.

For purposes of paragraph (1) of subsection (a), the excess investment interest for any taxable year is the amount by which the investment interest expense for the taxable year exceeds the net investment income for the taxable year.

(2) Definitions.

For purposes of this subsection—

(A) Net investment income.

The term "net investment income" means the excess of investment income over investment expenses.

(B) Investment income.

The term "investment income" means—

(i) the gross income from interest, dividends, rents, and royalties,

(ii) the net short-term capital gain attributable to the disposition of property held for investment, and

(iii) amounts treated under sections 1245 and 1250 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231,

but only to the extent such income, gain, and amounts are not derived from the conduct of a trade or business.

(C) Investment expenses.

The term "investment expenses" means the deductions allowable under sections 164(a) (1) or (2), 166, 167, 171, 212, 243, 244, 245, or 611 directly connected with the production of investment income. For purposes of this subparagraph, the deduction allowable under section 167 with respect to any property may be treated as the amount which would have been allowable had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life for which the taxpayer has held the property, and the deduction allowable under section 611 with respect to any property may be treated as the amount which would have been allowable had the taxpayer determined the deduction under section 611 without regard to section 613 for each taxable year for which the taxpayer has held the property.

(D) Investment interest expense.

The term "investment interest expense" means interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment. For purposes of the preceding sentence, interest paid or accrued on indebtedness incurred or continued in the construction of property to be used in a trade or business shall not be treated as an investment interest expense.

(3) Property subject to net lease.

For purposes of this subsection, property which is subject to a net lease entered into after October 9, 1969, shall be treated as property held for investment, and not as property used in a trade or business.

(c) Net leases.

For purposes of this section, property shall be considered to be subject to a net lease for a taxable year if—

(1) for such taxable year the sum of the deductions with respect to such property which are allowable solely by reason of section 162 is less than 15 percent of the rental income produced by such property, or

(2) the lessor is either guaranteed a specified return or is guaranteed in whole or in part against loss of income.

(Added Pub. L. 91–172, title III, § 301(a), Dec. 30, 1969, 83 Stat. 581.)

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 163, 1348 of this title.

§ 58. Rules for application of this part.

(a) Husband and wife.

In the case of a husband or wife who files a separate return for the taxable year, the $30,000 amount specified in section 56 shall be $15,000.

(b) Members of controlled groups.

In the case of a controlled group of corporations (as defined in section 1563(a)), the $30,000 amount specified in section 56 shall be divided equally among the component members of such group unless all component members consent (at such time and in such manner as the Secretary of his delegate prescribes by regulations) to an apportionment plan providing for an unequal allocation of such amount.

(c) Estates and trusts.

In the case of an estate or trust—

(1) the sum of the items of tax preference for any taxable year of the estate or trust shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) the $30,000 amount specified in section 56 applicable to such estate or trust shall be reduced to an amount which bears the same ratio to $30,000 as the portion of the sum of the items of tax preference allocated to the estate or trust under paragraph (1) bears to such sum.

(d) Electing small business corporations and their shareholders.

(1) In general.

Except as provided in paragraph (2), the items of tax preference of an electing small business corporation (as defined in section 1371(b)) for each taxable year of the corporation shall be treated as items of tax preference of the shareholders of such corporation, and, except as provided in paragraph (2), shall not be treated as items of tax preference of such corporation. The sum of the items so treated shall be apportioned pro rata among such shareholders in a manner consistent with section 1374(c)(1). For purposes of this paragraph, this part shall be treated as applying to such corporation.

(2) Certain capital gains.

If for a taxable year of an electing small business corporation a tax is imposed on the income of such corporation under section 1378, such corporation shall, notwithstanding the provisions of section 1371(b)(1), be subject to the tax imposed by section 56, but computed only with reference to the item of tax preference set forth in section 57(a)(9)(B) to the extent attributable to gains subject to the tax imposed by section 1378.

(e) Participants in a common trust fund.

The items of tax preference of a common trust fund (as defined in section 584(a)) for each taxable year of the fund shall be treated as items of tax preference of the participants of such fund and shall be apportioned pro rata among such participants. For purposes of this subsection, this part shall be treated as applying to such fund.

(f) Regulated investment companies, etc.

In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment trust to which part II of subpart M applies—

(1) the item of tax preference set forth in section 57(a)(9) shall not be treated as an item of tax preference of such company or such trust for each taxable year to the extent that such item is attributable to amounts taken into account as income by the shareholders of such company under section 852(b)(3), or by the shareholders or holders of beneficial interests of such trust under section 857(b)(3), and

(2) the items of tax preference of such company or such trust for each taxable year (other than the item of tax preference set forth in section 57(a)(9) and, in the case of a real estate investment trust, the item of tax preference set forth in section 57(a)(2)) shall be treated as items of tax preference of the shareholders of such company, or the shareholders or holders of beneficial interests of such trust (and not as item or tax preference of such company or such trust), in the same proportion that the dividends (other than capital gain dividends) paid to each such shareholder, or holder of beneficial interest, bears to the taxable income of such company or such trust determined without regard to the deduction for dividends paid.

(g) Tax preferences attributable to foreign sources.

(1) In general.

For purposes of section 56, the items of tax preference set forth in section 57(a) (other than in paragraphs (6) and (9) of such section) which are attributable to sources within any foreign country or possession of the United States shall be taken into account only to the extent that such items reduce the tax imposed by this chapter (other than the tax imposed by section 56) on income derived from sources within the United States. For purposes of the preceding sentence, items of tax preference shall be treated as reducing the tax imposed by this chapter before items which are not items of tax preference.

(2) Capital gains and stock options.

For purposes of section 56, the items of tax preference set forth in paragraphs (6) and (9) of section 57(a) which are attributable to sources within any foreign country or possession of the United States shall not be taken into account if, under the tax laws of such country or possession—

(A) in the case of the item set forth in paragraph (6) of section 57(a), preferential treatment is not accorded transfers of shares of stock pursuant to stock options described in such paragraph, and

(B) in the case of the item set forth in paragraph (9) of section 57(a), preferential treatment is not accorded gain from the sale or exchange of capital assets (or property treated as capital assets).

(Added Pub. L. 91–172, title III, § 301(a), Dec. 30, 1969, 83 Stat. 583.)

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 443 of this title.

Subchapter B.—Computation of Taxable Income

Part
I. Definition of gross income, adjusted gross income, and taxable income.
II. Items specifically included in gross income.
III. Items specifically excluded from gross income.
IV. Standard deduction for individuals.
V. Deductions for personal exemptions.
VI. Itemized deductions for individuals and corporations.
VII. Additional itemized deductions for individuals.
VIII. Special deductions for corporations.
IX. Items not deductible.
X. Terminal railroad corporations and their shareholders.

AMENDMENTS

1962—Pub. L. 87–870, § 1(b), Oct. 23, 1962, 76 Stat. 1160, added part X.

PART I.—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, AND TAXABLE INCOME

Sec.
61. Gross income defined.
62. Adjusted gross income defined.
63. Taxable income defined.

§ 61. Gross income defined.

(a) General definition.

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

(b) Cross references.

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 17.)

REIMBURSEMENT OF MOVING EXPENSES OF EMPLOYEES OF CERTAIN CORPORATIONS EXCLUDED FROM GROSS INCOME; CLAIM FOR REFUND OR CREDIT; LIMITATIONS; INTEREST

Pub. L. 86–780, § 5, Sept. 14, 1960, 74 Stat. 1013, provided that:

"Any amount received after December 31, 1949, and before October 1, 1955, from a corporation which—

"(1) was formed exclusively for the purpose of, and was engaged exclusively in, operating without profit a scientific laboratory for the Atomic Energy Commission, and

"(2) operated solely on funds appropriated to the Atomic Energy Commission,

by an individual as reimbursement for moving himself and his immediate family, household goods, and personal effects to a new place of residence in order to accept employment with such corporation shall, for Federal income tax purposes, be treated as an amount which was not includible in the gross income of the individual, to the extent that such amount did not exceed the actual expenses paid or incurred by the individual for such purposes, if the individual was advised, at the time of his employment, by an authorized officer, employee, or agent of such corporation that the amount of such reimbursement would not be includible in gross income. If refund or credit of any overpayment resulting from the application of this section is prevented on the date of enactment of this Act [Sept. 14, 1960], or within six months after such date, by the operation of any law or rule of law (other than chapter 74 of the Internal Revenue Code of 1954, relating to closing agreements and compromises, and the corresponding provisions of prior law), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefore is filed within six months after such date. No interest shall be paid or allowed on any overpayment resulting from the application of the preceding sentence."

CROSS REFERENCES

Capital gains and losses, see section 1201 et seq. of this title.

Guaranteed payments to partner for services or use of capital considered as made to one not member of partnership for purposes of this section, see section 707 of this title.

Income from sources—

Within the United States, see section 861 of this title.

Without the United States, see section 862 of this title.

Items specifically excluded from gross income—

Certain death benefits, see section 101 of this title.

Income from discharge of indebtedness, see section 108 of this title.

Items specifically included in gross income—

Alimony and separate maintenance payments, see section 71 of this title.

Annuities; certain proceeds of endowment and life insurance contracts, see section 72 of this title.

Recipients of income in respect of decedents, see section 691 of this title.

Trust income attributable to grantors and others as substantial owners includible in gross income, see section 671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 671, 707 of this title.

§ 62. Adjusted gross income defined.

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions.

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Trade and business deductions of employees.

(A) Reimbursed expenses.

The deductions allowed by part VI (sec. 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

(B) Expenses for travel away from home.

The deductions allowed by part VI (sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(C) Transportation expenses.

The deductions allowed by part VI (sec. 161 and following) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(D) Outside salesmen.

The deductions allowed by part VI (sec. 161 and following) which are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer.

(3) Long-term capital gains.

The deduction allowed by section 1202.

(4) Losses from sale or exchange of property.

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(5) Deductions attributable to rents and royalties.

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(6) Certain deductions of life tenants and income beneficiaries of property.

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(7) Pension, profit-sharing, annuity, and bond purchase plans of self-employed individuals.

In the case of an individual who is an employee within the meaning of section 401(c)(1), the deductions allowed by section 404 and section 405(c) to the extent attributable to contributions made on behalf of such individual.

(8) Moving expense deduction.

The deduction allowed by section 217.

(9) Pension, etc., plans of electing small business corporations.

The deduction allowed by section 1379(b)(3).

Nothing in this section shall permit the same item to be deducted more than once. (Aug. 16, 1954, ch.

736, 68A Stat. 17; Oct. 10, 1962, Pub. L. 87–792, § 7 (b), 76 Stat. 828; Feb. 26, 1964, Pub. L. 88–272, title II, § 213(b), 78 Stat. 52; Dec. 30, 1969, Pub. L. 91–172, title V, § 531(b), 83 Stat. 655.)

AMENDMENTS

1969—Par. (9). Pub. L. 91–172 added par. (9).
1964—Par. (8). Pub. L. 88–272 added par. (8).
1962—Par. (7). Pub. L. 87–792 added par. (7).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years of electing small business corporations beginning after Dec. 31, 1970, see section 531(d) of Pub. L. 91–172, set out as a note under section 1379 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 213(d) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) [adding section 217, redesignating former section 217 as 218, and amending analysis preceding section 211 of this title] and (b) [to this section] shall apply to expenses incurred after December 31, 1963, in taxable years ending after such date. The amendment made by subsection (c) [to section 3401 of this title] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

CROSS REFERENCES

Lessee, coal disposed with retained economic interest, see section 631 of this title.
Optional tax, individuals, see section 3 of this title.
Percentage allowed for charitable, etc., contributions, see section 170 of this title.
Standard deduction—
Generally, see section 141 of this title.
Election, see section 144 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1348, 3402 of this title; title 18 section 3575; title 21 section 849.

§ 63. Taxable income defined.

(a) General rule.

Except as provided in subsection (b), for purposes of this subtitle the term "taxable income" means gross income, minus the deductions allowed by this chapter, other than the standard deduction allowed by part IV (sec. 141 and following).

(b) Individuals electing standard deduction.

In the case of an individual electing under section 144 to use the standard deduction provided in part IV (sec. 141 and following), for purposes of this subtitle the term "taxable income" means adjusted gross income, minus—

(1) such standard deduction, and

(2) the deductions for personal exemptions provided in section 151.

(Aug. 16, 1954, ch. 736, 68A Stat. 18.)

CROSS REFERENCES

Deductions—
Additional itemized deductions for individuals, see section 211 et seq. of this title.
Deductions for personal exemptions, see section 151 et seq. of this title.
Itemized deductions for individuals and corporations, see section 161 et seq. of this title.
Special deductions for corporations, see section 241 et seq. of this title.
Standard deduction, computation with, see section 4 of this title.
Standard deduction referred to in this section, amount of, see section 141 of this title.
Gross income—
Defined, see section 61 of this title.
Items specifically included in gross income, see section 71 et seq. of this title.
Recomputation where limitation on deductions allowable to individuals in certain cases, see section 270 of this title.
Sale or exchange of residence, see section 1034 of this title.
Tax imposed, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 72, 161, 211, 1034 of this title.

PART II.—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.
71. Alimony and separate maintenance payments.
72. Annuities; certain proceeds of endowment and life insurance contracts.
73. Services of child.
74. Prizes and awards.
75. Dealers in tax-exempt securities.
76. Mortgages made or obligations issued by joint-stock land banks.
77. Commodity credit loans.
78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit.
79. Group-term life insurance purchased for employees.
80. Restoration of value of certain securities.
81. Increases in suspense account under section 166(g).
82. Reimbursement of moving expenses.
83. Property transferred in connection with performance of services.

AMENDMENTS

1969—Pub. L. 91–172, title II, § 231(c)(1), title III, § 321(c), Dec. 30, 1969, 83 Stat. 579, 591, added items 82, 83.
1966—Pub. L. 89–722, § 1(b)(2), Nov. 2, 1966, 80 Stat. 1152, inserted item 81.
Pub. L. 89–384, § 1(b)(2), Apr. 8, 1966, 80 Stat. 102, added item 80.
1964—Pub. L. 88–272, title II, § 204(a)(2), Feb. 26, 1964, 78 Stat. 36, added item 79.
1962—Pub. L. 87–834, § 9(d)(1), Oct. 16, 1962, 76 Stat. 1001, added item 78.

§ 71. Alimony and separate maintenance payments.

(a) General rule.

(1) Decree of divorce or separate maintenance.

If a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise, in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation.

(2) Written separation agreement.

If a wife is separated from her husband and there is a written separation agreement executed after the date of the enactment of this title, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such agreement is executed which are made under such agreement and because of the marital or family relationship (or which are attributable to property transferred, in trust or otherwise, under such agreement and because of

such relationship). This paragraph shall not apply if the husband and wife make a single return jointly.

(3) Decree for support.

If a wife is separated from her husband, the wife's gross income includes periodic payments (whether or not made at regular intervals) received by her after the date of the enactment of this title from her husband under a decree entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance. This paragraph shall not apply if the husband and wife make a single return jointly.

(b) Payments to support minor children.

Subsection (a) shall not apply to that part of any payment which the terms of the decree, instrument, or agreement fix, in terms of an amount of money or a part of the payment, as a sum which is payable for the support of minor children of the husband. For purposes of the preceding sentence, if any payment is less than the amount specified in the decree, instrument, or agreement, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(c) Principal sum paid in installments.

(1) General rule.

For purposes of subsection (a), installment payments discharging a part of an obligation the principal sum of which is, either in terms of money or property, specified in the decree, instrument, or agreement shall not be treated as periodic payments.

(2) Where period for payment is more than 10 years.

If, by the terms of the decree, instrument, or agreement, the principal sum referred to in paragraph (1) is to be paid or may be paid over a period ending more than 10 years from the date of such decree, instrument, or agreement, then (notwithstanding paragraph (1)) the installment payments shall be treated as periodic payments for purposes of subsection (a), but (in the case of any one taxable year of the wife) only to the extent of 10 percent of the principal sum. For purposes of the preceding sentence, the part of any principal sum which is allocable to a period after the taxable year of the wife in which it is received shall be treated as an installment payment for the taxable year in which it is received.

(d) Rule for husband in case of transferred property.

The husband's gross income does not include amounts received which, under subsection (a), are (1) includible in the gross income of the wife, and (2) attributable to transferred property.

(e) Cross references.

(1) For definitions of "husband" and "wife", see section 7701 (a) (17).

(2) For deduction by husband of periodic payments not attributable to transferred property, see section 215.

(3) For taxable status of income of an estate or trust in case of divorce, etc., see section 682.

(Aug. 16, 1954, ch. 736, 68A Stat. 19.)

REFERENCES IN TEXT

Date of the enactment of this title, referred to in subsec. (a) (2), (3), is Aug. 16, 1954.

CROSS REFERENCES

Alimony, etc., payments, as not subject to death benefits provisions, see section 101 of this title.

Gross income as including alimony and separate maintenance payments, see section 61 of this title.

Husband and wife, definition of, see section 7701 (a) (17) of this title.

Payment includible in gross income of wife under this section not treated as payment by husband for support of dependent, see section 152 of this title.

Payments in discharge of alimony as not subject to annuity provisions, see section 72 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 101, 152, 215, 682, 7701 of this title.

§ 72. Annuities; certain proceeds of endowment and life insurance contracts.

(a) General rule for annuities.

Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

(b) Exclusion ratio.

Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date). This subsection shall not apply to any amount to which subsection (d) (1) (relating to certain employee annuities) applies.

(c) Definitions.

(1) Investment in the contract.

For purposes of subsection (b), the investment in the contract as of the annuity starting date is—

(A) the aggregate amount of premiums or other consideration paid for the contract, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

(2) Adjustment in investment where there is refund feature.

If—

(A) the expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

(B) the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

(C) such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under paragraph (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary or his delegate. For purposes of this paragraph and of subsection (e) (2) (A), the term "refund of the consideration paid" includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration

was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under paragraph (1) (A).

(3) Expected return.

For purposes of subsection (b), the expected return under the contract shall be determined as follows:

(A) Life expectancy.

If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Secretary or his delegate.

(B) Installment payments.

If subparagraph (A) does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.

(4) Annuity starting date.

For purposes of this section, the annuity starting date in the case of any contract is the first day of the first period for which an amount is received as an annuity under the contract; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954.

(d) Employees' annuities.

(1) Employee's contributions recoverable in 3 years.

Where—

(A) part of the consideration for an annuity, endowment, or life insurance contract is contributed by the employer, and

(B) during the 3-year period beginning on the date (whether or not before January 1, 1954) on which an amount is first received under the contract as an annuity, the aggregate amount receivable by the employee under the terms of the contract is equal to or greater than the consideration for the contract contributed by the employee,

then all amounts received as an annuity under the contract shall be excluded from gross income until there has been so excluded (under this paragraph and prior income tax laws) an amount equal to the consideration for the contract contributed by the employee. Thereafter all amounts so received under the contract shall be included in gross income.

(2) Special rules for application of paragraph (1).

For purposes of paragraph (1)—

(A) if the employee died before any amount was received as an annuity under the contract, the words "receivable by the employee" shall be read as "receivable by a beneficiary of the employee"; and

(B) any contribution made with respect to the contract while the employee is an employee within the meaning of section 401(c)(1) which is not allowed as a deduction under section 404 shall be treated as consideration for the contract contributed by the employee.

(3) Cross reference.

For certain rules for determining whether amounts contributed by employer are includible in the gross income of the employee, see part I of subchapter D (sec. 401 and following, relating to pension, profit-sharing, and stock bonus plans, etc.).

(e) Amounts not received as annuities.

(1) General rule.

If any amount is received under an annuity, endowment, or life insurance contract, if such amount is not received as an annuity, and if no other provision of this subtitle applies, then such amount—

(A) if received on or after the annuity starting date, shall be included in gross income; or

(B) if subparagraph (A) does not apply, shall be included in gross income, but only to the extent that it (when added to amounts previously received under the contract which were excludable from gross income under this subtitle or prior income tax laws) exceeds the aggregate premiums or other consideration paid.

For purposes of this section, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

(2) Special rules for application of paragraph (1).

For purposes of paragraph (1), the following shall be treated as amounts not received as an annuity:

(A) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract; and

(B) any amount received under a contract on its surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of paragraph (1) (B) shall apply (and the rule of paragraph (1) (A) shall not apply).

(f) Special rules for computing employees' contributions.

In computing, for purposes of subsection (c) (1)(A), the aggregate amount of premiums or other consideration paid for the contract, for purposes of subsection (d) (1), the consideration for the contract contributed by the employee, and for purposes of subsection (e) (1) (B), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) such amounts were includible in the gross income of the employee under this subtitle or prior income tax laws; or

(2) if such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution.

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply

to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary or his delegate, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services.

(g) Rules for transferee where transfer was for value.

Where any contract (or any interest therein) is transferred (by assignment or otherwise) for a valuable consideration, to the extent that the contract (or interest therein) does not, in the hands of the transferee, have a basis which is determined by reference to the basis in the hands of the transferor, then—

(1) for purposes of this section, only the actual value of such consideration, plus the amount of the premiums and other consideration paid by the transferee after the transfer, shall be taken into account in computing the aggregate amount of the premiums or other consideration paid for the contract;

(2) for purposes of subsection (c) (1) (B), there shall be taken into account only the aggregate amount received under the contract by the transferee before the annuity starting date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws; and

(3) the annuity starting date is January 1, 1954, or the first day of the first period for which the transferee received an amount under the contract as an annuity, whichever is the later.

For purposes of this subsection, the term "transferee" includes a beneficiary of, or the estate of, the transferee.

(h) Option to receive annuity in lieu of lump sum.

If—

(1) a contract provides for payment of a lump sum in full discharge of an obligation under the contract, subject to an option to receive an annuity in lieu of such lump sum;

(2) the option is exercised within 60 days after the day on which such lump sum first became payable; and

(3) part or all of such lump sum would (but for this subsection) be includible in gross income by reason of subsection (e) (1),

then, for purposes of this subtitle, no part of such lump sum shall be considered as includible in gross income at the time such lump sum first became payable.

(i) Joint and survivor annuities where first annuitant died in 1951, 1952, or 1953.

Where an annuitant died after December 31, 1950, and before January 1, 1954, and the basis of a surviving annuitant's interest in the joint and survivor annuity contract was determinable under section 113 (a) (5) of the Internal Revenue Code of 1939, then—

(1) subsection (d) shall not apply with respect to such contract;

(2) for purposes of this section, the aggregate amount of premiums or other consideration paid for the contract is the basis of the contract determined under such section 113 (a) (5);

(3) for purposes of subsection (c) (1) (B), there shall be taken into account only the aggregate amount received by the surviving annuitant under the contract before the annuity starting date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws; and

(4) the annuity starting date is January 1, 1954, or the first day of the first period for which the surviving annuitant received an amount under the contract as an annuity, whichever is the later.

(j) Interest.

Notwithstanding any other provision of this section, if any amount is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(k) Payments in discharge of alimony.

(1) In general.

This section shall not apply to so much of any payment under an annuity, endowment, or life insurance contract (or any interest therein) as is includible in the gross income of the wife under section 71 or section 682 (relating to income of an estate or trust in case of divorce, etc.).

(2) Cross reference.

For definition of "wife", see section 7701 (a) (17).

(*l*) Face-amount certificates.

For purposes of this section, the term "endowment contract" includes a face-amount certificate, as defined in section 2 (a) (15) of the Investment Company Act of 1940 (15 U. S. C., sec. 80a–2), issued after December 31, 1954.

(m) Special rules applicable to employee annuities and distributions under employee plans.

(1) Certain amounts received before annuity starting date.

Any amounts received under an annuity, endowment, or life insurance contract before the annuity starting date which are not received as an annuity (within the meaning of subsection (e) (2)) shall be included in the recipient's gross income for the taxable year in which received to the extent that—

(A) such amounts, plus all amounts theretofore received under the contract and includible in gross income under this paragraph, do not exceed

(B) the aggregate premiums or other consideration paid for the contract while the employee was an owner-employee which were allowed as deductions under section 404 for the taxable year and all prior taxable years.

Any such amounts so received which are not includible in gross income under this paragraph shall be subject to the provisions of subsection (e).

(2) Computation of consideration paid by the employee.

In computing—

(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c) (1) (A) (relating to the investment in the contract),

(B) the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employee's contributions recoverable in 3 years), and

(C) the aggregate premiums or other consideration paid for purposes of subsection (e)(1)(B) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an employee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the Secretary or his delegate) to the cost of life, accident, health, or other insurance.

(3) Life insurance contracts.

(A) This paragraph shall apply to any life insurance contract—

(i) purchased as a part of a plan described in section 403(a), or

(ii) purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the Secretary or his delegate to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.

(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

(4) Amounts constructively received.

(A) Assignments or pledges.

If during any taxable year an owner-employee assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a trust described in section 401(a) which is exempt from tax under section 501(a) or any portion of the value of a contract purchased as part of a plan described in section 403(a), such portion shall be treated as having been received by such owner-employee as a distribution from such trust or as an amount received under the contract.

(B) Loans on contracts.

If during any taxable year, an owner-employee receives, directly or indirectly, any amount from any insurance company as a loan under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as part of a plan described in section 403(a), and issued by such insurance company, such amount shall be treated as an amount received under the contract.

(5) Penalties applicable to certain amounts received by owner-employees.

(A) This paragraph shall apply—

(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, an owner-employee, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (whether or not paid by him) while he was an owner-employee,

(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, an owner-employee, or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary or his delegate, to exceed the benefits provided for such individual under the plan formula, and

(iii) to amounts which are received, by an individual who is, or has been, an owner-employee, by reason of the distribution under the provisions of section 401(e)(2)(E) of his entire interest in all qualified trusts described in section 401(a) and in all plans described in section 403(a).

(B)(i) If the aggregate of the amounts to which this paragraph applies received by any person in his taxable year equals or exceeds $2,500, the increase in his tax for the taxable year in which such amounts are received and attributable to such amounts shall not be less than 110 percent of the aggregate increase in taxes, for the taxable year and the 4 immediately preceding taxable years, which would have resulted if such amounts had been included in such person's gross income ratably over such taxable years.

(ii) If deductions have been allowed under section 404 for contributions paid on behalf of the individual while he is an owner-employee for a number of prior taxable years less than 4, clause (i) shall be applied by taking into account a number of taxable years immediately preceding the taxable year in which the amount was so received equal to such lesser number.

(C) If subparagraph (B) does not apply to a person for the taxable year, the increase in tax of such person for the taxable year attributable to the amounts to which this paragraph applies shall be 110 percent of such increase (computed without regard to this subparagraph).

(D) Subparagraph (A)(ii) of this paragraph shall not apply to any amount to which section 402(a)(2) or 403(a)(2) applies.

(E) For special rules for computation of taxable income for taxable years to which this paragraph applies, see subsection (n)(3).

(6) Owner-employee defined.

For purposes of this subsection, the term "owner-employee" has the meaning assigned to it by section 401(c)(3).

(7) Meaning of disabled.

For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary or his delegate may require.

(n) Treatment of total distributions.

(1) Application of subsection.

(A) General rule.

This subsection shall apply to amounts—

(i) distributed to a distributee, in the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or

(ii) paid to a payee, in the case of an annuity plan described in section 403(a),

if the total distributions or amounts payable to the distributee or payee with respect to an employee (including an individual who is an employee within the meaning of section 401(c)(1)) are paid to the distributee or payee within one taxable year of the distributee or payee, but only to the extent that section 402(a)(2) or 403(a)(2)(A) does not apply to such amounts.

(B) Distributions to which applicable.

This subsection shall apply only to distributions or amounts paid—

(i) on account of the employee's death,

(ii) with respect to an individual who is an employee without regard to section 401(c)(1), on account of his separation from the service,

(iii) with respect to an employee within the meaning of section 401(c)(1), after he has attained the age of 59½ years, or

(iv) with respect to an employee within the meaning of section 401(c)(1), after he has become disabled (within the meaning of subsection (m)(7)).

(C) Minimum period of service.

This subsection shall apply to amounts distributed or paid to an employee from or under a plan only if he has been a participant in the plan for 5 or more taxable years prior to the taxable year in which such amounts are distributed or paid.

(D) Amounts subject to penalty.

This subsection shall not apply to amounts described in clauses (ii) and (iii) of subparagraph (A) of subsection (m)(5) (but, in the case of amounts described in clause (ii) of such subparagraph, only to the extent that subsection (m)(5) applies to such amounts).

(2) Limitation of tax.

In any case to which this subsection applies, the tax attributable to the amounts to which this subsection applies for the taxable year in which such amounts are received shall not exceed whichever of the following is the greater:

(A) 5 times the increase in tax which would result from the inclusion in gross income of the recipient of 20 percent of so much of the amount so received as is includible in gross income, or

(B) 5 times the increase in tax which would result if the taxable income of the recipient for such taxable year equaled 20 percent of the amount of the taxable income of the recipient for such taxable year determined under paragraph (3)(A).

(3) Determination of taxable income.

Notwithstanding section 63 (relating to definition of taxable income), for purposes only of computing the tax under this chapter attributable to amounts to which this subsection or subsection (m)(5) applies and which are includible in gross income—

(A) the taxable income of the recipient for the taxable year of receipt shall be treated as being not less than the amount by which (i) the aggregate of such amounts so includible in gross income exceeds (ii) the amount of the deductions allowed for such taxable year under section 151 (relating to deductions for personal exemptions); and

(B) in making ratable inclusion computations under paragraph (5)(B) of subsection (m), the taxable income of the recipient for each taxable year involved in such ratable inclusion shall be treated as being not less than the amount required by such paragraph (5)(B) to be treated as includible in gross income for such taxable year.

In any case in which the preceding sentence results in an increase in taxable income for any taxable year, the resulting increase in the taxes imposed by section 1 or 3 for such taxable year shall not be reduced by any credit under part IV

of subchapter A (other than sections 31 and 39 thereof) which, but for this sentence, would be allowable.

(4) Special rule for employees without regard to section 401(c)(1).

In the case of amounts to which this subsection applies which are distributed or paid with respect to an individual who is an employee without regard to section 401(c)(1), paragraph (2) shall be applied with the following modifications:

(A) "7 times" shall be substituted for "5 times", and "14⅔ percent" shall be substituted for "20 percent".

(B) Any amount which is received during the taxable year by the employee as compensation (other than as deferred compensation within the meaning of section 404) for personal services performed for the employer in respect of whom the amounts distributed or paid are received shall not be taken into account.

(C) No portion of the total distributions or amounts payable (of which the amounts distributed or paid are a part) to which section 402 (a)(2) or 403(a)(2)(A) applies shall be taken into account.

Subparagraph (B) shall not apply if the employee has not attained the age of 59½ years, unless he has died or become disabled (within the meaning of subsection (m)(7)).

(*o*) Annuities under retired serviceman's family protection plan.

Subsections (b) and (d) shall not apply in the case of amounts received after December 31, 1965, as an annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1) or this section, including amounts excluded before January 1, 1966) an amount equal to the consideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

(p) Cross reference.

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

(Aug. 16, 1954, ch. 736, 68A Stat. 20; Oct. 10, 1962, Pub. L. 87–792, § 4(a), (b), 76 Stat. 821; Oct. 16, 1962, Pub. L. 87–834, § 11(b), 76 Stat. 1005; Feb. 26, 1964, Pub. L. 88–272, title II, § 232(b), 78 Stat. 110; June 21, 1965, Pub. L. 89–44, title VIII, § 809 (d)(2), 79 Stat. 167; July 30, 1965, Pub. L. 89–97, title I, § 106(d)(2), 79 Stat. 337; Mar. 8, 1966, Pub. L. 89–365, § 1(b), 80 Stat. 32; Dec. 30, 1969, Pub. L. 91–172, title V, § 515(b), 83 Stat. 644.)

AMENDMENTS

1969—Subsec. (n)(1). Pub. L. 91–172, § 515(b)(1), altered section to accommodate the insertion into sections 402 and 403 of provisions under which employer contributions to qualified pension, profit sharing, stock bonus, and annuity plans for plan years beginning after 1969 are to be treated as ordinary income when received in a lump sum distribution, but with such amounts to be eligible for a special averaging procedure.

Subsec. (n)(4). Pub. L. 91–172, § 515(b)(2), added subsec. (n)(4).

1966—Subsec. (*o*). Pub. L. 89–365 added subsec. (*o*). Former subsec. (*o*) redesignated (p).

Subsec. (p). Pub. L. 89–365 redesignated former subsec. (*o*) as (p).

1965—Subsec. (m)(5)(A)(i). Pub. L. 89–97, § 106(d)(2)(A), substituted "paragraph (7) of this subsection" for "section 213(g)(3)".

Subsec. (m)(7). Pub. L. 89–97, § 106(d)(2)(B), added par. (7).

Subsec. (n)(1). Pub. L. 89–97, § 106(d)(2)(C), substituted in subpars. (A)(iii) and (B)(iii) "subsection (m)(7)" for "section 213(g)(3)".

Subsec. (n)(3). Pub. L. 89–44 struck out "section 31" in the sentence following subpar. (B) and inserted in lieu thereof "sections 31 and 39."

1964—Subsec. (e)(3). Pub. L. 88–272 eliminated par. (3) which provided for a limit on the tax attributable to the receipt of a lump sum.

1962—Subsec. (d)(2). Pub. L. 87–792, § 4(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (f). Pub. L. 87–834 inserted sentence providing that par. (2) shall not apply to amounts which were contributed by the employer after Dec. 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of Section 911 if such amounts had been paid directly to the employee at the time of contribution, and making such sentence inapplicable to amounts which were contributed by the employer, as determined under regulations, to provide pension or annuity credits, to the extent such credits are attributable to services performed before Jan. 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on Mar. 12, 1962, and on that date applicable to such services.

Subsec. (m). Pub. L. 87–792, § 4(b), added subsec. (m) and redesignated former subsec. (m) as (*o*).

Subsec. (n). Pub. L. 87–792, § 4(b), added subsec. (n).

Subsec. (*o*). Pub. L. 87–792, § 4(b), redesignated former subsec. (m) as (*o*).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Addition of subsec. (*o*) and redesignation of subsec. (*o*) as subsec. (p) by Pub. L. 89–365 applicable with respect to taxable years ending after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment of this section by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

Amendment of subsec. (n)(3) by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (e)(3) by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 11(c)(2) of Pub. L. 87–834 provided that: "The amendment made by subsection (b) [to subsec. (f) of this section] shall apply to taxable years ending after December 31, 1962."

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

CROSS REFERENCES

Amounts received by surviving annuitant under joint and survivor annuity contract in respect of decedents' income, see section 691 of this title.

Basis of property acquired from decedent, certain provisions inapplicable to annuities, see section 1014 of this title.

Beneficiary of employees' trust, taxability of, see section 402 of this title.

Employee annuities, taxation of, see section 403 of this title.

Employees' death benefits, see section 101 of this title.

Retirement income, see section 37 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 79, 101, 122, 401, 402, 403, 404, 405, 406, 407, 483, 691, 1014, 1302, 1304, 1348, 1379 of this title.

§ 73. Services of child.

(a) Treatment of amounts received.

Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(b) Treatment of expenditures.

All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child (and not of the parent) solely by reason of subsection (a) shall be treated as paid or incurred by the child.

(c) Parent defined.

For purposes of this section, the term "parent" includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

(d) Cross reference.

For assessment of tax against parent in certain cases, see section 6201 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 24.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6201 of this title.

§ 74. Prizes and awards.

(a) General rule.

Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.

(b) Exception.

Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if—

(1) the recipient was selected without any action on his part to enter the contest or proceeding; and

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award.

(Aug. 16, 1954, ch. 736, 68A Stat. 24.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4941, 4945 of this title.

§ 75. Dealers in tax-exempt securities.

(a) Adjustment for bond premium.

In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in subsection (b) (1)) primarily for sale to customers in the ordinary course of his trade or business—

(1) if the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in subsection (b) (2)) during such year shall be reduced by an amount equal to the amortizable bond premium which would be disallowed as a deduction for such year by section 171 (a) (2) (relating to deduction for amortizable bond premium) if the definition in section 171 (d) of the term "bond" did not exclude such municipal bond; or

(2) if the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this paragraph) of the municipal bond shall be reduced by the amount of the adjustment which would be required under section 1016 (a) (5) (relating to adjustment to basis for amortizable bond premium) if the definition in section 171 (d) of the term "bond" did not exclude such municipal bond.

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation described in subsection (b) (1) (A) (ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b) (1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

(b) Definitions.

For purposes of subsection (a)—

(1) The term "municipal bond" means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludable from gross income; but such term does not include such an obligation if—

(A) (i) it is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, or

(ii) its earliest maturity or call date is a date more than 5 years from the date on which it was acquired by the taxpayer; and

(B) when it is sold or otherwise disposed of by the taxpayer—

(i) in the case of a sale, the amount realized, or

(ii) in the case of any other disposition, its fair market value at the time of such disposition,

is higher than its adjusted basis (computed without regard to this section and section 1016 (a) (6)).

Determinations under subparagraph (B) shall be exclusive of interest.

(2) The term "cost of securities sold" means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of—

(A) the inventory value of the opening inventory for such year, and

(B) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Sept. 2, 1958, Pub. L. 85-866, title I. § 2(a), 72 Stat. 1606.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-866, § 2(a)(2), (3), eliminated "short-term" each place it appeared, and added sentence to provide that no reduction to cost of securities sold during taxable year shall be made in respect of subsec. (b)(1)(A)(ii) obligations held at close of year, and to permit reduction in cost of securities sold in taxable year sold if obligation is municipal bond.

Subsec. (b)(1). Pub. L. 85-866, § 2(a)(1), substituted "municipal bond" for "short-term municipal bond", designated former subpars. (A) and (B) as (A) (i) and (ii), respectively, and added subpar. (B).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 (c) of Pub. L. 85-866 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (a) and (b) (1) of this section and to section 1016 (a) (6) of this title] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date."

SHORT TITLE

Section 1 (a) of Pub. L. 85-866 provided that Pub. L. 85-866, which added sections 178, 455, 558, 1242, 1243, 1306, 1371—1377, 1482, 2208, 2517, 6037, 7513 and 7514 of this title, amended sections 35, 75, 101, 152, 162, 164—168, 170—172, 213, 243, 246, 337, 341, 358, 372, 381, 391, 403, 404, 421, 453, 481, 503, 534, 535, 545, 556, 582, 611, 613, 614, 851, 852, 871, 904, 905, 911, 1015, 1016, 1031, 1033, 1034, 1053, 1071, 1231—1235, 1237, 1239, 1312, 1314, 1341, 1347, 1441, 1504, 2011, 2014, 2015, 2039, 2055, 2106, 2501, 2517, 2522, 3121, 3122, 3504, 6012 6013, 6015, 6033, 6104, 6163, 6164, 6212, 6325, 6338, 6339, 6501 6504 6532, 6601, 6611, 6652, 6653, 6851, 6871, 7213, 7324, 7325, 7422, 7455 and 7502 of this title, and sections 22, 131, 812, 813, 925—927, 3771 and 3794 of Internal Revenue Code of 1939, repealed section 120 of this title, and enacted notes set out under sections 75, 120, 152, 162, 164, 168, 170—172, 178, 213, 243, 246, 341, 372, 391, 403, 421, 453, 455, 481, 545, 556, 613, 614, 852, 871, 904, 905, 1016, 1071, 1231, 1233, 1235, 1306, 1312, 1341, 1347, 1361, 1482, 2011, 2015, 2039, 2517, 3504, 6012, 6104, 6163, 6511, 6601, and 7502 of this title, and under sections 22, 42, 106, 812 and 3772 of Internal Revenue Code of 1939, should be popularly known as the "Technical Amendments Act of 1958".

CROSS REFERENCES

General rule for inventories, see section 471 of this title.
Last-in, first-out inventories, see section 472 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 76. Mortgages made or obligations issued by joint-stock land banks.

All income (except interest) derived from mortgages made, or obligations issued, after May 28, 1938, by a joint-stock land bank shall (notwithstanding section 26 of the Federal Farm Loan Act; 12 U. S. C. 931-3) be included in gross income. (Aug. 16, 1954, ch. 736, 68A Stat. 25.)

§ 77. Commodity credit loans.

(a) Election to include loans in income.

Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) Effect of election on adjustments for subsequent years.

If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Secretary or his delegate a change to a different method is authorized. (Aug. 16, 1954, ch. 736, 68A Stat. 25.)

CROSS REFERENCES

Adjustments to basis, see section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit.

If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year, an amount equal to the taxes deemed to be paid by such corporation under section 902(a)(1) (relating to credit for corporate stockholder in foreign corporation) or under section 960(a)(1)(C) (relating to taxes paid by foreign corporation) for such taxable year shall be treated for purposes of this title (other than section 245) as a dividend received by such domestic corporation from the foreign corporation. (Added Pub. L. 87-834, § 9(b), Oct. 16, 1962, 76 Stat. 1001.)

EFFECTIVE DATE

Section applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87-834, set out as a note under section 902 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 906 of this title.

§ 79. Group-term life insurance purchased for employees.

(a) General rule.

There shall be included in the gross income of an employee for the taxable year an amount equal to the cost of group-term life insurance on his life provided for part or all of such year under a policy (or policies) carried directly or indirectly by his employer (or employers); but only to the extent that such cost exceeds the sum of—

(1) the cost of $50,000 of such insurance, and

(2) the amount (if any) paid by the employee toward the purchase of such insurance.

(b) Exceptions.

Subsection (a) shall not apply to—

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and either has reached the retirement age with respect to such employer or is disabled (within the meaning of section 72 (m)(7)),

(2) the cost of any portion of the group-term life insurance on the life of an employee provided during part or all of the taxable year of the employee under which—

(A) the employer is directly or indirectly the beneficiary, or

(B) a person described in section 170(c) is the sole beneficiary,

for the entire period during such taxable year for which the employee receives such insurance, and

(3) the cost of any group-term life insurance which is provided under a contract to which section 72(m)(3) applies.

(c) Determination of cost of insurance.

For purposes of this section and section 6052, the cost of group-term insurance on the life of an employee provided during any period shall be determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by regulations by the Secretary or his delegate. In the case of an employee who has attained age 64, the cost prescribed shall not exceed the cost with respect to such individual if he were age 63. (Added Pub. L. 88–272, title II, § 204(a)(1), Feb. 26, 1964, 78 Stat. 36, and amended Pub. L. 89–97, title I, § 106(d)(3), July 30, 1965, 79 Stat. 337.)

AMENDMENTS

1965—Subsec. (b)(1). Pub. L. 89–97 substituted "section 72(m)(7)" for "paragraph (3) of section 213(g), determined without regard to paragraph (4) thereof".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of this section by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE

Section 204(d) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) [to this section, and section 7701(a)(20) of this title] and (c) [to sections 6052 and 6678 of this title] and paragraph (3) of section 6652(a) of the Internal Revenue Code of 1954 (as amended by section 221(b)(2) of this Act) [to section 6652(a) of this title], shall apply with respect to group-term life insurance provided after December 31, 1963, in taxable years ending after such date. The amendments made by subsection (b) [to section 3401(a)(13), (14) of this title] shall apply with respect to remuneration paid after December 31, 1963, in the form of group-term life insurance provided after such date. In applying section 79(b) of the Internal Revenue Code of 1954 (as added by subsection (a)(1) of this section) to a taxable year beginning before May 1, 1964, if paragraph (2)(B) of such section applies with respect to an employee for the period beginning May 1, 1964, and ending with the close of his first taxable year ending after April 30, 1964, such paragraph (2)(B) shall be treated as applying with respect to such employee for the period beginning January 1, 1964, and ending April 30, 1964."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6052, 7701 of this title.

§ 80. Restoration of value of certain securities.

(a) General rule.

In the case of a domestic corporation subject to the tax imposed by section 11 or 802, if the value of any security (as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing of property to which such security was related, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165,

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

(b) Reduction for failure to receive tax benefit.

The amount otherwise includible in gross income under subsection (a) in respect of any security shall be reduced by an amount equal to the amount (if any) of the loss described in subsection (a)(2) which did not result in a reduction of the taxpayer's tax under this subtitle for any taxable year, determined under regulations prescribed by the Secretary or his delegate.

(c) Character of income.

For purposes of this subtitle—

(1) Except as provided in paragraph (2), the amount included in gross income under this section shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

(2) If the loss described in subsection (a)(2) was taken into account as a loss from the sale or exchange of a capital asset, the amount included in gross income under this section shall be treated as long-term capital gain.

(d) Treatment under foreign expropriation loss recovery provisions.

This section shall not apply to any recovery of a foreign expropriation loss to which section 1351 applies. (Added Pub. L. 89–384, § 1(b)(1), Apr. 8, 1966, 80 Stat. 101.)

EFFECTIVE DATE

Section 1(b)(3) of Pub. L. 89–384 provided that: "The amendments made by this subsection [adding this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to losses described in section 80(a)(2) of the Internal Revenue Code of 1954 (as added by paragraph (1) of this subsection) [subsec. (a)(2) of this section] which were sustained after December 31, 1958."

§ 81. Increases in suspense account under section 166(g).

The amount of any increase in the suspense account required by paragraph (4)(B)(ii) of section 166(g) (relating to certain debt obligations guaranteed by dealers) shall be included in gross income for the taxable year for which such increase is required. (Added Pub. L. 89–722, § 1 (b)(1), Nov. 2, 1966, 80 Stat. 1152.)

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years ending after Oct. 21, 1965, see section 2 of Pub. L. 89–722, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 166 of this title.

§ 82. Reimbursement for expenses of moving.

There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment. (Added Pub. L. 91–172, title II, § 231(b), Dec. 30, 1969, 83 Stat. 579.)

EFFECTIVE DATE

Section applicable to taxable years beginning after December 31, 1969, except that it does not apply to moving expenses paid or incurred before July 1, 1970, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

§ 83. Property transferred in connection with performance of services.

(a) General rule.

If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of—

(1) the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over

(2) the amount (if any) paid for such property,

shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

(b) Election to include in gross income in year of transfer.

(1) In general.

Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income for the taxable year in which such property is transferred, the excess of—

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

If such election is made, subsection (a) shall not apply with respect to the transfer of such property, and if such property is subsequently forfeited, no deduction shall be allowed in respect of such forfeiture.

(2) Election.

An election under paragraph (1) with respect to any transfer of property shall be made in such manner as the Secretary or his delegate prescribes and shall be made not later than 30 days after the date of such transfer (or, if later, 30 days after the date of the enactment of the Tax Reform Act of 1969). Such election may not be revoked except with the consent of the Secretary or his delegate.

(c) Special rules.

For purposes of this section—

(1) Substantial risk of forfeiture.

The rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

(2) Transferability of property.

The rights of a person in property are transferable only if the rights in such property of any transferee are not subject to a substantial risk of forfeiture.

(d) Certain restrictions which will never lapse.

(1) Valuation.

In the case of property subject to a restriction which by its terms will never lapse, and which allows the transferee to sell such property only at a price determined under a formula, the price so determined shall be deemed to be the fair market value of the property unless established to the contrary by the Secretary or his delegate, and the burden of proof shall be on the Secretary or his delegate with respect to such value.

(2) Cancellation.

If, in the case of property subject to a restriction which by its terms will never lapse, the restriction is canceled, then, unless the taxpayer establishes—

(A) that such cancellation was not compensatory, and

(B) that the person, if any, who would be allowed a deduction if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as evidenced in such manner as the Secretary or his delegate shall prescribe by regulations,

the excess of the fair market value of the property (computed without regard to the restrictions) at the time of cancellation over the sum of—

(C) the fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(D) the amount, if any, paid for the cancellation,

shall be treated as compensation for the taxable year in which such cancellation occurs.

(e) Applicability of section.

This section shall not apply to—

(1) a transaction to which section 421 applies,

(2) a transfer to or from a trust described in section 401(a) or a transfer under an annuity plan which meets the requirements of section 404(a)(2)

(3) the transfer of an option without a readily ascertainable fair market value, or

(4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant.

(f) Holding period.

In determining the period for which the taxpayer has held property to which subsection (a) applies, there shall be included only the period beginning at the first time his rights in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier.

(g) Certain exchanges.

If property to which subsection (a) applies is exchanged for property subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject, and if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applied to such exchange, or if such exchange was pursuant to the exercise of a conversion privilege—

(1) such exchange shall be disregarded for purposes of subsection (a), and

(2) the property received shall be treated as property to which subsection (a) applies.

(h) Deduction by employer.

In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

(i) Transition rules.

This section shall apply to property transferred after June 30, 1969, except that this section shall not apply to property transferred—

(1) pursuant to a binding written contract entered into before April 22, 1969,

(2) upon the exercise of an option granted before April 22, 1969,

(3) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969,

(4) before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract entered into before April 22, 1969, between a corporation and the transferor requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to purchase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969, or

(5) in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or for property to which this section does not apply (by reason of paragraphs (1), (2), (3), or (4)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject.

(Added Pub. L. 91–172, title III, § 321(a), Dec. 30, 1969, 83 Stat. 588.)

EFFECTIVE DATE

Section 321(d) of Pub. L. 91–172 provided that: "The amendments made by subsections (a) and (c) [to sections 402(b), 403(c) and (d), and 404(a)(5) of this title] shall apply to taxable years ending after June 30, 1969. The amendments made by subsection (b) [enacting this section] shall apply with respect to contributions made and premiums paid after August 1, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 1348 of this title.

PART III.—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.
101. Certain death payments.
102. Gifts and inheritances.
103. Interest on certain governmental obligations.
104. Compensation for injuries or sickness.
105. Amounts received under accident and health plans.
106. Contributions by employer to accident and health plans.
107. Rental value of parsonages.
108. Income from discharge of indebtedness.
109. Improvements by lessee on lessor's property.
110. Income taxes paid by lessee corporation.
111. Recovery of bad debts, prior taxes, and delinquency amounts.
112. Certain combat pay of members of the Armed Forces.
113. Mustering-out payments for members of the Armed Forces.
114. Sports programs conducted for the American National Red Cross.
115. Income of States, municipalities, etc.
116. Partial exclusion of dividends received by individuals.
117. Scholarships and fellowship grants.
118. Contributions to the capital of a corporation.
119. Meals or lodging furnished for convenience of employer.
121. Gain from sale or exchange of residence of individual who has attained age 65.
122. Certain reduced uniformed services retirement pay.
123. Amounts received under insurance contracts for certain living expenses.
124. Cross references to other Acts.

AMENDMENTS

1969—Pub. L. 91–172, title IX, § 901(b), Dec. 30, 1969, 83 Stat. 709, redesignated former item 123 as 124, and added item 123.

1966—Pub. L. 89–365, § 1(a)(2), Mar. 8, 1966, 80 Stat. 32, redesignated former item 122 as 123, and added item 122.

1964—Pub. L. 88–272, title II, § 206(b)(2), Feb. 26, 1964, 78 Stat. 40, redesignated item 121 as 122, and added item 121.

1958—Pub. L. 85–866, title I, § 3(b), Sept. 2, 1958, 72 Stat. 1607, eliminated item 120.

§ 101. Certain death benefits.

(a) Proceeds of life insurance contracts payable by reason of death.

(1) General rule.

Except as otherwise provided in paragraph (2) and in subsection (d), gross income does not include amounts received (whether in a single sum

or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) Transfer for valuable consideration.

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such a transfer—

(A) if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) if such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

(b) Employees' death benefits.

(1) General rule.

Gross income does not include amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee.

(2) Special rules for paragraph (1).

(A) $5,000 limitation.

The aggregate amounts excludable under paragraph (1) with respect to the death of any employee shall not exceed $5,000.

(B) Nonforfeitable rights.

Paragraph (1) shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. This subparagraph shall not apply to total distributions payable (as defined in section 402 (a) (3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—

(i) by a stock bonus, pension, or profit-sharing trust described in section 401 (a) which is exempt from tax under section 501 (a),

(ii) under an annuity contract under a plan described in section 403(a), or

(iii) under an annuity contract purchased by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi) or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a), but only with respect to the portion of such total distributions payable which bears the same ratio to the amount of such total distributions payable which is (without regard to this subsection) includible in gross income, as the amounts contributed by the employer for such annuity contract which are excludable from gross income under section 403(b) bear the total amounts contributed by the employer for such annuity contract.

(C) Joint and survivor annuities.

Paragraph (1) shall not apply to amounts received by a surviving annuitant under a joint and survivor's annuity contract after the first day of the first period for which an amount was received as an annuity by the employee (or would have been received if the employee had lived).

(D) Other annuities.

In the case of any amount to which section 72 (relating to annuities, etc.) applies, the amount which is excludable under paragraph (1) (as modified by the preceding subparagraphs of this paragraph) shall be determined by reference to the value of such amount as of the day on which the employee died. Any amount so excludable under paragraph (1) shall, for purposes of section 72, be treated as additional consideration paid by the employee. Paragraph (1) shall not apply in the case of an annuity under chapter 73 of title 10 of the United States Code if the individual who made the election under such chapter died after attaining retirement age.

(3) Self-employed individual not considered an employee.

For purposes of this subsection, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(c) Interest.

If any amount excluded from gross income by subsection (a) or (b) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) Payment of life insurance proceeds at a date later than death.

(1) General rule.

The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary or his delegate) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received—

(A) any amount determined by such proration, and

(B) in the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2) (A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than $1,000 with respect to any insured.

Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer.

An amount held by an insurer with respect to any beneficiary shall mean an amount to which subsection (a) applies which is—

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) is equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.

(3) Surviving spouse.

For purposes of this subsection, the term "surviving spouse" means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.

(4) Application of subsection.

This subsection shall not apply to any amount to which subsection (c) is applicable.

(e) Alimony, etc., payments.

(1) In general.

This section shall not apply to so much of any payment as is includible in the gross income of the wife under section 71 (relating to alimony) or section 682 (relating to income of an estate or trust in case of divorce, etc.).

(2) Cross reference.

For definition of "wife", see section 7701 (a) (17).

(f) Effective date of section.

This section shall apply only to amounts received by reason of the death of an insured or an employee occurring after the date of enactment of this title. Section 22 (b) (1) of the Internal Revenue Code of 1939 shall apply to amounts received by reason of the death of an insured or an employee occurring on or before such date. (Aug. 16, 1954, ch. 736, 68A Stat. 26; Sept. 2, 1958, Pub. L. 85-866, title I, § 23(d), 72 Stat. 1622; Oct. 10, 1962, Pub. L. 87-792, § 7(c), 76 Stat. 829; Mar. 8, 1966, Pub. L. 89-365, § 1(c), 80 Stat. 32; Dec. 30, 1969, Pub. L. 91-172, title I, § 101 (j)(1), 83 Stat. 526.)

REFERENCES IN TEXT

Date of enactment of this title, referred to in subsec. (f), is Aug. 16, 1954.

AMENDMENTS

1969—Subsec. (b)(2)(B)(iii). Pub. L. 91-172 substituted references to section 170(b)(1)(A) (ii) and (vi), and to religious organizations, for references to section 503(b)(1), 2, or 3.

1966—Subsec. (b)(2)(D). Pub. L. 89-365 provided that par. (1) shall not apply in the case of an annuity under chapter 73 of Title 10 if the individual who made the election under that chapter died after attaining retirement age.

1962—Subsec. (b)(2)(B). Pub. L. 87-792, § 7(c)(1), substituted "described in section 403(a)" for "which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a)" in cl. (ii).

Subsec. (b)(3). Pub. L. 87-792, § 7(c)(2), added subsec. (b)(3).

1958—Subsec. (b)(2)(B). Pub. L. 85-866 substituted "This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—" for "(other than total distributions payable, as defined in section 402(a)(3), which are paid to distributee, by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a), within one taxable year of the distributee by reason of the employee's death)", and added clauses (i), (ii), and (iii).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L., 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (b)(2)(D) by Pub. L. 89-365 applicable with respect to individuals making an election under chapter 73 of Title 10 who died after Dec. 31, 1965, see section 1(d) of Pub. L. 89-365, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b)(2)(B) by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1957, see section 23(g) of Pub. L. 85-866, set out as a note under section 403 of this title.

CROSS REFERENCES

Basis rules of general application, see section 1011 et seq. of this title.

Employee defined, see section 7701 (a) (20) of this title.

Limitation on retirement income as inapplicable to amount excluded from gross income under this section relating to life insurance proceeds, see section 37 of this title.

Rules and regulations, see section 7805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 72, 406, 407, 872, 7701 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46-301 of the District of Columbia Code.

§ 102. Gifts and inheritances.

(a) General rule.

Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) Income.

Subsection (a) shall not exclude from gross income—

(1) the income from any property referred to in subsection (a); or

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

Where, under the terms of the gift, bequest, devise, or inheritance, the payment, crediting, or distribution thereof is to be made at intervals, then, to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property. Any amount included in the gross income of a beneficiary under subchapter J shall be treated for purposes of

paragraph (2) as a gift, bequest, devise, or inheritance of income from property. (Aug. 16, 1954, ch. 736, 68A Stat. 28.)

CROSS REFERENCES

Estate tax, see section 2001 et seq. of this title.
Gift tax, see section 2501 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 274 of this title.

§ 103. Interest on certain governmental obligations.

(a) General rule.

Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;

(2) the obligations of the United States; or

(3) the obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States and if under the respective Acts authorizing the issue of the obligations the interest is wholly exempt from the taxes imposed by this subtitle.

(b) Exception.

Subsection (a) (2) shall not apply to interest on obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit, to the extent they represent deposits made before March 1, 1941), unless under the respective Acts authorizing the issuance thereof such interest is wholly exempt from the taxes imposed by this subtitle.

(c) Industrial development bonds.

(1) Subsection (a)(1) not to apply.

Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a) (1).

(2) Industrial development bond.

For purposes of this subsection, the term "industrial development bond" means any obligation—

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part—

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(3) Exempt person.

For purposes of paragraph (2)(A), the term "exempt person" means—

(A) a governmental unit, or

(B) an organization described in section 501 (c)(3) and exempt from tax under section 501 (a) (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization).

(4) Certain exempt activities.

Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) residential real property for family units,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy, gas, or water, or

(F) air or water pollution control facilities.

(5) Industrial parks.

Paragraph (1) shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition or development of land as the site for an industrial park. For purposes of the preceding sentence, the term "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, power, or communication facilities, which are incidental to use of the site as an industrial park, but, except wth respect to such facilities, does not include the provision of structures or buildings.

(6) Exemption for certain small issues.

(A) In general.

Paragraph (1) shall not apply to any obligation issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and substantially all of the proceeds of which are to be used (i) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or (ii) to redeem part or all of a prior issue which was issued for purposes described in clause (i) or this clause.

(B) Certain prior issues taken into account.

If—

(i) the proceeds of two or more issues of obligations (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same country (but not in any incorporated municipality),

(ii) the principal user of such facilities is or will be the same person or two or more related persons, and

(iii) but for this subparagraph, subparagraph (A) would apply to each such issue,

then, for purposes of subparagraph (A), in determining the aggregate face amount of any later issue there shall be taken into account the face amount of obligations issued under all prior such issues and outstanding at the time of such

later issue (not including as outstanding any obligation which is to be redeemed from the proceeds of the later issue).

(C) Related persons.

For purposes of this paragraph and paragraph (7), a person is a related person to another person if—

(i) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(ii) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(D) $5,000,000 limit in certain cases.

At the election of the issuer, made at such time and in such manner as the Secretary or his delegate shall by regulations prescribe, with respect to any issue this paragraph shall be applied—

(i) by substituting "$5,000,000" for "$1,000,000" in subparagraph (A), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in subparagraph (B), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (E) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of proceeds of outstanding issues to which subparagraph (A) applied), as if the aggregate amount of such capital expenditures constituted the face amount a prior outstanding issue described in subparagraph (B).

(E) Facilities taken into account.

For purposes of subparagraph (D)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or two or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(F) Certain capital expenditures not taken into account.

For purposes of subparagraph (D)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance, or

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $250,000), shall not be taken into account.

(G) Limitation on loss of tax exemption.

In applying subparagraph (D)(ii) with respect to capital expenditures made after the date of any issue, no obligation issued as a part of such issue shall be treated as an obligation not described in subsection (a)(1) by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(H) Certain refinancing issues.

In the case of any issue described in subparagraph (A)(ii), an election may be made under subparagraph (D) only if all of the prior issues being redeemed are issues to which subparagraph (A) applies. In applying subparagraph (D)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under subparagraph (A).

(7) Exception.

Paragraphs (4), (5), and (6) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

(d) Arbitrage bonds.

(1) Subsection (a)(1) not to apply.

Except as provided in this subsection, any arbitrage bond shall be treated as an obligation not described in subsection (a)(1).

(2) Arbitrage bond.

For purposes of this subsection, the term "arbitrage bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) to acquire securities (within the meaning of section 165(g)(2)(A) or (B)) or obligations (other than obligations described in subsection (a)(1)) which may be reasonably expected at the time of issuance of such issue, to produce a yield over the term of the issue which is materially higher (taking into account any discount or premium) than the yield on obligations of such issue, or

(B) To replace funds which were used directly or indirectly to acquire securities or obligations described in subparagraph (A).

(3) Exceptions.

Paragraph (1) shall not apply to any obligation—

(A) which is issued as part of an issue substantially all of the proceeds of which are

reasonably expected to be used to provide permanent financing for real property used or to be used for residential purposes for the personnel of an educational institution (within the meaning of section 151(e)(4)) which grants baccalaureate or higher degrees, or to replace funds which were so used, and

(B) the yield on which over the term of the issue is not reasonably expected, at the time of issuance of such issue, to be substantially lower than the yield on obligations acquired or to be acquired in providing such financing.

This paragraph shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of property financed by the proceeds of the issue of which such obligation is a part, or by a member of the family (within the meaning of section 318(a)(1)) of any such person.

(4) Special rules.

For purposes of paragraph (1), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that—

(A) the proceeds of the issue of which such obligation is a part may be invested for a temporary period in securities or other obligations until such proceeds are needed for the purpose for which such issue was issued, or

(B) an amount of the proceeds of the issue of which such obligation is a part may be invested in securities or other obligations which are part of a reasonably required reserve or replacement fund.

The amount referred to in subparagraph (B) shall not exceed 15 percent of the proceeds of the issue of which such obligation is a part unless the issuer establishes that a higher amount is necessary.

(5) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(e) Cross references.

For provisions relating to the taxable status of—

(1) Bonds and certificates of indebtedness authorized by the First Liberty Bond Act, see sections 1 and 6 of that Act (40 Stat. 35, 36; 31 U. S. C. 746, 755);

(2) Bonds issued to restore or maintain the gold reserve, see section 2 of the Act of March 14, 1900 (31 Stat. 46; 31 U. S. C. 408);

(3) Bonds, notes, certificates of indebtedness, and Treasury bills authorized by the Second Liberty Bond Act, see sections 4, 5 (b) and (d), 7, 18 (b), and 22 (d) of that Act, as amended (40 Stat. 290; 46 Stat. 20, 775; 40 Stat. 291, 1310; 55 Stat. 8; 31 U. S. C. 752a, 754, 747, 753, 757c);

(4) Bonds, notes, and certificates of indebtedness of the United States and bonds of the War Finance Corporation owned by certain nonresidents, see section 3 of the Fourth Liberty Bond Act, as amended (40 Stat. 1311, § 4; 31 U. S. C. 750);

(5) Certificates of indebtedness issued after February 4, 1910, see section 2 of the Act of that date (36 Stat. 192; 31 U. S. C. 769);

(6) Consols of 1930, see section 11 of the Act of March 14, 1900 (31 Stat. 48; 31 U. S. C. 751);

(7) Obligations and evidences of ownership issued by the United States or any of its agencies or instrumentalities on or after March 28, 1942, see section 4 of the Public Debt Act of 1941, as amended (c. 147, 61 Stat. 180; 31 U. S. C. 742a);

(8) Commodity Credit Corporation obligations, see section 5 of the Act of March 8, 1938 (52 Stat. 108; 15 U. S. C. 713a-5);

(9) Debentures issued by Federal Housing Administrator, see sections 204 (d) and 207 (i) of the National Housing Act, as amended (52 Stat. 14, 20; 12 U. S. C. 1710, 1713);

(10) Debentures issued to mortgagees by United States Maritime Commission, see section 1105 (c) of the Merchant Marine Act, 1936, as amended (52 Stat. 972; 46 U. S. C. 1275);

(11) Federal Deposit Insurance Corporation obligations, see section 15 of the Federal Deposit Insurance Act (64 Stat. 890; 12 U. S. C. 1825);

(12) Federal Home Loan Bank obligations, see section 13 of the Federal Home Loan Bank Act, as amended (49 Stat. 295, § 8; 12 U. S. C. 1433);

(13) Federal savings and loan association loans, see section 5 (h) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 133; 12 U. S. C. 1464);

(14) Federal Savings and Loan Insurance Corporation obligations, see section 402 (e) of the National Housing Act (48 Stat. 1257; 12 U. S. C. 1725);

(15) Home Owners' Loan Corporation bonds, see section 4 (c) of the Home Owners' Loan Act of 1933, as amended (48 Stat. 644, c. 168; 12 U. S. C. 1463);

(16) Obligations of Central Bank for Cooperatives, production credit corporations, production credit associations, and banks for cooperatives, see section 63 of the Farm Credit Act of 1933 (48 Stat. 267; 12 U. S. C. 1138c);

(17) Panama Canal bonds, see section 1 of the Act of December 21, 1904 (34 Stat. 5; 31 U. S. C. 743), section 8 of the Act of June 28, 1902 (32 Stat. 484; 31 U. S. C. 744), and section 39 of the Tariff Act of 1909 (36 Stat. 117; 31 U. S. C. 745);

(18) Philippine bonds, etc., issued before the independence of the Philippines, see section 9 of the Philippine Independence Act (48 Stat. 463; 48 U. S. C. 1239);

(19) Postal savings bonds, see section 10 of the Act of June 25, 1910 (36 Stat. 817; 39 U. S. C. 760);

(20) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (50 Stat. 844; 48 U. S. C. 745);

(21) Treasury notes issued to retire national bank notes, see section 18 of the Federal Reserve Act (38 Stat. 268; 12 U. S. C. 447);

(22) United States Housing Authority obligations, see sections 5 (e) and 20 (b) of the United States Housing Act of 1937 (50 Stat. 890, 898; 42 U. S. C. 1405, 1420);

(23) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1949 (63 Stat. 940; 48 U. S. C. 1403).

(Aug. 16, 1954, ch. 736, 68A Stat. 29; June 28, 1968, Pub. L. 90-364, title I, § 107(a), 82 Stat. 266; Oct. 24, 1968, Pub. L. 90-634, title IV, § 401(a), 82 Stat. 1349; Dec. 30, 1969, Pub. L. 91-172, title VI, § 601(a), 83 Stat. 656.)

REFERENCES IN TEXT

Section 2 of the act of March 14, 1900 (31 Stat. 46; 31 U.S.C. 408), referred to in subsec. (e)(2), was repealed by Pub. L. 90-262, § 10, Mar. 18, 1968, 82 Stat. 51.

Section 7 of the Second Liberty Bond Act (31 U.S.C. 747), referred to in subsec. (e)(3), was repealed by Pub. L. 86-346, title I, § 105(b)(2), Sept. 22, 1959, 73 Stat. 622, and is now covered by section 742 of Title 31, Money and Finance.

Section 4(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1463), referred to in subsec. (e)(15), was omitted from the code. See notes under former section 1463 of Title 12, Banks and Banking.

Section 9 of the Philippine Independence Act (48 U.S.C. 1239), referred to in subsec. (e)(18), was omitted from the code. See notes under former sections 1010—1276e of Title 48, Territories and Insular Possessions.

Section 10 of the act of June 25, 1910 (39 U.S.C. 760), referred to in subsec. (e)(19), was repealed by Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 708.

AMENDMENTS

1969—Subsec. (d). Pub. L. 91-172 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91-172 redesignated former subsec. (d) as (e).

1968—Subsec. (c). Pub. L. 90-364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(6)(D)—(H). Pub. L. 90-634 added subsec. (c)(6)(D)—(H).

Subsec. (d). Pub. L. 90-364 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 601(b) of Pub. L. 91-172 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after October 9, 1969."

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 401(b) of Pub. L. 90-634 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to obligations issued after the date of the enactment of this Act [Oct. 24, 1968]."

Section 107(b)(1) of Pub. L. 90–364 provided that: "Except as provided by paragraph (2) [set out as a note below], the amendment made by subsection (a) [adding subsec. (c) of this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date."

TRANSITIONAL PROVISIONS FOR INDUSTRIAL DEVELOPMENT BONDS ISSUED BEFORE JANUARY 1, 1969

Section 107(b)(2) of Pub. L. 90–364 provided that:

"Section 103(c)(1) of the Internal Revenue Code of 1954, as amended by subsection (a) [subsec. (c)(1) of this section], shall not apply with respect to any obligation issued before January 1, 1969, if before May 1, 1968—

"(A) the issuance of the obligation (or the project in connection with which the proceeds of the obligations are to be used) was authorized or approved by the governing body of the governmental unit issuing the obligation or by the voters of such governmental unit;

"(B) in connection with the issuance of such obligation or with the use of the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds, a governmental unit has made a significant financial commitment;

"(C) any person (other than a governmental unit) who will use the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds has expended (or has entered into a binding contract to expend) for purposes which are related to the use of such proceeds or property, an amount equal to or in excess of 20 percent of such proceeds; or

"(D) in the case of an obligation issued in conjunction with a project where financial assistance will be provided by a governmental agency concerned with economic development, such agency has approved the project or an application for financial assistance is pending."

CROSS REFERENCES

Bonds and other evidences of indebtedness having tax-free interest as not subject to special rules for determining capital gains and losses, see section 1232 of this title.

Credits against tax of partially tax-exempt interest received by individuals, see section 35 of this title.

Estates, trusts and beneficiaries, tax-exempt interest in determining distributable net income, see section 643 of this title.

Insurance company taxable income as gross income less, among others, deduction for tax-free interest, see section 832 of this title.

Life insurance companies, taxable income as gross income minus, among others, deduction for tax-free interest, see section 803 of this title.

Mutual insurance companies, gross amount of income as subject to deduction, among others of interest under this section, see section 821 of this title.

Mutual insurance companies, taxable income as gross investment income minus, among others, deduction for tax-free interest, see section 822 of this title.

Partially tax-exempt interest deduction for corporations, see section 242 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 593, 643, 804, 809, 818, 819, 822, 832, 1232, 4940, 4942, 6049 of this title; title 15 sections 77c, 78c.

§ 104. Compensation for injuries or sickness.

(a) In general.

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness;

(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer); and

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021).

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee.

(b) Cross references.

(1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a) (4) of this section, see section 402 (h) of the Career Compensation Act of 1949 (37 U. S. C. 272 (h)).

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Sept. 8, 1960, Pub. L. 86–723, § 51, 74 Stat. 847; Oct. 10, 1962, Pub. L. 87–792, § 7(d), 76 Stat. 829.)

REFERENCES IN TEXT

Section 402 (h) of Career Compensation Act of 1949 (37 U. S. C. 272 (h)), referred to in par. (2) of subsec. (b), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. See section 1403 of Title 10, Armed Forces.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–792 inserted sentence requiring contributions made on behalf of an individual who is, or has been, an employee within the meaning of section 401(c)(1), while he was such an employee to a trust which is exempt from tax, or under a plan described in section 403(a), to be treated as contributions by the employer which were not includible in the gross income of the employee.

1960—Subsec. (a)(4). Pub. L. 86–723 provided for exclusion from gross income of amounts received as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of subsec. (a)(4) by Pub. L. 86–723 effective with respect to taxable years ending after Sept. 8, 1960, see section 56(e) of Pub. L. 86–723, set out as a note under section 809 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all

functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

The Coast and Geodetic Survey was consolidated with the Weather Bureau of the Department of Commerce to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All personnel (including commissioned officers) of the Survey and all property held or used by the Survey were deemed transferred to the Administration, and all functions of the Survey, not previously transferred by 1950 Reorg. Plan No. 5, were transferred to the Secretary of Commerce.

CROSS REFERENCES

Amounts received through accident or health insurance, treatment as, see section 105 of this title.

Disability retired pay, treatment under this title, see section 1403 of Title 10, Armed Forces.

Employee defined, see section 7701 (a) (20) of this title.

Limitation on retirement income inapplicable to exclusions under this section, see section 37 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 105, 7701 of this title; title 10 section 1403.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 47–1557a of the District of Columbia Code.

§ 105. Amounts received under accident and health plans.

(a) Amounts attributable to employer contributions.

Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care.

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213 (e)) of the taxpayer, his spouse, and his dependents (as defined in section 152).

(c) Payments unrelated to absence from work.

Gross income does not include amounts referred to in subsection (a) to the extent such amounts—

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152), and

(2) are computed with reference to the nature of the injury without regard to the period the employee is absent from work.

(d) Wage continuation plans.

Gross income does not include amounts referred to in subsection (a) if such amounts constitute wages or payments in lieu of wages for a period during which the employee is absent from work on account of personal injuries or sickness; but this subsection shall not apply to the extent that such amounts exceed a weekly rate of $100. The preceding sentence shall not apply to amounts attributable to the first 30 calendar days in such period, if such amounts are at a rate which exceeds 75 percent of the regular weekly rate of wages of the employee (as determined under regulations prescribed by the Secretary or his delegate). If amounts attributable to the first 30 calendar days in such period are at a rate which does not exceed 75 percent of the regular weekly rate of wages of the employee, the first sentence of this subsection (1) shall not apply to the extent that such amounts exceed a weekly rate of $75, and (2) shall not apply to amounts attributable to the first 7 calendar days in such period unless the employee is hospitalized on account of personal injuries or sickness for at least one day during such period. If such amounts are not paid on the basis of a weekly pay period, the Secretary or his delegate shall by regulations prescribe the method of determining the weekly rate at which such amounts are paid.

(e) Accident and health plans.

For purposes of this section and section 104—

(1) amounts received under an accident or health plan for employees, and

(2) amounts received from a sickness and disability fund for employees maintained under the law of a State, a Territory, or the District of Columbia,

shall be treated as amounts received through accident or health insurance.

(f) Rules for application of section 213.

For purposes of section 213 (a) (relating to medical, dental, etc., expenses) amounts excluded from gross income under subsection (c) or (d) shall not be considered as compensation (by insurance or otherwise) for expenses paid for medical care.

(g) Self-employed individual not considered an employee.

For purposes of this section, the term "employee" does not include an individual who is an employee within the meaning of section 401 (c) (1) (relating to self-employed individuals). (Aug. 16, 1954, ch. 736, 68A Stat. 30; Oct. 10, 1962, Pub. L. 87–792, § 7(e), 76 Stat. 829; Feb. 26, 1964, Pub. L. 88–272, title II, § 205(a), 78 Stat. 38.)

AMENDMENTS

1964—Subsec. (d). Pub. L. 88–272 substituted provisions stating that "The preceding sentence shall not apply to amounts attributable to the first 30" days if

the amounts exceed 75 percent of regular weekly wages, and if they do not exceed said 75 percent, the first sentence of this subsection shall not apply to the extent the amounts exceed $75 weekly and shall not apply to amounts attributable to the first 7 calendar days unless the employee is hospitalized for injury or sickness for at least 1 day in such period, for provisions stating that said "preceding sentence" did not apply in cases of sickness, to amounts attributable to the first 7 days unless the employee was hospitalized for sickness for at least 1 day during such period.

1962—Subsec. (g). Pub. L. 87–792 added subsec. (g).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 205(b) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to subsec. (d) of this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

CROSS REFERENCES

Employee defined, see section 7701 (a) (20) of this title.

Limitation on retirement income inapplicable to exclusions under this section, see section 37 of this title.

Rules and regulations, see section 7805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 403, 7701 of this title.

§ 106. Contributions by employer to accident and health plans.

Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness. (Aug. 16, 1954, ch. 736, 68A Stat. 32.)

CROSS REFERENCES

Compensation for injuries or sickness, exclusion of, see section 104 of this title.

Employee defined, see section 7701 (a) (20) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7701 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7–135 of the District of Columbia Code.

§ 107. Rental value of parsonages.

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home.

(Aug. 16, 1954, ch. 736, 68A Stat. 32.)

CROSS REFERENCES

Inclusion in gross income, see section 61 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1402 of this title; title 42 section 411.

§ 108. Income from discharge of indebtedness.

(a) Special rule of exclusion.

No amount shall be included in gross income by reason of the discharge, in whole or in part, within the taxable year, of any indebtedness for which the taxpayer is liable, or subject to which the taxpayer holds property, if—

(1) the indebtedness was incurred or assumed—

(A) by a corporation, or

(B) by an individual in connection with property used in his trade or business, and

(2) such taxpayer makes and files a consent to the regulations prescribed under section 1017 (relating to adjustment of basis) then in effect at such time and in such manner as the Secretary or his delegate by regulations prescribes.

In such case, the amount of any income of such taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction.

(b) Railroad corporations.

No amount shall be included in gross income by reason of the discharge, cancellation, or modification, in whole or in part, within the taxable year, of any indebtedness of a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)), if such discharge, cancellation, or modification is effected pursuant to an order of a court—

(A) in a receivership proceeding, or

(B) in a proceeding under section 77 of the Bankruptcy Act,

commenced before January 1, 1960. In such cases, the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. Subsection (a) of this section shall not apply with respect to any discharge of indebtedness to which this subsection applies. (Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, § 5, 70 Stat. 403; June 8, 1960, Pub. L. 86–496, § 1(a), 74 Stat. 164.)

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and eliminated provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956—Subsec. (b) amended by act June 29, 1956, which substituted "December 31, 1957" for "December 31, 1955".

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86–496 provided that: "The amendment made by subsection (a) [to subsec. (b) of this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1017 of this title.

§ 109. Improvements by lessee on lessor's property.

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee. (Aug. 16, 1954, ch. 736, 68A Stat. 33.)

CROSS REFERENCES

Basic rule for property on which lessee has made improvements, see section 1019 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1019 of this title.

§ 110. Income taxes paid by lessee corporation.

If—

(1) a lease was entered into before January 1, 1954,

(2) both lessee and lessor are corporations, and

(3) under the lease, the lessee is obligated to pay, or to reimburse the lessor for, any part of the tax imposed by this subtitle on the lessor with respect to the rentals derived by the lessor from the lessee,

then gross income of the lessor does not include such payment or reimbursement, and no deduction for such payment or reimbursement shall be allowed to the lessee. For purposes of the preceding sentence, a lease shall be considered to have been entered into before January 1, 1954, if it is a renewal or continuance of a lease entered into before such date and if such renewal or continuance was made in accordance with an option contained in the lease on December 31, 1953. (Aug. 16, 1954, ch. 736, 68A Stat. 33.)

§ 111. Recovery of bad debts, prior taxes, and delinquency amounts.

(a) General rule.

Gross income does not include income attributable to the recovery during the taxable year of a bad debt, prior tax, or delinquency amount, to the extent of the amount of the recovery exclusion with respect to such debt, tax, or amount.

(b) Definitions.

For purposes of subsection (a)—

(1) Bad debt.

The term "bad debt" means a debt on account of the worthlessness or partial worthlessness of which a deduction was allowed for a prior taxable year.

(2) Prior tax.

The term "prior tax" means a tax on account of which a deduction or credit was allowed for a prior taxable year.

(3) Delinquency amount.

The term "delinquency amount" means an amount paid or accrued on account of which a deduction or credit was allowed for a prior taxable year and which is attributable to failure to file return with respect to a tax, or pay a tax, within the time required by the law under which the tax is imposed, or to failure to file return with respect to a tax or pay a tax.

(4) Recovery exclusion.

The term "recovery exclusion", with respect to a bad debt, prior tax, or delinquency amount, means the amount, determined in accordance with regulations prescribed by the Secretary or his delegate, of the deductions or credits allowed, on account of such bad debt, prior tax, or delinquency amount, which did not result in a reduction of the taxpayer's tax under this subtitle (not including the accumulated earnings tax imposed by section 531 or the tax on personal holding companies imposed by section 541) or corresponding provisions of prior income tax laws (other than subchapter E of chapter 2 of the Internal Revenue Code of 1939, relating to World War II excess profits tax), reduced by the amount excludable in previous taxable years with respect to such debt, tax, or amount under this section.

(c) Special rules for accumulated earnings tax and for personal holding company tax.

In applying subsections (a) and (b) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) a recovery exclusion allowed for purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not the bad debt, prior tax, or delinquency amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where a bad debt, prior tax, or delinquency amount was not allowable as a deduction or credit for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then a recovery exclusion shall be allowable if such bad debt, prior tax, or delinquency amount did not result in a reduction of the tax under section 531 or the tax under section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

CROSS REFERENCES

Additions to the tax and additional amounts—

Failure to file tax return, see section 6651 of this title.

Failure to pay tax, see section 6653 of this title.

Penalties for willful failure to—

File return, or pay tax, see section 7203 of this title.

Pay over tax, see section 7202 of this title.

Recovery of bad debts, prior taxes, or delinquency amounts as item of distributor or transferor corporation with respect to carryovers in certain corporate acquisitions, see section 381 of this title.

Rules and regulations, see section 7805 of this title.

Tax adjustment measured by prior benefits with respect to war loss recoveries, see section 1333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 381, 1333, 1351 of this title.

§ 112. Certain combat pay of members of the Armed Forces.

(a) Enlisted personnel.

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone during an induction period, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c) (3) of this section.

(b) Commissioned officers.

Gross income does not include so much of the compensation as does not exceed $500 received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone during an induction period, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c) (3) of this section.

(c) Definitions.

For purposes of this section—

(1) The term "commissioned officer" does not include a commissioned warrant officer.

(2) The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term "compensation" does not include pensions and retirement pay.

(5) The term "induction period" means any period during which, under laws heretofore or hereafter enacted relating to the induction of individuals for training and service in the Armed Forces of the United States, individuals (other than individuals liable for induction by reason of a prior deferment) are liable for induction for such training and service.

(Aug. 16, 1954, ch. 736, 68A Stat. 34; Nov. 2, 1966, Pub. L. 89-739, § 1, 80 Stat. 1165.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-739 substituted "$500" for "$200."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89-739 provided that: "The amendment made by the first section of this Act [amending subsec. (b) of this section] shall apply with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after such date."

EX. ORD. NO. 10585. TERMINATION OF COMBATANT ACTIVITIES IN KOREA

Ex. Ord. No. 10585, Jan. 1, 1955, 20 F.R. 17, provided: By virtue of the authority vested in me by section 112 (c) (3) of the Internal Revenue Code of 1954 [subsection (c) (3) of this section], January 31, 1955, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 10195 of December 20, 1950 (15 F. R. 9177) [set out as a note under section 22 of Title 26 (I. R. C. 1939)].

DWIGHT D. EISENHOWER

EX. ORD. NO. 11216. DESIGNATION OF VIETNAM AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 11216, Apr. 24, 1965, 30 F.R. 5817, provided: Pursuant to the authority vested in me by section 112 of the Internal Revenue Code of 1954, I hereby designate, for the purposes of that section, as an area in which Armed Forces of the United States are and have been engaged in combat:

Vietnam, including the waters adjacent thereto within the following-described limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N Lat., 108°15′ E Long.; thence southward to 18° N Lat., 108°15′ E Long.; thence southeastward to 17°30 N Lat., 111° E Long.; thence southward to 11° N Lat., 111° E Long.; thence southwestward to 7° N Lat., 105° E Long.; thence westward to 7° N Lat., 103° E Long.; thence northward to 9°30′ N Lat., 103° E Long.; thence northeastward to 10°15′ N Lat., 104°27′ E Long.; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

The date of the commencing of combatant activities in such area is hereby designated as January 1, 1964.

LYNDON B. JOHNSON.

CROSS REFERENCES

Additional estate taxes inapplicable to members of armed forces dying during induction period, see section 2201 of this title.

Communications excise tax, exemption from, see section 4253 of this title.

Income taxes on members of armed forces on death, see section 692 of this title.

Sale or exchange of residence, see section 1034 of this title.

Time for performing certain acts postponed by reason of war, see section 7508 of this title.

Wages as not including remuneration paid to members of armed services entitled to benefits of this section, see section 3401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 692, 1034, 2201, 3401, 4251 of this title.

§ 113. Mustering-out payments for members of the Armed Forces.

Gross income does not include amounts received during the taxable year as mustering-out payments with respect to service in the Armed Forces of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 35.)

§ 114. Sports programs conducted for the American National Red Cross.

(a) General rule.

In the case of a taxpayer which is a corporation primarily engaged in the furnishing of sports programs, gross income does not include amounts received as proceeds from a sports program conducted by the taxpayer if—

(1) the taxpayer agrees in writing with the American National Red Cross to conduct such sports program exclusively for the benefit of the American National Red Cross;

(2) the taxpayer turns over to the American National Red Cross the proceeds from such sports program, minus the expenses paid or incurred by the taxpayer—

(A) which would not have been so paid or incurred but for such sports program, and

(B) which would be allowable as a deduction under section 162 (relating to trade or business expenses) but for subsection (b) of this section; and

(3) the facilities used for such program are not regularly used during the taxable year for the conduct of sports programs to which this subsection applies.

For purposes of this subsection, the term "proceeds from such sports program" includes all amounts paid for admission to the sports program, plus all proceeds received by the taxpayer from such program or activities carried on in connection therewith.

(b) Treatment of expenses.

Expenses described in subsection (a) (2) shall be allowed as a deduction under section 162 only to the extent that such expenses exceed the amount excluded from gross income by subsection (a) of this section. (Aug. 16, 1954, ch. 736, 68A Stat. 35.)

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

§ 115. Income of states, municipalities, etc.

(a) General rule.

Gross income does not include—

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or Territory, or any political subdivision thereof, or the District of Columbia; or

(2) income accruing to the government of any possession of the United States or any political subdivision thereof.

(b) Contracts made before September 8, 1916, relating to public utilities.

Where a State or Territory, or any political subdivision thereof, or the District of Columbia, before September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which was to acquire, construct, operate, or maintain a public utility—

(1) If—

(A) by the terms of such contract the tax imposed by this subtitle is to be paid out of the proceeds from the operation of such public utility before any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and

(B) a part of such proceeds for the taxable year would (but for the imposition of the tax imposed by this subtitle) accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia,

then a tax on the taxable income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this subtitle, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under regulations prescribed by the Secretary or his delegate) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this subtitle) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the taxable income from the operation of such public utility for such taxable year.

(2) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this subtitle, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax on the taxable income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this subtitle.

(c) Contracts made before May 29, 1928, relating to bridge acquisitions.

Where a State or political subdivision thereof, pursuant to a contract entered into before May 29, 1928, to which it is not a party, is to acquire a bridge—

(1) If—

(A) by the terms of such contract the tax imposed by this subtitle is to be paid out of the proceeds from the operation of such bridge before any division of such proceeds, and

(B) a part of such proceeds for the taxable year would (but for the imposition of the tax imposed by this subtitle) accrue directly to or for the use of or would be applied for the benefit of such State or political subdivision,

then a tax on the taxable income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this subtitle, but there shall be refunded to such State or political subdivision (under regulations to be prescribed by the Secretary or his delegate) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this subtitle) would have accrued directly to or for the use of or would be applied for the benefit of such State or political subdivision bears to the amount of the taxable income from the operation of such bridge for such taxable year. No such refund shall be made unless the entire amount of the refund is to be applied in part payment for the acquisition of such bridge.

(2) If by the terms of such contract no part of the proceeds from the operation of the bridge for the taxable year would, irrespective of the tax imposed by this subtitle, accrue directly to or for the use of or be applied for the benefit of such State or political subdivision, then the tax on the taxable income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this subtitle. (Aug. 16, 1954, ch. 736, 68A Stat. 35.)

§ 116. Partial exclusion of dividends received by individuals.

(a) Exclusion from gross income.

Effective with respect to any taxable year ending after July 31, 1954, gross income does not include amounts received by an individual as dividends from domestic corporations, to the extent that the dividends do not exceed $100. If the dividends received in a taxable year exceed $100, the exclusion provided by the preceding sentence shall apply to the dividends first received in such year.

(b) Certain dividends excluded.

Subsection (a) shall not apply to any dividend from—

(1) a corporation organized under the China Trade Act, 1922 (see sec. 941);

(2) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is—

(A) a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

(B) a corporation to which section 931 (relating to income from sources within possessions of the United States) applies; or

(3) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (sec. 856 and following).

(c) Special rules for certain distributions.

For purposes of subsection (a)—

(1) Any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.) shall not be treated as a dividend.

(2) A dividend received from a regulated investment company shall be subject to the limitations prescribed in section 854.

(3) The amount of dividends properly allocable to a beneficiary under section 652 or 662 shall be deemed to have been received by the beneficiary ratably on the same date that the dividends were received by the estate or trust.

(d) Certain nonresident aliens ineligible for exclusion.

In the case of a nonresident alien individual, subsection (a) shall apply only—

(1) in determining the tax imposed for the taxable year pursuant to section 871(b)(1) and only in respect of dividends which are effectively connected with the conduct of a trade or business within the United States, or

(2) in determining the tax imposed for the taxable year pursuant to section 877(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 37; June 25, 1959, Pub. L. 86-69, § 3(a)(2), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86-779, § 10(f), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88-272, title II, § 201 (c), (d)(6)(C), 78 Stat. 32; Nov. 13, 1966, Pub. L. 89-809, title I, § 103 (g), 80 Stat. 1552.)

REFERENCES IN TEXT

The China Trade Act, 1922, referred to in subsec. (b)(1), is classified to section 141 et seq. of Title 15, Commerce and Trade.

AMENDMENTS

1966—Subsec. (d). Pub. L. 89-809 limited the availability of the exclusion to dividends which are effectively connected with the conduct of a trade or business in the United States and extended the allowance of the exclusion to an expatriate subject to tax under section 877(b).

1964—Subsec. (a). Pub. L. 88-272, § 201(c), substituted "$100" for "$50" wherever appearing.

Subsec. (c)(3). Pub. L. 88-272, § 201(d)(6)(C), added par. (3).

1960—Subsec. (b). Pub. L. 86-779 added par. (3).

1959—Subsec. (b). Pub. L. 86-69 redesignated pars. (2) and (3) as (1) and (2) and eliminated former par. (1) which related to dividends from insurance companies subject to a tax imposed by part I or II of subchapter L.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (a) by Pub. L. 88-272, § 201(c), applicable to taxable years beginning after Dec. 31, 1963, and of subsec. (c)(3) by Pub. L. 88-272, § 201(d)(6)(C), applicable to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 35 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-779 applicable to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (b) of this section by Pub. L. 86-69 applicable to dividends received after December 31, 1958, in taxable years ending after such date, see section 3(a)(3) of Pub. L. 86-69, set out as a note under section 34 of this title.

CROSS REFERENCES

Common trust funds, see section 584 of this title.

Corporate distributions of property, see section 301 of this title.

Dividends received by individuals, credits against tax, see section 34 of this title.

Dividends received credit not allowed on distributions of electing small business corporations, see section 1375 of this title.

Estates, trusts, and beneficiaries, see sections 642, 643 of this title.

Income and credits of partner, see section 702 of this title.

Limitations applicable to dividends received from regulated investment company, see section 854 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 584, 643, 702, 854, 857, 1375 of this title.

§ 117. Scholarships and fellowship grants.

(a) General rule.

In the case of an individual, gross income does not include—

(1) any amount received—

(A) as a scholarship at an educational institution (as defined in section 151 (e) (4)), or

(B) as a fellowship grant,

including the value of contributed services and accommodations; and

(2) any amount received to cover expenses for—

(A) travel,

(B) research,

(C) clerical help, or

(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient.

(b) Limitations.

(1) Individuals who are candidates for degrees.

In the case of an individual who is a candidate for a degree at an educational institution (as defined in section 151 (e) (4)), subsection (a) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services in the nature of part-time employment required as a condition to receiving the scholarship or the fellowship grant. If teaching, research, or other services are required of all candidates (whether or not recipients of scholarships or fellowship grants) for a particular degree as a condition to receiving such degree, such teaching, research, or other services shall not be regarded as part-time employment within the meaning of this paragraph.

(2) Individuals who are not candidates for degrees.

In the case of an individual who is not a candidate for a degree at an educational institution (as defined in section 151 (e) (4)), subsection (a) shall apply only if the condition in subparagraph (A) is satisfied and then only within the limitations provided in subparagraph (B).

(A) Conditions for exclusion.

The grantor of the scholarship or fellowship grant is—

(i) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) a foreign government,

(iii) an international organization, or a binational or multinational education and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(iv) the United States, or an instrumentality or agency thereof, or a State, a territory, or a possession of the United States, or any political subdivision thereof, or the District of Columbia.

(B) Extent of exclusion.

The amount of the scholarship or fellowship grant excluded under subsection (a) (1) in any taxable year shall be limited to an amount equal to $300 times the number of months for which the recipient received amounts under the scholarship or fellowship grant during such taxable year, except that no exclusion shall be allowed under subsection (a) after the recipient has been entitled to exclude under this section for a period of 36 months (whether or not consecutive) amounts received as a scholarship or fellowship grant while not a candidate for a degree at an educational institution (as defined in section 151 (e) (4)).

(Aug. 16, 1954, ch. 736, 68A Stat. 38; Sept. 21, 1961, Pub. L. 87-256, § 110(a), 75 Stat. 535.)

REFERENCES IN TEXT

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(A), is classified to chapter 33 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1961—Subsec. (b)(2)(A). Pub. L. 87-256 included cases where the grantor of the scholarship or fellowship grant is a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(1) of Pub. L. 87-256 provided that: "The amendments made by subsections (a), (b), and (c) of this section [to subsec. (b)(2)(A) of this section and sections 871 and 872 of this title] shall apply to taxable years beginning after December 31, 1961."

CROSS REFERENCES

Prizes and awards as includible in gross income, see section 74 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 74, 1441 of this title.

§ 118. Contributions to the capital of a corporation.

(a) General rule.

In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Cross reference.

For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(Aug. 16, 1954, ch. 736, 68A Stat. 39.)

§ 119. Meals or lodging furnished for the convenience of the employer.

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him by his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation. (Aug. 16, 1954, ch. 736, 68A Stat. 39.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1402 of this title; title 42 section 411.

§ 120. Repealed. Pub. L. 85-866, title I, § 3 (a), Sept. 2, 1958, 72 Stat. 1607.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police.

EFFECTIVE DATE OF REPEAL

Section 3 (c) of Pub. L. 85-866 provided that: "The amendments made by subsections (a) [which repealed this section] and (b) [which amended analysis preceding section 101 of this title] shall apply with respect to taxable years ending after September 30, 1958, but only with respect to amounts received as a statutory subsistence allowance for any day after September 30, 1958."

§ 121. Gain from sale or exchange of residence of individual who has attained age 65.

(a) General rule.

At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if—

(1) the taxpayer has attained the age of 65 before the date of such sale or exchange, and

(2) during the 8-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating 5 years or more.

(b) Limitations.

(1) Where adjusted sales price exceeds $20,000.

If the adjusted sales price of the property sold or exchanged exceeds $20,000, subsection (a) shall apply to that portion of the gain which bears the same ratio to the total amount of such gain as $20,000 bears to such adjusted sales price. For purposes of the preceding sentence, the term "adjusted sales price" has the meaning assigned to such term by section 1034(b)(1) (determined without regard to subsection (d)(7) of this section).

(2) Application to only one sale or exchange.

Subsection (a) shall not apply to any sale or exchange by the taxpayer if an election by the taxpayer or his spouse under subsection (a) with respect to any other sale or exchange is in effect.

(c) Election.

An election under subsection (a) may be made or revoked at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by this chapter for the taxable year in which the sale or exchange occurred, and shall be made or evoked in such manner as the Secretary or his delegate shall by regulations prescribe. In the case of a taxpayer who is married, an election under subsection (a) or a revocation thereof may be made only if his spouse joins in such election or revocation.

(d) Special rules.

(1) Property held jointly by husband and wife.

For purposes of this section, if—

(A) property is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(B) such husband and wife make a joint return under section 6013 for the taxable year of the sale or exchange, and

(C) one spouse satisfies the age, holding, and use requirements of subsection (a) with respect to such property,

then both husband and wife shall be treated as satisfying the age, holding, and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse.

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, if—

(A) the deceased spouse (during the 8-year period ending on the date of the sale or exchange) satisfied the holding and use requirements of subsection (a)(2) with respect to such property, and

(B) no election by the deceased spouse under subsection (a) is in effect with respect to a prior sale or exchange,

then such individual shall be treated as satisfying the holding and use requirements of subsection (a)(2) with respect to such property.

(3) Tenant-stockholder in cooperative housing corporation.

For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) the holding requirements of subsection (a)(2) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a)(2) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(4) Involuntary conversions.

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(5) Property used in part as principal residence.

In the case of property only a portion of which, during the 8-year period ending on the date of the sale or exchange, has been owned and used by the taxpayer as his principal residence for periods aggregating 5 years or more, this section shall apply with respect to so much of the gain from the sale or exchange of such property as is determined, under regulations prescribed by the Secretary or his delegate, to be attributable to the portion of the property so owned and used by the taxpayer.

(6) Determination of marital status.

In the case of any sale or exchange, for purposes of this section—

(A) the determination of whether an individual is married shall be made as of the date of the sale or exchange; and

(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(7) Application of sections 1033 and 1034.

In applying sections 1033 (relating to involuntary conversions) and 1034 (relating to sale or exchange of residence), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to an election under this section.

(Added Pub. L. 88–272, title II, § 206(a), Feb. 26, 1964, 78 Stat. 38.)

EFFECTIVE DATE

Section 206(c) of Pub. L. 88–272 provided that: "The amendments made by this section [adding this section, redesignating former section 121 as 122, and amending sections 1033, 1034 and 6012 of this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1038, 1250, 6012 of this title.

§ 122. Certain reduced uniformed services retirement pay.

(a) General rule.

In the case of a member or former member of the uniformed services of the United States who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election.

(b) Special rule.

(1) Amount excluded from gross income.

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

(2) Consideration for the contract.

For purposes of paragraph (1) and section 72(o), the term "consideration for the contract" means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 of such title 10.

(Added Pub. L. 89–365, § 1(a)(1), Mar. 8, 1966, 80 Stat. 32.)

EFFECTIVE DATE

Section 1(d) of Pub. L. 89–365 provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 72 of this title] shall apply with respect to taxable years ending after December 31, 1965. The amendment made by subsection (c) [amending section 101(b)(2)(D) of this title] shall apply with respect to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 72 of this title.

§ 123. Amounts received under insurance contracts for certain living expenses.

(a) General rule.

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

(b) Limitation.

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which—

(1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed

(2) the normal living expenses which would have been incurred for himself and members of his household during such period.

(Added Pub. L. 91–172, title IX, § 901(a), Dec. 30, 1969, 83 Stat. 709.)

EFFECTIVE DATE

Section 901(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969."

§ 124. Cross references to other acts.

(a) For exemption of—

(1) Adjustments of indebtedness under wage earners' plans, see section 679 of the Bankruptcy Act (52 Stat. 938; 11 U. S. C. 1079);

(2) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see the Acts of March 6, 1934 (48 Stat. 466; 5 U. S. C. 118c) and April 25, 1938 (52 Stat. 221; 5 U. S. C. 118c–1);

(3) Amounts credited to the Maritime Administration under section 9 (b) (6) of the Merchant Ship Sales Act of 1946, see section 9 (c) (1) of that Act (60 Stat. 48; 50 U. S. C. App. 1742);

(4) Benefits under World War Adjusted Compensation Act, see section 308 of that Act, as amended (43 Stat. 125; 44 Stat. 827, § 3; 38 U. S. C. 618);

(5) Benefits under World War Veterans' Act, 1924, see section 3 of the Act of August 12, 1935 (49 Stat. 609; 38 U. S. C. 454a);

(6) Dividends and interest derived from certain preferred stock by Reconstruction Finance Corporation, see section 304 of the Act of March 9, 1933, as amended (49 Stat. 1185; 12 U. S. C. 51d);

(7) Earnings of ship contractors deposited in special reserve funds, see section 607 (h) of the Merchant Marine Act, 1936, as amended (52 Stat. 961, § 28; 46 U. S. C. 1177);

(8) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (38 Stat. 258; 12 U. S. C. 531);

(9) Income derived from Ogdensburg bridge across Saint Lawrence River, see section 4 of the Act of June 14, 1933, as amended (54 Stat. 259, § 2);

(10) Income derived from Owensboro bridge across Ohio River and nearby ferries, see section 4 of the Act of August 14, 1937 (50 Stat. 643);

(11) Income derived from Saint Clair River bridge and ferries, see section 4 of the Act of June 25, 1930, as amended (48 Stat. 140, § 1);

(12) Leave compensation payments under section 6 of Armed Forces Leave Act of 1946, see section 7 of that Act (60 Stat. 967; 37 U. S. C. 36);

(13) Mustering-out payments made to or on account of veterans under the Mustering-Out Payment Act of 1944, see section 5 (a) of that Act (58 Stat. 10; 38 U. S. C. 691e);

(14) Railroad retirement annuities and pensions, see section 12 of the Railroad Retirement Act of 1935, as amended (50 Stat. 316; 45 U. S. C. 228*l*);

(15) Railroad unemployment benefits, see section 2 (e) of the Railroad Unemployment Insurance Act, as amended (52 Stat. 1097; 53 Stat. 845, § 9; 45 U. S. C. 352);

(16) Special pensions of persons on Army and Navy medal of honor roll, see section 3 of the Act of April 27, 1916 (39 Stat. 54; 38 U. S. C. 393);

(17) Gain derived from the sale or other disposition of Treasury Bills, issued after June 17, 1930, under the Second Liberty Bond Act, as amended, see Act of June 17, 1930 (C. 512, 46 Stat. 775; 31 U. S. C. 754).

(18) Benefits under laws administered by the Veterans' Administration, see section 3101 of title 38, United States Code.

(b) For extension of military income tax-exemption benefits to commissioned officers of Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (58 Stat. 689; 42 U. S. C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, § 124, formerly § 121; Aug. 1, 1956, ch. 837, title V, § 501(t), 70 Stat. 885; June 17, 1957, Pub. L. 85–56, title XXII, § 2201 (25), 71 Stat. 160; Sept. 2, 1958, Pub. L. 85–857, § 13 (t) 72 Stat. 1266; renumbered § 122, Feb. 26, 1964, Pub. L. 88–272, title II, § 206(a), 78 Stat. 38; renumbered § 123, Mar. 8, 1966, Pub. L. 89–365, § 1(a)(1), 80 Stat. 32; renumbered § 124, Dec. 30, 1969, Pub. L. 91–172, title IX, § 901(a), 83 Stat. 709.)

REFERENCES IN TEXT

The acts of March 26, 1934 (48 Stat. 466; 5 U.S.C. 118c), and April 25, 1938 (52 Stat. 221; 5 U.S.C. 118c–1), referred to in subsec. (a)(2), were repealed by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378, and are now covered by section 5943 of Title 5, Government Organization and Employees.

Section 308 of the World War Adjusted Compensation Act, as amended (43 Stat. 125; 44 Stat. 827, § 3; 38 U.S.C. 618), referred to in subsec. (a)(4), was repealed by Pub. L. 85–857, § 14 (47), Sept. 2, 1958, 72 Stat. 1271.

Section 3 of act Aug. 12, 1935 (49 Stat. 609; 38 U.S.C. 454a), referred to in subsec. (a)(5), was repealed by Pub. L. 85–56, title XXII, § 2202 (135), June 17, 1957, 71 Stat. 168, eff. Jan. 1, 1958, and is now covered by section 3101 of Title 38, Veterans' Benefits.

Section 304 of the act of Mar. 9, 1933, as amended (49 Stat. 1185; 12 U.S.C. 51d), referred to in subsec. (a)(6), was repealed by act June 30, 1947, ch. 166, title II, § 206 (b), 61 Stat. 208.

Section 7 of the Armed Forces Leave Act of 1946 (60 Stat. 967; 37 U.S.C. 36), referred to in subsec. (a)(12), was repealed by Pub. L. 87–649, § 14, Sept. 7, 1962, 76 Stat. 498.

Section 5 (a) of the Mustering-Out Payment Act of 1944 (58 Stat. 10; 38 U.S.C. 691e), referred to in subsec. (a)(13), was repealed by Pub. L. 85–857, § 14(86), Sept. 2, 1958, 72 Stat. 1272.

Section 3 of the act of April 27, 1916 (39 Stat. 54; 38 U.S.C. 393), referred to in subsec. (a)(16), is now covered by section 562 of Title 38, Veterans' Benefits.

Act of June 17, 1930 (c. 512, 46 Stat. 775; 31 U.S.C. 754), referred to in subsec. (a)(17), enacted subsec. (d) of section 754 of Title 31, Money and Finance. Such subsec. (d) was repealed by Pub. L. 86–346, Title I, § 105(b)(1), September 22, 1959, 73 Stat. 622, and is now covered by section 742 of Title 31, Money and Finance.

Section 210 of the Servicemen's and Veterans' Survivor Benefits Act, referred to in subsec. (a)(18), is now covered by section 3101 of Title 38, Veterans' Benefits.

AMENDMENTS

1958—Subsec. (a)(18). Pub. L. 85–857 substituted "section 3101 of Title 38, United States Code" for "section 1001 of the Veterans' Benefits Act of 1957".

1957—Subsec. (a)(18). Pub. L. 85–56 substituted provisions relating to benefits under laws administered by the Veterans' Administration, for provisions which related to dependency and indemnity compensation.

1956—Subsec. (a). Act Aug. 1, 1956, added par. (18), relating to dependency and indemnity compensation.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

CROSS REFERENCES

Patronage refunds paid by Federal intermediate credit banks as exempt from income tax, see section 1072 (b) of Title 12, Banks and Banking.

PART IV.—STANDARD DEDUCTION FOR INDIVIDUALS

Sec.
141. Standard deduction.
142. Individuals not eligible for standard deduction.
143. Determination of marital status.
144. Election of standard deduction.
145. Cross reference.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 63 of this title.

§ 141. Standard deduction.

(a) Standard deduction.

Except as otherwise provided in this section, the standard deduction referred to in this title is the larger of the percentage standard deduction or the low income allowance.

(b) Percentage standard deduction.

The percentage standard deduction is an amount equal to the applicable percentage of adjusted gross income shown in the following table, but not to exceed the maximum amount shown in such table (or one-half of such maximum amount in the case of a separate return by a married individual):

Taxable years beginning in—	Applicable percentage	Maximum amount
1970	10	$1,000
1971	13	1,500
1972	14	2,000
1973 and thereafter	15	2,000

(c) Low income allowance.

(1) In general.

The low income allowance is an amount equal to the sum of—

(A) the basic allowance, and

(B) the additional allowance.

(2) Basic allowance.

For purposes of this subsection, the basic allowance is an amount equal to the sum of—

(A) $200, plus

(B) $100, multiplied by the number of exemptions.

The basic allowance shall not exceed $1,000.

(3) Additional allowance.

(A) In general.

For purposes of this subsection, the additional allowance is an amount equal to the excess (if any) of $900 over the sum of—

(i) $100, multiplied by the number of exemptions, plus

(ii) the income phase-out.

(B) Income phase-out.

For purposes of subparagraph (A)(ii), the income phase-out is an amount equal to one-half of the amount by which the adjusted gross income for the taxable year exceeds the sum of—

(i) $1,100, plus

(ii) $625, multiplied by the number of exemptions.

(4) Married individuals filing separate returns.

In the case of a married taxpayer filing a separate return—

(A) the low income allowance is an amount equal to the basic allowance, and

(B) the basic allowance is an amount (not in excess of $500) equal to the sum of—

(i) $100, plus

(ii) $100, multiplied by the number of exemptions.

(5) Number of exemptions.

For purposes of this subsection, the number of exemptions is the number of exemptions allowed as a deduction for the taxable year under section 151.

(6) Special rule for 1971.

For a taxable year beginning after December 31, 1970, and before January 1, 1972—

(A) paragraph (3)(A) shall be applied by substituting "$850" for "$900,"

(B) paragraph (3)(B) shall be applied by substituting "one-fifteenth" for "one-half."

(C) paragraph (3)(B)(i) shall be applied by substituting "$1050" for "$1100", and

(D) paragraph (3)(B)(ii) shall be applied by substituting "$650" for "$625."

(d) Married individuals filing separate returns.

Notwithstanding subsection (a)—

(1) The low income allowance shall not apply in the case of a separate return by a married individual if the tax of the other spouse is determined with regard to the percentage standard deduction.

(2) A married individual filing a separate return may, if the low income allowance is less than the percentage standard deduction, and if the low income allowance of his spouse is greater than the percentage standard deduction of such spouse, elect (under regulations prescribed by the Secretary or his delegate) to have his tax determined with regard to the low income allowance in lieu of being determined with regard to the 10-percent standard deduction.

(Aug. 16, 1954, ch. 736, 68A Stat. 40; Feb. 26, 1964, Pub. L. 88–272, title I, § 112(a), 78 Stat. 23; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 802 (a), (c)(4), 83 Stat. 676, 678.)

LOW INCOME ALLOWANCE FOR YEARS AFTER 1971

Section 802(e) of Pub. L. 91–172 provided that, effective with respect to taxable years beginning after Dec. 31, 1971, subsec. (c) of this section (relating to low income allowance) shall read as follows:

"(c) Low income allowance.

"The low income allowance is $1,000 ($500, in the case of a married individual filing a separate return."

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 802(a), altered the definition of standard deduction by substituting "larger of the percentage standard deduction or the low income allowance" for "larger of the 10 per cent standard deduction or the minimum standard deduction" as the definition, and struck out the maximum limits.

Subsec. (b). Pub. L. 91–172, § 802(a), substituted a table to be used in determining the percentage standard deduction for the definition of the 10 per cent standard deduction.

Subsec. (c). Pub. L. 91–172, § 802(a), substituted low-income allowance provisions for minimum standard deduction provisions.

Subsec. (d). Pub. L. 91–172, § 802(c)(4), substituted "low income allowance" and "percentage" for "minimum standard deduction" and "10-percent", respectively, wherever appearing.

1964—Pub. L. 88–272 designated existing provisions as subsec. (a), substituted "Except as otherwise provided in this section, the standard deduction referred to in this title is the larger of the 10-percent standard deduction or the minimum standard deduction. The standard deduction shall not exceed $1,000" for "The standard deduction referred to in section 63(b) (defining taxable income in case of individual electing standard deduction) shall be an amount equal to 10 percent of the adjusted gross income or $1,000, whichever is the lesser" therein, and added subsecs. (b)–(d).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 802(d) of Pub. L. 91–172, set out as a note under section 4 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

CROSS REFERENCES

Individuals electing standard deduction, see section 63 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 144, 584, 703, 1051, 3402 of this title.

§ 142. Individuals not eligible for standard deduction.

(a) Husband and wife.

The standard deduction shall not be allowed to a husband or wife if the tax of the other spouse is determined under section 1 on the basis of the taxable income computed without regard to the standard deduction.

(b) Certain other taxpayers ineligible.

The standard deduction shall not be allowed in computing the taxable income of—

(1) a nonresident alien individual;

(2) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States);

(3) an individual making a return under section 443 (a) (1) for a period of less than 12 months on account of a change in his annual accounting period; or

(4) an estate or trust, common trust fund, or partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 40.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 144, 931, 6012 of this title.

§ 143. Determination of marital status.

(a) General rule.

For purposes of this part—

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) Certain married individuals living apart.

For purposes of this part, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a deduction for the taxable year under section 151,

(2) such individual furnishes over half of the cost of maintaining such household during the taxable year, and

(3) during the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.

(Aug. 16, 1954, ch. 736, 68A Stat. 41; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 802(b), 83 Stat. 677.)

AMENDMENTS

1969—Pub. L. 91–172 substituted "(a) General Rule.—For purposes of this part—" for "For purposes of this part—" in the material preceding par. (1) and added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 802(d) of Pub. L. 91–172, set out as a note under section 4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 2, 4, 1304 of this title.

§ 144. Election of standard deduction.

(a) Method and effect of election.

(1) If the adjusted gross income shown on the return is $5,000 or more, the standard deduction shall be allowed if the taxpayer so elects in his return, and the Secretary or his delegate shall by regulations prescribe the manner of signifying such election in the return. If the adjusted gross income shown on the return is $5,000 or more, but the correct adjusted gross income is less than $5,000, then an election by the taxpayer under the preceding sentence to take the standard deduction shall be considered as his election to pay the tax imposed by section 3 (relating to tax based on tax table); and his failure to make under the preceding sentence an election to take the standard deduction shall be considered his election not to pay the tax imposed by section 3.

(2) If the adjusted gross income shown on the return is less than $5,000, the standard deduction shall be allowed only if the taxpayer elects, in the manner provided in section 4, to pay the tax imposed by section 3. If the adjusted gross income shown on the return is less than $5,000, but the correct adjusted gross income is $5,000 or more, then an election by the taxpayer to pay the tax imposed by section 3 shall be considered as his election to take the standard deduction; and his failure to elect to pay the tax imposed by section 3 shall be considered his election not to take the standard deduction.

(3) If the taxpayer on making his return fails to signify, in the manner provided by paragraph (1) or (2), his election to take the standard deduction or to pay the tax imposed by section 3, as the case may be, such failure shall be considered his election not to take the standard deduction.

(b) Change of election.

Under regulations prescribed by the Secretary or his delegate, a change of election with respect to the standard deduction for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding, for purposes of section 142 (a), to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(1) the spouse makes a change of election with respect to the standard deduction for the taxable year covered in such separate return, consistent with the change of election sought by the taxpayer, and

(2) the taxpayer and his spouse consent in writing to the assessment, within such period as may be agreed on with the Secretary or his delegate, of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This subsection shall not apply if the tax liability of the taxpayer's spouse, for the taxable year corresponding (for purposes of section 142 (a)) to the taxable year of the taxpayer, has been compromised under section 7122.

(c) Change of election defined.

For purposes of this title, the term "change of election with respect to the standard deduction" means—

(1) a change of an election to take (or not to take) the standard deduction;

(2) a change of an election to pay (or not to pay) the tax under section 3; or

(3) a change of an election under section 141(d)(2).

(d) Individuals electing income averaging.

In the case of a taxpayer who chooses to have the benefits of part I of subchapter Q (relating to income averaging) for the taxable year—

(1) subsection (a) shall not apply for such taxable year, and

(2) the standard deduction shall be allowed if the taxpayer so elects in his return for such taxable year.

The Secretary or his delegate shall by regulations prescribe the manner of signifying such election in the return. If the taxpayer on making his return fails to signify, in the manner so prescribed, his election to take the standard deduction, such failure shall be considered his election not to take the standard deduction. (Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88–272, title I, § 112(c), title II, § 232(c), 78 Stat. 24, 110.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–272, § 112(c)(1), substituted "with respect to the standard deduction for any taxable year" for "for any taxable year to take, or not to take, the standard deduction, or to pay, or not to pay, the tax under section 3."

Subsec. (c). Pub. L. 88–272, § 112(c)(2), added subsec. (c).

Subsec. (d). Pub. L. 88–272, § 232(c), added subsec. (d).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsecs. (b), (c) by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment of section by Pub. L. 88–272 adding subsec. (d), applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 63 of this title.

§ 145. Cross reference.

For disallowance of certain credits against the tax in the case of individuals electing the standard deduction, see section 36.

(Aug. 16, 1954, ch. 736, 68A Stat. 42.)

PART V.—DEDUCTIONS FOR PERSONAL EXEMPTIONS

Sec.
151. Allowance of deductions for personal exemptions.
152. Dependent defined.
153. Determination of marital status.
154. Cross references.

§ 151. Allowance of deductions for personal exemptions.

(a) Allowance of deductions.

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and spouse.

An exemption of $650 for the taxpayer; and an additional exemption of $650 for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for taxpayer or spouse aged 65 or more.

(1) For taxpayer.

An additional exemption of $650 for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(2) For spouse.

An additional exemption of $650 for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional exemption for blindness of taxpayer or spouse.

(1) For taxpayer.

An additional exemption of $650 for the tax payer if he is blind at the close of his taxable year.

(2) For spouse.

An additional exemption of $650 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined.

For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional exemption for dependents.

(1) In general.

An exemption of $650 for each dependent (as defined in section 152)—

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins in less than $650, or

(B) who is a child of the taxpayer and who (i) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents.

No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined.

For purposes of paragraph (1) (B), the term "child" means an individual who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined.

For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational institution; or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a State or political subdivision of a State.

For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(Aug. 16, 1954, ch. 736, 68A Stat. 42; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 801(a)(1), (b)(1), title IX, § 941(b), 83 Stat. 675, 726.)

INCREASES IN PERSONAL EXEMPTION

Section 801(c)(1) of Pub. L. 91–172 provided for an increase of the personal exemption to $700, effective with respect to taxable years beginning after Dec. 31, 1971 and before Jan. 1, 1973.

Section 801(d)(1) of Pub. L. 91–172 provided for an increase of the personal exemption to $750, effective with respect to taxable years beginning after Dec. 31, 1972.

AMENDMENTS

1969—Pub. L. 91–172, §§ 801(a)(1), (b)(1), increased the exemption from $600 to $625, and for $625 to $650 wherever appearing.

Subsecs. (b), (c), Pub. L. 91–172, § 941(b), substituted "if a joint return is not made by the taxpayer and his spouse" for "if a separate return is made by the taxpayer".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 801(a)(1) of Pub. L. 91–172 provided in part that the increase in exemption from $600 to $625 is effective with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971.

Section 801(b)(1) provided in part that the increase in the exemption from $625 to $650 is effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972.

Section 941(c) of Pub. L. 91–172 provided that: "The amendments made by subsections (a) [amending section 6012 of this title] and (b) [amending this section] shall apply to taxable years beginning after December 31, 1969."

CROSS REFERENCES

Adjusted gross income minus standard deduction and deductions for personal exemptions as taxable income, see section 63 of this title.

Adjustment in deduction for personal exemption on making return for short period, see section 443 (c) of this title.

Benefit of personal exemptions in tax-free covenant bond cases, see section 1451 (d) of this title.

Deduction for—

Exemptions in case of optional tax, see sections 3 and 4 (a) of this title.

Personal exemptions not allowed in self-employment partnership income, see section 1402 (a) (8) of this title.

Nonresident alien entitled to benefits of this section, see section 874 (b) of this title.

Partnership not entitled to personal exemptions under this section, see section 703 (a) (2) (B) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 4, 63, 103, 117, 141, 143, 152, 163, 170, 172, 214, 403, 443, 512, 642, 703, 873, 874, 891, 904, 911, 931, 933, 1211, 1303, 1402, 1451, 3402, 4914, 4941, 4945, 6012, 6654 of this title.

§ 152. Dependent defined.

(a) General definition.

For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(10) An individual who—

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(b) Rules relating to general definition.

For purposes of this section—

(1) The terms "brother" and "sister" include a brother or sister by the halfblood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.

(3) The term "dependent" does not include any individual who is not a citizen of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer—

(A) born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him, or

(B) legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen of the United States.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(c) Multiple support agreements.

For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary or his delegate may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special support test in case of students.

For purposes of subsection (a), in the case of any individual who is—

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151 (e) (4)),

amounts received as scholarships for study at an educational institution (as defined in section 151(e) (4)) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) Support test in case of child of divorced parents, etc.

(1) General rule.

If—

(A) a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of his support for such year from the other parent (referred to in this subsection as the parent not having custody).

(2) Special rule.

The child of parent described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

(A) (i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B) (i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for all of such children) for the calendar year, and

(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

(3) Itemized statements required.

If a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary or his delegate, an itemized statement of the expenditures upon which the other parent's claim of support is based.

(4) Exception for multiple-support agreement.

The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(5) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 43; Aug. 9, 1955, ch. 693, § 2, 69 Stat. 626; Sept. 2, 1958, Pub. L. 85-866, title I, § 4(a-c), 72 Stat. 1607; Sept. 23, 1959, Pub. L. 86-376, § 1(a), 73 Stat. 699; Aug. 31, 1967, Pub. L. 90-78, § 1, 81 Stat. 191; Dec. 30, 1969, Pub. L. 91-172, title IX, § 912(a), 83 Stat. 722.)

AMENDMENTS

1969—Subsec. (b)(2). Pub. L. 91-172 inserted reference to foster children who satisfy the requirements of subsec. (a)(9) of this section.

1967—Subsec. (a). Pub. L. 90-78, § 1(b), inserted "or (e)" following "subsection (c)".

Subsec. (e). Pub. L. 90-78, §1(a), added subsec. (e).

1959—Subsec. (b)(2). Pub. L. 86-376 provided that a child who is a member of an individual's household if placed with such individual by an authorized placement agency for legal adoption by such individual shall be treated as a child by blood.

1958—Subsec. (a)(9). Pub. L. 85-866, § 4(a), inserted "(other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer)".

Subsec. (b)(3). Pub. L. 85-866, § 4(b), among other changes, eliminated provision that the term "dependent" does not include any individual who is not a United States citizen unless such individual is a resident of United States or of a contiguous country, or of Canal Zone or Panama, and added provision barring exclusion from definition of "dependent" any child of taxpayer, legally adopted by him, if, for taxable year of taxpayer, child's principal place of abode is taxpayer's home and child is member of taxpayer's household, if taxpayer is United States citizen.

Subsec. (b)(5). Pub. L. 85-866, § 4(c), added subsec. (b)(5).

1955—Subsec. (b)(3). Act Aug. 9, 1955, substituted "January 1, 1956" for "July 5, 1946".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 912(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90-78 provided that: "The amendments made by the first section of this Act [to subsecs. (a) and (e) of this section] shall apply with respect to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 1(b) of Pub. L. 86-376 provided that: "The amendment made by subsection (a) [to subsec. (b)(2) of this section] shall apply to taxable years beginning after December 31, 1958."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendments of subsecs. (a) (9) and (b) (5) of this section by Pub. L. 85-866, applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 4 (d) of Pub. L. 85-866 provided that: "The amendment made by subsection (b) [to subsec. (b) (3) of this section] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 (b) of act Aug. 9, 1955, provided that the amendment of this section by section 2 of such act shall apply with respect to taxable years beginning after Dec. 31, 1953 and ending Aug. 16, 1954.

CROSS REFERENCES

Alimony payments by husband deductible, see section 215 of this title.

Husband and wife, definition of, see section 7701 (a) (17) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 105, 143, 151, 170, 213, 214, 7701 of this title.

§ 153. Determination of marital status.

For purposes of this part—

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(Aug. 16, 1954, ch. 736, 68A Stat. 45.)

§ 154. Cross references.

(1) For definitions of "husband" and "wife", as used in section 152 (b) (4), see section 7701 (a) (17).

(2) For deductions of estates and trusts, in lieu of the exemptions under section 151, see section 642 (b).

(3) For exemptions of nonresident aliens, see section 873 (b) (3).

(4) For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931 (e).

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Nov. 13, 1966, Pub. L. 89-809, title I, § 103(c) (2), 80 Stat. 1551.)

AMENDMENTS

1966—Par. (3). Pub. L. 89-809 substituted "873(b) (3)" for "873(d)".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n) (1) of Pub. L. 89-809, set out as a note under section 871 of this title.

PART VI.—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.
161. Allowance of deductions.
162. Trade or business expenses.
163. Interest.
164. Taxes.
165. Losses.
166. Bad debts.
167. Depreciation.
168. Amortization of emergency facilities.
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170. Charitable, etc., contributions and gifts.
171. Amortizable bond premium.
172. Net operating loss deduction.
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175. Soil and water conservation expenditures.
176. Payments with respect to employees of certain foreign corporations.
177. Trademark and trade name expenditures.
178. Depreciation or amortization of improvements made by lessee on lessor's property.
179. Additional first-year depreciation allowance for small business.
180. Expenditures by farmers for fertilizer, etc.
182. Expenditures by farmers for clearing land.
183. Activities not engaged in for profit.
184. Amortization of certain railroad rolling stock.
185. Amortization of railroad grading and tunnel bores.
186. Recoveries of damages for antitrust violations, etc.
187. Amortization of certain coal mine safety equipment.

AMENDMENTS

1969—Pub. L. 91-172, title II, § 213(c)(1), title VII, §§ 704(b)(1), 705(b), 707(b), title IX, § 904(b), Dec. 30, 1969, 83 Stat. 572, 669, 674, 675, 712, substituted reference to pollution control facilities for reference to grain storage facilities in item 169, and added items 183 to 187.

1964—Pub. L. 88-272, title II, § 203(a)(3)(D), Feb. 26, 1964, 78 Stat. 34, deleted item 181.

1962—Pub. L. 87-834, §§ 2(g)(3), 21(c), Oct. 16, 1962, 76 Stat. 973, 1064, added items 181, 182.

1960—Pub. L. 86-779, § 6(b), Sept. 14, 1960, 74 Stat. 1001, added item 180.

1958—Pub. L. 85-866 title I, § 15 (b), title II, § 204 (b), Sept. 2, 1958, 72 Stat. 1613, 1680, added items 178 and 179.

1956—Act June 29, 1956, ch. 464, § 4 (b), 70 Stat. 406, added item 177.

1954—Act Sept. 1, 1954, ch. 1206, title II, § 210 (b), 68 Stat. 1097, added item 176.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 62, 241 of this title.

§ 161. Allowance of deductions.

In computing taxable income under section 63 (a), there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible). (Aug. 16, 1954, ch. 736, 68A Stat. 45.)

CROSS REFERENCES

Adjusted gross income as gross income minus certain deductions, see section 62 of this title.

Deductions of nonresident alien individuals, see section 873 of this title.

§ 162. Trade or business expenses.

(a) In general.

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of

property to which the taxpayer has not taken or is not taking title or in which he has no equity. For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

(b) Charitable contributions and gifts excepted.

No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) Bribes and illegal kickbacks.

(1) Illegal payments to government officials or employees.

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or would be unlawful under the laws of the United States) shall be upon the Secretary or his delegate to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) Other bribes or kickbacks.

If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described in paragraph (1)) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding.

(3) Statute of limitations.

If a taxpayer claimed a deduction for a payment described in paragraph (2) which is disallowed because of a final judgment entered after the close of the taxable year for which the deduction was claimed, and if the proceeding was based on an indictment returned or an information filed prior to the expiration of the period for the assessment of any deficiency for such taxable year, the period for the assessment of any deficiency attributable to the deduction of such payment shall not expire prior to the expiration of one year from the date of such final judgment, and such deficiency may be assessed prior to the expiration of such one-year period notwithstanding the provision of any other law or rule of law which would otherwise prevent such assessment.

(d) Capital contributions to Federal National Mortgage Association.

For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Appearances, etc., with respect to legislation.

(1) In general.

The deduction allowed by subsection (a) shall include all the ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(A) in direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(B) in direct connection with communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by such organization.

(2) Limitation.

The provisions of paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred (whether by way of contribution, gift, or otherwise)—

(A) for participation in, or intervention in, any political campaign on behalf of any candidate for public office, or

(B) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(f) Fines and penalties.

No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) Treble damage payments under the antitrust laws.

If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of

guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(h) Cross reference.

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Sept. 2, 1958, Pub. L. 85-866, title I, § 5 (a), 72 Stat. 1608; Sept. 14, 1960, Pub. L. 86-779, §§ 7(b), 8(a), 74 Stat. 1002, 1003; Oct. 16, 1962, Pub. L. 87-834, §§ 3(a), 4(b), 76 Stat. 973, 976; Dec. 30, 1969, Pub. L. 91-172, title V, § 516(c)(2)(A), title IX, § 902(a), (b) 83 Stat. 648, 710).

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-172, § 902(b), designated existing provisions as par. (1), and in par. (1) so designated, extended the applicability of nondeductible expenses for payments to any official or employee of any government, or of any agency or instrumentality of any government, and added pars. (2) and (3).

Subsec. (f). Pub. L. 91-172, § 902(a), added subsec. (f). Former subsec. (f) was redesignated as subsec. (h).

Subsec. (g). Pub. L. 91-172, § 902(a), added subsec. (g).

Subsec. (h). Pub. L. 91-172, §§ 516(c)(2)(A), 902(a), redesignated former subsec. (f) as (h) and, in subsec. (h) as so redesignated, substituted "(1) For" for "For" and added reference to section 1253 for special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name.

Pub. L. 91-172, § 902(a), redesignated former subsec. (f) as (h).

1962—Subsec. (a)(2). Pub. L. 87-834, § 4(b), substituted "(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)" for "including the entire amount expended for meals and lodging)."

Subsec. (e). Pub. L. 87-834, § 3(a), added subsec. (e), and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 87-834, § 3(a), redesignated former subsec. (e) as (f).

1960—Subsec. (b). Pub. L. 86-779, § 7(b), inserted "the dollar limitations," following "the percentage limitations,".

Subsec. (d). Pub. L. 86-779, § 8(a), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 86-779, § 8(a), redesignated former subsec. (d) as (e).

1958—Subsec. (c). Pub. L. 85-866, § 5(a), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 85-866, § 5(a), redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 902(c) of Pub. L. 91-172 provided that: "Section 162(f) of the Internal Revenue Code of 1954 [subsec. (f) of this section] (as added by subsection (a)) shall apply to all taxable years to which such Code [this title] applies. Section 162(g) of such Code [subsec. (g) of this section] (as added by subsection (a)) shall apply with respect to amounts paid or incurred after December 31, 1969. Section 162(c)(1) of such Code [subsec. (c)(1) of this section] (as amended by subsection (b)) shall apply to all taxable years to which such Code applies. Sections 162(c)(2) and (3) of such Code [subsec. (c)(2) and (3) of this section] (as amended by subsection (b)) shall apply with respect to payments made after the date of the enactment of this Act [Dec. 30, 1969]."

Amendment of section by section 516(c)(2)(A) of Pub. L. 91-172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91-172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87-834 provided that: "The amendments made by this section [amending subsec. (a) of this section and adding section 274 of this title] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date."

Section 3(b) of Pub. L. 87-834 provided that: "The amendments made by this section [adding subsec. (e) and redesignating former subsec. (e) as (f)] shall apply to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 7(c) of Pub. L. 86-779 provided that: "The amendments made by subsections (a) and (b) [to section 170 of this title and subsec. (b) of this section] shall apply with respect to taxable years beginning after December 31, 1959."

Section 8(d) of Pub. L. 86-779 provided that: "The amendments made by subsections (a), (b), and (c) [adding subsec. (d) of this section and section 1054 of this title and amending table of sections for Part IV by adding item 1054 and numbering former item 1054 as 1055] shall apply with respect to taxable years beginning after December 31, 1959."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 5(b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [to subsecs. (c) and (d) of this section] shall apply only with respect to expenses paid or incurred after the date of the enactment of this Act [Sept. 2, 1958]. The determination as to whether any expense paid or incurred on or before the date of the enactment of this Act [Sept. 2, 1958] shall be allowed as a deduction shall be made as if this section had not been enacted and without inference drawn from the fact that this section is not made applicable with respect to expenses paid or incurred on or before the date of the enactment of this Act [Sept. 2, 1958]."

DEDUCTIBILITY OF ACCRUED VACATION PAY

Section 97 of Pub. L. 85-866, as amended by Pub. L. 86-496, § 2, June 8, 1960, 74 Stat. 164; Pub. L. 88-153, Oct. 17, 1963, 77 Stat. 272; Pub. L. 88-554, § 1, Aug. 31, 1964, 78 Stat. 761; Pub. L. 89-692, Oct. 15, 1966, 80 Stat. 1025; Pub. L. 91-172, title IX, § 903, Dec. 30, 1969, 83 Stat. 711, provided that: "Deduction under section 162 of the Internal Revenue Code of 1954 [this section] for accrued vacation pay, computed in accordance with the method of accounting, consistently followed by the taxpayer in arriving at such deduction, shall not be denied for any taxable year ending before January 1, 1971, solely by reason of the fact that (1) the liability for the vacation pay to a specific person has not been clearly established, or (2) the amount of the liability to each individual is not capable of computation with reasonable accuracy, if at the time of the accrual the employee in respect of whom the vacation pay is accrued has performed the qualifying service necessary under a plan or policy (communicated to the employee before the beginning of the vacation year) which provides for vacations with pay to qualified employees."

INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES

Pub. L. 86–564, title III, § 301, June 30, 1960, 74 Stat. 291, provided that:

"(a) Investigation and report by Joint Committee on Internal Revenue Taxation.

"The Joint Committee on Internal Revenue Taxation is hereby authorized and directed to make a full and complete investigation and study of the operation and effects of present law, regulations, and practices relating to the deduction, as ordinary and necessary business expenses, of expenses for entertainment, gifts, dues or initiation fees in social, athletic, or sporting clubs or organizations, and similar or related items. The Joint Committee shall report to the House of Representatives and to the Senate the results of its investigation and study as soon as practicable during the 87th Congress, together with its recommendations for any changes in the law and administrative practices which in its judgment are necessary or appropriate.

"(b) Report by Secretary of the Treasury.

"The Secretary of the Treasury is hereby authorized and directed to report as soon as practicable during the 87th Congress to the House of Representatives and to the Senate the results of the enforcement program of the Internal Revenue Service (announced in Technical Information Release 221, dated April 4, 1960) relating to the deductions, as ordinary and necessary business expenses, of expenses for entertainment, travel, yachts, hunting lodges, club dues, and similar or related items, together with such recommendations with respect thereto as he considers necessary or appropriate to avoid misuse of the business expense deduction.

"(c) Consultation of staffs.

"The staff of the Joint Committee on Internal Revenue Taxation, and the staff of the Secretary of the Treasury, shall consult and cooperate with each other in performing any duties assigned to carry out the purposes of this section."

FILING OF CLAIMS FOR REFUNDS OF OVERPAYMENTS

Extension of time for filing of claims for refunds or credit of overpayments of income tax resulting from application of this section, see section 96 of Pub. L. 85–866, set out as a note under section 6511 of this title.

CROSS REFERENCES

Adjusted gross income as gross income minus, among others, trade and business deductions, see section 62 of this title.

Capital expenditures not deductible, see section 263 of this title.

Charitable contributions and gifts deductible, see section 170 of this title.

Corporate organizational expenses as deferred expenses, see section 248 of this title.

Employee stock options, disallowance of deduction under this section, see section 421 (a) (2) of this title.

Employer contributions to employees' trust or annuity plan negotiated during government operation as deductible under this section, see section 404 (c) of this title.

Nontrade or nonbusiness expenses deductible, see section 212 of this title.

Personal, living and family expenses not deductible, see section 262 of this title.

Taxable year deductions to be taken, see section 461 of this title.

Trade or business defined, see section 7701 (a) (26) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 81, 114, 163, 183, 263, 404, 421, 542, 543, 545, 556, 691, 707, 832, 1054, 1253, 1402 of this title; title 2 section 31c; title 15 section 78kkk; title 42 section 403.

§ 163. Interest.

(a) General rule.

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated.

(1) General rule.

If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational institution (as defined in section 151(e)(4)) and which is provided for a student of such institution.

(2) Limitation.

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents.

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on interest on investment indebtedness.

(1) In general.

In the case of a taxpayer other than a corporation, the amount of investment interest (as defined in paragraph (3)(D)) otherwise allowable as a deduction under this chapter shall be limited, in the following order, to—

(A) $25,000 ($12,500, in the case of a separate return by a married individual), plus

(B) the amount of the net investment income (as defined in paragraph (3)(A)), plus

(C) an amount equal to the amount by which the net long-term capital gain exceeds the net short-term capital loss for the taxable year, plus

(D) one-half of the amount by which investment interest exceeds the sum of the amounts described in subparagraphs (A), (B), and (C).

In the case of a trust, the $25,000 amount specified in subparagraph (A) and in paragraph (2) (A) shall be zero. In determining the amount described in subparagraph (C), only gains and losses attributable to the disposition of property held for investment shall be taken into account.

(2) Carryover of disallowed investment interest.

(A) In general.

The amount of disallowed investment interest for any taxable year shall be treated as investment interest paid or accrued in the succeeding taxable year. The amount of the interest

so treated which is allowable as a deduction by reason of the first sentence of this paragraph for any taxable year shall not exceed one-half of the amount by which—

(i) the net investment income for such taxable year plus $25,000, exceeds

(ii) the investment interest paid or accrued during such taxable year (determined without regard to this paragraph) or $25,000, whichever is greater.

(B) Reduction for capital gain deduction.

If—

(i) an amount of disallowed investment interest treated under subparagraph (A) as investment interest paid or accrued in the taxable year is not allowable as a deduction for such taxable year by reason of the second sentence of subparagraph (A), and

(ii) the taxpayer is entitled to a deduction under section 1202 for such taxable year (whether or not the taxpayer claims such deduction), the amount of such disallowed investment interest shall be reduced by an amount equal to the amount of the deduction allowable under section 1202.

(3) Definitions.

For purposes of this subsection—

(A) Net investment income.

The term "net investment income" means the excess of investment income over investment expenses.

(B) Investment income.

The term "investment income" means—

(i) the gross income from interest, dividends, rents, and royalties,

(ii) the net short-term capital gain attributable to the disposition of property held for investment, and

(iii) any amount treated under sections 1245 and 1250 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231,

but only to the extent such income, gain, and amounts are not derived from the conduct of a trade or business.

(C) Investment expenses.

The term "investment expenses" means the deductions allowable under sections 164(a) (1) or (2), 166, 167, 171, 212, or 611 directly connected with the production of investment income. For purposes of this subparagraph, the deduction allowable under section 167 with respect to any property may be treated as the amount which would have been allowable had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life for which the taxpayer has held the property, and the deduction allowable under section 611 with respect to any property may be treated as the amount which would have been allowable had the taxpayer determined the deduction under section 611 without regard to section 613 for each taxable year for which the taxpayer has held the property.

(D) Investment interest.

The term "investment interest" means interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.

(E) Disallowed investment interest.

The term "disallowed investment interest" means with respect to any taxable year, the amount not allowable as a deduction solely by reason of the limitations in paragraphs (1) and (2)(A).

(4) Special rules.

(A) Property subject to net lease.

For purposes of this subsection, property subject to a lease shall be treated as property held for investment, and not as property used in a trade or business, for a taxable year, if—

(i) for such taxable year the sum of the deductions with respect to such property which are allowable solely by reason of section 162 is less than 15 percent of the rental income produced by such property, or

(ii) the lessor is either guaranteed a specified return or is guaranteed in whole or in part against loss of income.

(B) Partnerships.

In the case of a partnership, each partner shall, under regulations prescribed by the Secretary or his delegate, take into account separately his distributive share of the partnership's investment interest and the other items of income and expense taken into account under this subsection.

(C) Shareholders of electing small business corporations.

In the case of an electing small business corporation (as defined in section 1371(b)), the investment interest paid or accrued by such corporation and the other items of income and expense which would be taken into account if this subsection applied to such corporation shall, under regulations prescribed by the Secretary or his delegate, be treated as investment interest paid or accrued by the shareholders of such corporation and as items of such shareholders, and shall be apportioned pro rata among such shareholders in a manner consistent with section 1374(c)(1).

(D) Construction interest.

For purposes of this subsection, interest paid or accrued on indebtedness incurred or continued in the construction of property to be used in a trade or business shall not be treated as investment interest.

(5) Capital gains.

For purposes of sections 1201(b) (relating to alternative capital gains tax), 1202 (relating to deduction for capital gains), and 57(a)(9) (relating to treatment of capital gains as a tax preference), an amount equal to the amount of investment interest which is allowable as a deduction under this chapter by reason of subparagraph (C) of paragraph (1) shall be treated as gain from

the sale or other disposition of property which is neither a capital asset nor property described in section 1231.

(6) Exceptions.

This subsection shall not apply with respect to investment interest, investment income, and investment expenses attributable to a specific item of property, if the indebtedness with respect to such property—

(A) is for a specified term, and

(B) was incurred before December 17, 1969, or is incurred after December 16, 1969, pursuant to a written contract or commitment which, on such date and at all times thereafter prior to the incurring of such indebtedness, is binding on the taxpayer.

(e) Cross references.

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265 (2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

(Aug. 16, 1954, ch. 736, 68A Stat. 46; Apr. 10, 1963, Pub. L. 88–9, § 1 (a), (c), 77 Stat. 6, 7; Feb. 26, 1964, Pub. L. 88–272, title II, § 224(c), 78 Stat. 79; Dec. 30, 1969, Pub. L. 91–172, title II, § 221(a), 83 Stat. 574.)

AMENDMENTS

1969—Pub. L. 91–172 added subsec. (d). Former subsec. (d) was redesignated as (e).

1964—Subsec. (b)(1). Pub. L. 88–272 included the purchase of educational services, and defined "educational services."

1963—Subsec. (c). Pub. L. 88–9, § 1(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 88–9, § 1(a), (c), redesignated former subsec. (c) as (d), and added par. (5).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 221(b) of Pub. L. 91–172 provided that: "The amendments made by this section [adding subsec. (d) of this section] shall apply to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 224(d) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) [adding section 483 of this title] and (b) [to the analysis preceding section 481 of this title] shall apply to payments made after December 31, 1963, on account of sales or exchanges of property occurring after June 30, 1963, other than any sale or exchange made pursuant to a binding written contract (including an irrevocable written option) entered into before July 1, 1963. The amendments made by subsection (c) [to subsec. (b)(1) of this section] shall apply to payments made during taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1963 AMENDMENT

Subsec. (c) of this section effective as of Jan. 1, 1962, and applicable with respect to taxable years ending on or after such date, see section 2 of Pub. L. 88–9, set out as a note under section 1055 of this title.

CROSS REFERENCES

Expenses and interest relating to tax-exempt income, see section 265 of this title.

Interest as income, see section 61 of this title.

Interest deductions—

Amortizable bond premium, see section 171 of this title.

Business leases, see section 514 of this title.

Cooperative housing corporation, tenant-stockholder, see section 216 of this title.

Local benefit assessments, see section 164 of this title.

Obligations of corporations organized under Act of Congress, see section 242 of this title.

Recipients of income in respect of decedents, see section 691 of this title.

Specially treated deductions, see section 270 of this title.

Tax-exempt income, see section 265 of this title.

Tax-free, see section 803 of this title.

Unpaid, see section 267 of this title.

Taxable year deduction to be taken, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 267, 483, 691, 809, 832 of this title.

§ 164. Taxes.

(a) General rule.

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.

(2) State and local personal property taxes.

(3) State and local, and foreign, income, war profits, and excess profits taxes.

(4) State and local general sales taxes.

(5) State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income).

(b) Definitions and special rules.

For purposes of this section—

(1) Personal property taxes.

The term "personal property tax" means an ad valorem tax which is imposed on an annual basis in respect of personal property.

(2) General sales taxes.

(A) In general.

The term "general sales tax" means a tax imposed at one rate in respect of the sale at retail of a broad range of classes of items.

(B) Special rules for food, etc.

In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) the fact that the tax does not apply in respect of some or all of such items shall not be taken into account in determining whether the tax applies in respect of a broad range of classes of items, and

(ii) the fact that the rate of tax applicable in respect of some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(C) Items taxed at different rates.

Except in the case of a lower rate of tax applicable in respect of an item described in

subparagraph (B), no deduction shall be allowed under this section for any general sales tax imposed in respect of an item at a rate other than the general rate of tax.

(D) Compensating use taxes.

A compensating use tax in respect of an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term "compensating use tax" means, in respect of any item, a tax which—

(i) is imposed on the use, storage, or consumption of such item, and

(ii) is complementary to a general sales tax, but only if a deduction is allowable under subsection (a)(4) in respect of items sold at retail in the taxing jurisdiction which are similar to such item.

(3) State or local taxes.

A State or local tax includes only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(4) Foreign taxes.

A foreign tax includes only a tax imposed by the authority of a foreign country.

(5) Separately stated general sales taxes and gasoline taxes.

If the amount of any general sales tax or of any tax on the sale of gasoline, diesel fuel, or other motor fuel is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(c) Deduction denied in case of certain taxes.

No deduction shall be allowed for the following taxes:

(1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(2) Taxes on real property, to the extent that subsection (d) requires such taxes to be treated as imposed on another taxpayer.

(d) Apportionment of taxes on real property between seller and purchaser.

(1) General rule.

For purposes of subsection (a), of real property is sold during any real property tax year, then—

(A) so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

(B) so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(2) Special rules.

(A) in the case of any sale of real property, if—

(i) a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and

(ii) the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year,

then for purposes of subsection (a) the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (1) of this subsection, is treated as imposed on the taxpayer. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(B) Paragraph (1) shall apply to taxable years ending after December 31, 1953, but only in the case of sales after December 31, 1953.

(C) Paragraph (1) shall not apply to any real property tax, to the extent that such tax was allowable as a deduction under the Internal Revenue Code of 1939 to the seller for a taxable year which ended before January 1, 1954.

(D) In the case of any sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461 (c) (relating to the accrual of real property taxes) applies, then, for purposes of subsection (a), that portion of such tax which—

(i) is treated, under paragraph (1) of this subsection, as imposed on the taxpayer, and

(ii) may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year,

shall be treated as having accrued on the date of the sale.

(e) Taxes of shareholder paid by corporation.

Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and where the shareholder does not reimburse the corporation, then—

(1) the deduction allowed by subsection (a) shall be allowed to the corporation; and

(2) no deduction shall be allowed the shareholder for such tax.

(f) Payments for municipal services in atomic energy communities.

For purposes of this section, amounts paid or accrued, to compensate the Atomic Energy Commission for municipal-type services, by any owner of real property within any community (within the meaning of section 21b of the Atomic Energy Community Act of 1955) shall be treated as State real property taxes paid or accrued. For purposes of this subsection, the term "owner" includes a person who holds the real property under a leasehold of 40 or more years and a person who has entered into a contract to purchase under section 61 of the Atomic Energy Community Act of 1955. Subsection (d) of this section shall not apply to a sale by the United States of property with respect to which this subsection applies.

(g) Cross references.

(1) For provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), see section 1451.

(2) For provisions disallowing any deduction for certain taxes, see section 275.

(Aug. 16, 1954, ch. 736, 68A Stat. 47; Sept. 2, 1958, Pub. L. 85-866, title I, § 6(a), 72 Stat. 1608; Feb. 26, 1964, Pub. L. 88-272, title II, § 207 (a), (b) (1), (2), 78 Stat. 40-42.)

REFERENCES IN TEXT

Section 21b and section 61 of the Atomic Energy Community Act of 1955, referred to in subsec. (f) of this section, are classified to sections 2304 (b) and 2361, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-272, § 207(a), limited the subsection to State, local and foreign real property, income, war profits, excess profits, and unspecified taxes, on a business or activity described in section 212, and to State and local personal property, general sales, gasoline, diesel fuel and other motor fuel taxes.

Subsec. (b). Pub. L. 88-272, § 207(a), added subsec. (b), and omitted a prior subsec. (b) which denied the deduction for certain Federal income taxes, for Federal war profits and excess profits taxes, import duties, excise and stamp taxes, and estate, inheritance, legacy, succession and gift taxes, local assessments against benefits increasing property values, and certain taxes imposed by any foreign country or possession of the United States if the taxpayer chose to benefit by section 901 relating to foreign tax credit, and for taxes on real property to the extent that they are treated as imposed on another taxpayer.

Subsec. (c). Pub. L. 88-272, § 207(a), substituted provisions denying the deduction for taxes assessed against local benefits which increase property value, except for so much as is properly allocable to maintenance or interest charges, and for real property taxes to the extent they are treated as imposed on another taxpayer, for provisions relating to certain retail sales taxes and gasoline taxes, the extent to which they were deductible, and to the definition of "State or local sales tax."

Subsec. (f). Pub. L. 88-272, § 207(b)(1), inserted "State" preceding "real property taxes."

Subsec. (g). Pub. L. 88-272, § 207(b)(2), designated existing provisions as par. (1), substituted "1451" for "1451(f)" therein, and added par. (2).

1958—Subsec. (f). Pub. L. 85-866, § 6(a), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g). Pub. L. 85-866, § 6(a), redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 207(c) of Pub. L. 88-272 provided that:

"(1) General rule.—Except as provided in paragraph (2), the amendments made by this section [adding section 275, and amending this section, and sections 535, 545(b)(1), 556(b)(1), 901 and 903 of this title] shall apply to taxable years beginning after December 31, 1963.

"(2) Special taxing districts.—Section 164(c)(1) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not prevent the deduction under section 164 of such Code (as so amended) of taxes levied by a special taxing district which is described in section 164(b)(5) of such Code (as in effect for a taxable year ending on December 31, 1963) and which was in existence on December 31, 1963, for the purpose of retiring indebtedness existing on such date."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 6 (b) of Pub. L. 85-866 provided that: "The amendments made by subsection (a) [to subsecs. (f) and (g) of this section] shall apply with respect to taxable years beginning after December 31, 1957."

CROSS REFERENCES

Carrying charges not deductible, see section 266 of this title.

Federal employment taxes not deductible, see section 3502 (a) of this title.

Nondeductibility of employment taxes in computing taxable income, see section 3502 of this title.

Taxable year deduction to be taken, see section 461 of this title.

Withholding tax not deductible by employer or employee, see section 3502 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 216, 275, 542, 556, 691, 703, 804, 822, 832, 853, 903, 960, 1001, 1012 of this title.

§ 165. Losses.

(a) General rule.

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction.

For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals.

In the case of an individual, the deduction under subsection (a) shall be limited to—

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) lossess of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft. A loss described in this paragraph shall be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100. For purposes of the $100 limitation of the preceding sentence, a husband and wife making a joint return under section 6013 for the taxable year in which the loss is allowed as a deduction shall be treated as one individual. No loss described in this paragraph shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(d) Wagering losses.

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses.

For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses.

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

(g) Worthless securities.

(1) General rule.

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined.

For purposes of this subsection, the term "security" means—

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation.

For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock is owned directly by the taxpayer, and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom. As used in subparagraph (A), the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(h) Disaster losses.

Notwithstanding the provisions of subsection (a), any loss

(1) attributable to a disaster which occurs during the period following the close of the taxable year and on or before the time prescribed by law for filing the income tax return for the taxable year (determined without regard to any extension of time), and

(2) occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1970.

at the election of the taxpayer, may be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred. Such deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred. If an election is made under this subsection, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed.

(i) Certain property confiscated by the Government of Cuba.

(1) Treatment as subsection (c)(3) loss.

For purposes of this chapter, in the case of an individual who was a citizen of the United States, or a resident alien, on December 31, 1958, any loss of property which—

(A) was sustained by reason of the expropriation, intervention, seizure, or similar taking of the property, before January 1, 1964, by the government of Cuba, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(B) was not a loss described in paragraph (1) of subsection (c).

shall be treated as a loss to which paragraph (3) of subsection (c) applies. In the case of tangible property, the preceding sentence shall not apply unless the property was held by the taxpayer, and was located in Cuba, on one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959.

(2) Special rules.

(A) For purposes of subsection (a), any loss described in paragraph (1) shall be treated as having been sustained on October 14, 1960, unless it is established that the loss was sustained on some other day.

(B) For purposes of subsection (a), the fair market value of property held by the taxpayer on one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959, to which paragraph (1) applies, on the day on which the loss of such property was sustained, shall be its fair market value on the first day in such period on which the property was held by the taxpayer.

(C) For purposes of section 172, a loss described in paragraph (1) shall not be treated as an expropriation loss within the meaning of section 172(k).

(D) For purposes of section 6601, the amount of any tax imposed by this title shall not be reduced by virtue of this subsection for any period prior to February 26, 1964.

(j) Cross references.

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g) (2) (C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

(Aug. 16, 1954, ch. 736, 68A Stat. 49; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 7, 57(c)(1), title II, § 202 (a), 72 Stat. 1608, 1646, 1676; Mar. 31, 1962, Pub. L. 87–426, § 2(a), 76 Stat. 51; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 208(a), 238, 78 Stat. 43, 128; June 30, 1964, Pub. L. 88–348, § 3(a), 78 Stat. 237; Dec. 31, 1970, Pub. L. 91–606, title III, § 301(h), 84 Stat. 1759; Jan. 12, 1971, Pub. L. 91–677, § 1(a), 84 Stat. 2061; Jan. 12, 1971, Pub. 91–687, § 1, 84 Stat. 2071.)

REFERENCE IN TEXT

The Disaster Relief Act of 1970, referred to in subsec. (h)(2), is classified to chapter 58 (section 4401 et seq.) of Title 42, The Public Health and Welfare.

AMENDMENTS

1971—Subsec. (g)(3). Pub. L. 91–687 substituted "stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock" for "at least 95 percent of each class

of its stock" in subpar. (A), and inserted at the end of the subsection the sentence providing that the term "stock", as used in subpar. (A), does not include nonvoting stock which is limited and preferred as to dividends.

Subsec. (i)(1). Pub. L. 91–677, § 1(a)(1), (2), struck out "or (2)" following "paragraph (1)" in cl. (B), and substituted "one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959" for "December 31, 1958".

Subsec. (i)(2)(B). Pub. L. 91–677, § 1(a)(3), substituted "one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959" for "December 31, 1958" and "the first day in such period on which the property was held by the taxpayer" for "December 31, 1958".

Subsec. (i)(3). Pub. L. 91–677, § 1(a)(4), struck out subsec. (i)(3) which authorized a refund or credit to be given for any overpayment attributable to the application of par. (1), provided that a claim was filed for such refund or credit before Jan. 1, 1965.

1970—Subsec. (h)(2). Pub. L. 91–606 substituted "the Disaster Relief Act of 1970" for "sections 1855–1855g of title 42".

1964—Subsec. (c)(3). Pub. L. 88–272, § 208(a), inserted the requirement that losses must exceed $100 to be deductible.

Subsec. (i). Pub. L. 88–348 designated existing provisions as par. (1), substituted provisions permitting individuals who were citizens of the United States or resident aliens on Dec. 31, 1958, who sustained any loss of property prior to Jan. 1, 1964, and which was not a loss described in par. (1) or (2) of subsec. (c), to treat such loss as a loss under subsec. (c)(3), except that in cases of tangible property, the property had to be held by the taxpayer, and located in Cuba, on Dec. 31, 1958, for provisions which permitted any loss of tangible property to be treated as a loss from a casualty within subsec. (c)(3), therein, and added pars. (2) and (3).

Pub. L. 88–272, § 238, added subsec. (i). Former subsec. (i), redesignated (j).

Subsec. (j). Pub. L. 88–272, § 238, redesignated former subsec. (i) as (j).

1962—Subsec. (h). Pub. L. 87–426, § 2(a)(2), added subsec. (h), and redesignated former subsec. (h) as (i).

Subsec. (i). Pub. L. 87–426, § 2(a)(1), redesignated former subsec. (h) as (i).

1958—Subsec. (g)(3)(B). Pub. L. 85–866, § 7, substituted "rental of" for "rental from".

Subsec. (h)(3), (4). Pub. L. 85–866, § 57(c)(1), added subsec. (h)(3), (4).

Subsec. (h)(5). Pub. L. 85–866, § 202(a), added subsec. (h)(5).

EFFECTIVE DATE OF 1971 AMENDMENTS

Section 2 of Pub. L. 91–687 provided that: "The amendments made by this Act [to subsec. (g)(3) of this section] shall apply with respect to taxable years beginning on or after January 1, 1970."

Section 1(b)(1) of Pub. L. 91–677 provided that: "The amendments made by subsection (a) of this section [amending subsec. (i) of this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 4401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 208(b) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to subsec. (c)(3) of this section] shall apply to losses sustained after December 31, 1963, in taxable years ending after such date."

Section 3(b) of Pub. L. 88–348 provided that: "The amendment made by subsection (a) [to subsec. (i) of this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2(b) of Pub. L. 87–426 provided that: "The amendments made by this section [adding subsec. (h) of this section and redesignating former subsec. (h) as (i)] shall be effective with respect to any disaster occurring after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1(c) of Pub. L. 85–866 provided that:

"Except as otherwise expressly provided—

"(1) amendements made by this title to subtitle A of the Internal Revenue Code of 1954 (relating to income taxes) [adding section 558 of this title and amending sections 152 (a) (9), (b) (5), 165 (g) (3) (B), 166 (d) (2) (A), 168 (e) (2) (A), (B), (C), 170 (b) (3), 172 (f) (3), (4), (g) (3), (4), 213 (d) (2) (A), 337 (d), 404 (a), 421 (a), 535 (b) (2), (6) (B), 545 (b) (2), 556 (b) (2), 582 (c), 611 (b) (4), 613 (d), 851 (e) (1), (2), 1015 (d), 1031 (d), 1033 (a) (2), (g), (h), (i) (2), (3), 1053, 1232 (c), 1233 (a), (g), 1234, 1237 (a) (1), 1341 (a), 1341 (b) (2) (last sentence), 1341 (b) (3), 1347 (last sentence), 2501 (b), 3121 (*l*) (3) and 3122 of this title] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954; and

"(2) amendments made by this title to subtitle F of such Code (relating to procedure and administration) [adding sections 7513 and 7514 of this title and amending sections 6013 (b) (2) (C), 6015 (f), 6212 (b) (1), 6325 (a) (1), (c)—(e), 6338 (c), 6339 (b) (2), 6501 (d), (g) (2), (h), (i), 6504 (15), 6511 (a), (b) (2), (d) (2) (A), 6601 (b), (h), 6652 (a), 6653 (c) (1), 6851 (d), 6871 (a), (b), 7213 (c), (d), 7324 (3), 7325 (3) and 7422 (f) (2) of this title] shall take effect as of August 17, 1954, and such subtitle, as so amended, shall apply as provided in section 7851 of the Internal Revenue Code of 1954".

Amendment of section by Pub. L. 85–866, § 57 (c) (1), which added subsec. (h) (3) (4), as applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57 (d) of Pub. L. 85–866, set out as a note under section 243 of this title.

SHORT TITLE

Section 201 of Pub. L. 85–866 provided that title II of Pub. L. 85–866, which is classified to subsec. (h) (5) of this section and to sections 172 (b) (1), (2), (j), (i), 172 note, 179, 179 note, 535 (c) (2), (3), 535 note, 1244, 1551, 6161 (a) (2), 6161 note, 6166, 6503 (d), and 6601 (b) of this title, should be popularly known as the "Small Business Tax Revision Act of 1958".

REFUND OR CREDIT OF OVERPAYMENT; TIME FOR FILING CLAIM; INTEREST

Section 1(b)(2) of Pub. L. 91–677 provided that:: "Notwithstanding any law or rule of law, refund or credit of any overpayment attributable to the amendments made by subsection (a) [amending subsec. (i) of this section] may be made or allowed if claim therefor is filed after the date of the enactment of this Act [Jan. 12, 1971] and before July 1, 1971. No interest shall be allowed with respect to any such refund or credit for any period before January 1, 1972."

CROSS REFERENCES

Adjusted gross income as gross income minus, among others, losses from sale or exchange of property, see section 62 of this title.

General rules for determining capital losses, see section 1221 et seq. of this title.

Loss deductions for nonresident alien individuals, see section 873 (b) of this title.

Losses in transactions between related taxpayers not deductible, see section 267 of this title.

Special rules for determining capital losses, see section 1231 et seq. of this title.

Treatment of capital losses, see section 1211 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80, 103, 166, 271, 272, 582, 585, 593, 873, 877, 931, 934, 1212, 1351, 6511 of this title.

§ 166. Bad debts.

(a) General rule.

(1) Wholly worthless debts.

There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

(2) Partially worthless debts.

When satisfied that a debt is recoverable only in part, the Secretary or his delegate may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of deduction.

For purposes of subsection (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Reserve for bad debts.

In lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary or his delegate) a deduction for a reasonable addition to a reserve for bad debts.

(d) Nonbusiness debts.

(1) General rule.

In the case of a taxpayer other than a corporation—

(A) subsections (a) and (c) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months.

(2) Nonbusiness debt defined.

For purposes of paragraph (1), the term "nonbusiness debt" means a debt other than—

(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless securities.

This section shall not apply to a debt which is evidenced by a security as defined in section 165 (g) (2) (C).

(f) Guarantor of certain noncorporate obligations.

A payment by the taxpayer (other than a corporation) in discharge of part or all of his obligation as a guarantor, endorser, or indemnitor of a noncorporate obligation the proceeds of which were used in the trade or business of the borrower shall be treated as a debt becoming worthless within such taxable year for purposes of this section (except that subsection (d) shall not apply), but only if the obligation of the borrower to the person to whom such payment was made was worthless (without regard to such guaranty, endorsement, or indemnity) at the time of such payment.

(g) Reserve for certain guaranteed debt obligations.

(1) Allowance of deduction.

In the case of a taxpayer who is a dealer in property, in lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary or his delegate) for any taxable year ending after October 21, 1965, a deduction—

(A) for a reasonable addition to a reserve for bad debts which may arise out of his liability as a guarantor, endorser, or indemnitor of debt obligations arising out of the sale by him of real property or tangible personal property (including related services) in the ordinary course of his trade or business; and

(B) for the amount of any reduction in the suspense account required by paragraph (4) (B) (i).

(2) Deduction disallowed in other cases.

Except as provided in paragraph (1), no deduction shall be allowed to a taxpayer for any addition to a reserve for bad debts which may arise out of his liability as guarantor, endorser, or indemnitor of debt obligations.

(3) Opening balance.

The opening balance of a reserve described in paragraph (1) (A) for the first taxable year ending after October 21, 1965, for which a taxpayer maintains such reserve shall, under regulations prescribed by the Secretary or his delegate, be determined as if the taxpayer had maintained such reserve for the preceding taxable years.

(4) Suspense account.

(A) Requirement.

Except as provided by subparagraph (C), each taxpayer who maintains a reserve described in paragraph (1) (A) shall, for purposes of this subsection and section 81, establish and maintain a suspense account. The initial balance of such account shall be equal to the opening balance described in paragraph (3).

(B) Adjustments.

At the close of each taxable year the suspense account shall be—

(i) reduced by the excess of the suspense account at the beginning of the year over the reserve described in paragraph (1) (A) (after making the addition for such year provided in such paragraph), or

(ii) increased (but not to an amount greater than the initial balance of the suspense account) by the excess of the reserve described in paragraph (1) (A) (after making the addition for such year provided in such paragraph) over the suspense account at the beginning of such year.

(C) Limitations.

Subparagraphs (A) and (B) shall not apply in the case of the taxpayer who maintained for his last taxable year ending before October 22, 1965, a reserve for bad debts under subsection (c) which included debt obligations described in paragraph (1) (A).

(D) Section 381 acquisitions.

The application of this paragraph in any acquisition to which section 381 (a) applies shall be determined under regulations prescribed by the Secretary or his delegate.

(h) Cross references.

(1) For disallowance of deduction for worthlessness of debts owed by political parties and similar organizations, see section 271.

(2) For special rule for banks with respect to worthless securities, see section 582.

(3) For special rule for bad debt reserves of certain mutual savings banks, domestic building and loan associations, and cooperative banks, see section 593.

(4) For special rule for bad debt reserves of banks, small business investment-companies, etc., see sections 585 and 586.

(Aug. 16, 1954, ch. 736, 68A Stat. 50; Sept. 2, 1958, Pub. L. 85–866, title I, § 8, 72 Stat. 1608; Nov. 2, 1966, Pub. L. 89–722, § 1(a), 80 Stat. 1151; Dec. 30, 1969, Pub. L. 91–172, title IV, § 431(c)(1), 83 Stat. 619.)

AMENDMENTS

1969—Subsec. (h). Pub. L. 91–172 added par. (4).

1966—Subsec. (g). Pub. L. 89–722 added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h). Pub. L. 89–722 redesignated former subsec. (g) as (h).

1958—Subsec. (d)(2)(A). Pub. L. 85–866 substituted "a trade or business of the taxpayer" for "a taxpayer's trade or business".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 431(d) of Pub. L. 91–172, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–722 provided that:

"(a) Except as provided in subsections (b) and (c), the amendments made by the first section of this Act [Enacting subsec. (g) of this section and section 81 of this title] shall apply to taxable years ending after October 21, 1965.

"(b) If—

"(1) the taxpayer before October 22, 1965, claimed a deduction, for a taxable year ending before such date, under section 166(c) of the Internal Revenue Code of 1954 [subsec. (c) of this section] for an addition to a reserve for bad debts on account of debt obligations described in section 166(g)(1)(A) of such Code (as amended by the first section of this Act) [subsec. (g)(1)(A) of this section], and

"(2) the assessment of a deficiency of the tax imposed by chapter 1 of such Code for such taxable year and each subsequent taxable year ending before October 22, 1965, is not prevented on December 31, 1966, by the operation of any law or rule of law,

then such deduction on account of such debt obligations shall be allowed for each such taxable year under such section 166(c) to the extent that the deduction would have been allowable under the provisions of such section 166(g)(1)(A) if such provisions applied to such taxable years.

"(c) Section 166(g)(2) of the Internal Revenue Code of 1954 (as amended by the first section of this Act) [subsec. (g)(2) of this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d) (2) (A) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

ESTABLISHMENT OF RESERVE FOR TAXABLE YEAR ENDING AFTER OCT. 21, 1965, AND BEGINNING BEFORE AUG. 2, 1966

Section 1(c) of Pub. L. 89–722 provided that: "If the taxpayer establishes a reserve described in section 166 (g)(1) of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section) [subsec. (g)(1) of this section] for a taxable year ending after October 21, 1965, and beginning before August 2, 1966, the establishment of such reserve shall not be considered as a change in method of accounting for purposes of section 446(e) of such Code."

CROSS REFERENCES

Bad debts—

Addition to reserve, see section 593 of this title.

Carryover, see section 381 of this title.

Limitation of claim for credit or refund, see section 6511 of this title.

Debts owed political parties not deductible, see section 271 of this title.

Time for taking deduction, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 81, 163, 271, 582, 585, 586, 593, 595, 809, 1351, 6511 of this title.

§ 167. Depreciation.

(a) General rule.

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) Use of certain methods and rates.

For taxable years ending after December 31, 1953, the term "reasonable allowance" as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary or his delegate, under any of the following methods:

(1) the straight line method,

(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

(3) the sum of the years-digits method, and

(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).

(c) Limitations on use of certain methods and rates.

Paragraphs (2), (3), and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

(d) Agreement as to useful life on which depreciation rate is based.

Where, under regulations prescribed by the Secretary or his delegate, the taxpayer and the Secretary or his delegate have, after the date of enactment of this title, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of facts or circumstances not

taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change.

(e) Change in method.

(1) Change from declining balance method.

In the absence of an agreement under subsection (d) containing a provision to the contrary, a taxpayer may at any time elect in accordance with regulations prescribed by the Secretary or his delegate to change from the method of depreciation described in subsection (b)(2) to the method described in subsection (b)(1).

(2) Change with respect to section 1245 property.

A taxpayer may, on or before the last day prescribed by law (including extensions thereof) for filing his return for his first taxable year beginning after December 31, 1962, and in such manner as the Secretary or his delegate shall by regulations prescribe, elect to change his method of depreciation in respect of section 1245 property (as defined in section 1245(a)(3)) from any declining balance or sum of the years-digits method to the straight line method. An election may be made under this paragraph notwithstanding any provision to the contrary in an agreement under subsection (d).

(3) Change with respect to section 1250 property.

A taxpayer may, on or before the last day prescribed by law (including extensions thereof) for filing his return for his first taxable year beginning after July 24, 1969, and in such manner as the Secretary or his delegate shall by regulation prescribe, elect to change his method of depreciation in respect of section 1250 property (as defined in section 1250(c)) from any declining balance or sum of the years-digits method of the straight line method. An election may be made under this paragraph notwithstanding any provision to the contrary in an agreement under subsection (d).

(f) Salvage value.

(1) General rule.

Under regulations prescribed by the Secretary or his delegate, a taxpayer may, for purposes of computing the allowance under subsection (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 percent of the basis of such property (as determined under subsection (g) as of the time as of which such salvage value is required to be determined).

(2) Personal property defined.

For purposes of this subsection, the term "personal property" means depreciable personal property (other than livestock) with a useful life of 3 years or more acquired after the date of the enactment of the Revenue Act of 1962.

(g) Basis for depreciation.

The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain on the sale or other disposition of such property.

(h) Life tenants and beneficiaries of trusts and estates.

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(i) Limitation in case of property constructed or acquired during the suspension period.

(1) In general.

Under regulations prescribed by the Secretary or his delegate, paragraphs (2), (3), and (4) of subsection (b) shall not apply in the case of real property which is not section 38 property (as defined in section 48(a)) if the physical construction, reconstruction, or erection of such property by any person begins during the suspension period, or begins, pursuant to an order placed during such period, before May 24, 1967. Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided by paragraphs (3), (4), (7), (8), (9), and (10) of section 48(h) shall be applied for purposes of the preceding sentence. In applying this paragraph to any property, there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection before May 24, 1967.

(2) Exception.

Paragraph (1) shall not apply to any item of real property selected by the taxpayer if the cost of such property (when added to the cost of all other items of real property selected by the taxpayer under this paragraph) does not exceed $50,000. Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided by paragraph (2) of section 48(c) shall be applied for purposes of this paragraph.

(3) Suspension period.

For purposes of this subsection, the term "suspension period" means the period beginning on October 10, 1966, and ending on March 9, 1967.

(j) Special rules for section 1250 property.

(1) General rule.

Except as provided in paragraphs (2) and (3), in the case of section 1250 property, subsection (b) shall not apply and the term "reasonable allowance" as used in subsection (a) shall include an allowance computed in accordance with regula-

tions prescribed by the Secretary or his delegate, under any of the following methods:

(A) the straight line method,

(B) the declining balance method, using a rate not exceeding 150 percent of the rate which would have been used had the annual allowance been computed under the method described in subparagraph (A), or

(C) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subparagraph (B).

Nothing in this paragraph shall be construed to limit or reduce an allowance otherwise allowable under subsection (a) except where allowable solely by reason of paragraph (2), (3), or (4) of subsection (b).

(2) Residential rental property.

(A) In general.

Paragraph (1) of this subsection shall not apply, and subsection (b) shall apply in any taxable year, to a building or structure—

(i) which is residential rental property located within the United States or any of its possessions, or located within a foreign country if a method of depreciation for such property comparable to the method provided in subsection (b) (2) or (3) is provided by the laws of such country, and

(ii) the original use of which commences with the taxpayer.

In the case of residential rental property located within a foreign country, the original use of which commences with the taxpayer, if the allowance for depreciation provided under the laws of such country for such property is greater than that provided under paragraph (1) of this subsection, but less than that provided under subsection (b), the allowance for depreciation under subsection (b) shall be limited to the amount provided under the laws of such country.

(B) Definition.

For purposes of subparagraph (A), a building or structure shall be considered to be residential rental property for any taxable year only if 80 percent or more of the gross rental income from such building or structure for such year is rental income from dwelling units (within the meaning of subsection (k)(3)(C)). For purposes of the preceding sentence, if any portion of such building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(C) Change in method of depreciation.

Any change in the computation of the allowance for depreciation for any taxable year, permitted or required by reason of the application of subparagraph (A), shall not be considered a change in a method of accounting.

(3) Property constructed, etc., before July 25, 1969.

Paragraph (1) of this subsection shall not apply, and subsection (b) shall apply, in the case of property—

(A) the construction, reconstruction, or erection of which was begun before July 25, 1969, or

(B) for which a written contract entered into before July 25, 1969, with respect to any part of the construction, reconstruction, or erection or for the permanent financing thereof, was on July 25, 1969, and at all times thereafter, binding on the taxpayer.

(4) Used section 1250 property.

Except as provided in paragraph (5), in the case of section 1250 property acquired after July 24, 1969, the original use of which does not commence with the taxpayer, the allowance for depreciation under this section shall be limited to an amount computed under—

(A) the straight line method, or

(B) any other method determined by the Secretary or his delegate to result in a reasonable allowance under subsection (a), not including—

(i) any declining balance method,

(ii) the sum of the years-digits method, or

(iii) any other method allowable solely by reason of the application of subsection (b)(4) or paragraph (1)(C) of this subsection.

(5) Used residential rental property.

In the case of section 1250 property which is residential rental property (as defined in paragraph (2)(B) acquired after July 24, 1969, having a useful life of 20 years or more, the original use of which does not commence with the taxpayer, the allowance for depreciation under this section shall be limited to an amount computed under—

(A) the straight line method,

(B) the declining balance method, using a rate not exceeding 125 percent of the rate which would have been used had the annual allowance been computed under the method described in subparagraph (A), or

(C) any other method determined by the Secretary or his delegate to result in a reasonable allowance under subsection (a), not including—

(i) the sum of the years-digits method,

(ii) any declining balance method using a rate in excess of the rate permitted under subparagraph (B), or

(iii) any other method allowable solely by reason of the application of subsection (b)(4) or paragraph (1)(C) of this subsection.

(6) Special rules.

(A) Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided in paragraphs (5), (9), (10), and (13) of section 48(h) shall be applied for purposes of paragraphs (3), (4), and (5) of this subsection.

(B) For purposes of paragraphs (2), (4), and (5), if section 1250 property which is not property described in subsection (a) when its original use commences, becomes property described

in subsection (a) after July 24, 1969, such property shall not be treated as property the original use of which commences with the taxpayer.

(C) Paragraphs (4) and (5) shall not apply in the case of section 1250 property acquired after July 24, 1969, pursuant to a written contract for the acquisition of such property or for the permanent financing thereof, which was, on July 24, 1969, and at all times thereafter, binding on the taxpayer.

(k) Depreciation of expenditures to rehabilitate low-income rental housing.

(1) 60-month rule.

The taxpayer may elect, in accordance with regulations prescribed by the Secretary or his delegate, to compute the depreciation deduction provided by subsection (a) attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1975, under the straight line method using a useful life of 60 months and no salvage value. Such method shall be in lieu of any other method of computing the depreciation deduction under subsection (a), and in lieu of any deduction for amortization, for such expenditures.

(2) Limitations.

(A) The aggregate amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit in any low-income rental housing which may be taken into account under paragraph (1) shall not exceed $15,000.

(B) Rehabilitation expenditures paid or incurred by the taxpayer in any taxable year with respect to any dwelling unit in any low-income rental housing shall be taken into account under paragraph (1) only if over a period of two consecutive years, including the taxable year, the aggregate amount of such expenditures exceeds $3,000.

(3) Definitions.

(A) Rehabilitation expenditures.

The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property or additions or improvements to property (or related facilities) with a useful life of 5 years or more, in connection with the rehabilitation of an existing building for low-income rental housing; but such term does not include the cost of acquisition of such building or any interest therein.

(B) Low-income rental housing.

The term "low-income rental housing" means any building the dwelling units in which are held for occupancy on a rental basis by families and individuals of low or moderate income, as determined by the Secretary or his delegate in a manner consistent with the policies of the Housing and Urban Development Act of 1968 pursuant to regulations prescribed under this subsection.

(C) Dwelling unit.

The term "dwelling unit" means a house or an apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, inn, or other establishment more than one-half of the units in which are used on a transient basis.

(*l*) Reasonable allowance in case of property of certain utilities.

(1) Pre-1970 public utility property.

(A) In general.

In the case of any pre-1970 public utility property, the term "reasonable allowance" as used in subsection (a) means an allowance computed under—

(i) a subsection (*l*) method, or

(ii) the applicable 1968 method for such property.

Except as provided in subparagraph (B), clause (ii) shall apply only if the taxpayer uses a normalization method of accounting.

(B) Flow-through method of accounting in certain cases.

In the case of any pre-1970 public utility property, the taxpayer may use the applicable 1968 method for such property if—

(i) the taxpayer used a flow-through method of accounting for such property for its July 1969 accounting period, or

(ii) the first accounting period with respect to such property is after the July 1969 accounting period, and the taxpayer used a flow-through method of accounting for its July 1969 accounting period for the property on the basis of which the applicable 1968 method for the property in question is established.

(2) Post-1969 public utility property.

In the case of any post-1969 public utility property, the term "reasonable allowance" as used in subsection (a) means an allowance computed under—

(A) a subsection (*l*) method,

(B) a method otherwise allowable under this section if the taxpayer uses a normalization method of accounting, or

(C) the applicable 1968 method, if, with respect to its pre-1970 public utility property of the same (or similar) kind most recently placed in service, the taxpayer used a flow-through method of accounting for its July 1969 accounting period.

(3) Definitions.

For purposes of this subsection—

(A) Public utility property.

The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(i) electrical energy, water, or sewage disposal services,

(ii) gas or steam through a local distribution system,

(iii) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(iv) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(B) Pre-1970 public utility property.

The term "pre-1970 public utility property" means property which was public utility property in the hands of any person at any time before January 1, 1970.

(C) Post-1969 public utility property.

The term "post-1969 public utility property" means any public utility property which is not pre-1970 public utility property.

(D) Applicable 1968 method.

The term "applicable 1968 method" means, with respect to any public utility property—

(i) the method of depreciation used on a return with respect to such property for the latest taxable year for which a return was filed before August 1, 1969,

(ii) if clause (i) does not apply, the method used by the taxpayer on a return for the latest taxable year for which a return was filed before August 1, 1969, with respect to its public utility property of the same kind (or if there is no property of the same kind, property of the most similar kind) most recently placed in service, or

(iii) if neither clause (i) nor (ii) applies, a subsection (*l*) method.

In the case of any section 1250 property to which subsection (j) applies, the term "applicable 1968 method" means the method permitted under subsection (j) which is most nearly comparable to the applicable 1968 method determined under the preceding sentence.

(E) Applicable 1968 method in certain cases.

If the taxpayer evidenced the intent to use a method of depreciation (other than its applicable 1968 method or a subsection (*l*) method) with respect to any public utility property in a timely application for change of accounting method filed before August 1, 1969, or in the computation of its tax expense for purposes of reflecting operating results in its regulated books of account for its July 1969 accounting period, such other method shall be deemed to be its applicable 1968 method with respect to such property and public utility property of the same (or similar) kind subsequently placed in service.

(F) Subsection (*l*) method.

The term "subsection (*l*) method" means any method determined by the Secretary or his delegate to result in a reasonable allowance under subsection (a), other than (i) a declining balance method, (ii) the sum of the years-digits method, or (iii) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C).

(G) Normalization method of accounting.

In order to use a normalization method of accounting with respect to any public utility property—

(i) the taxpayer must use the same method of depreciation to compute both its tax expense and its depreciation expense for purposes of establishing its cost of service for ratemaking purposes and for reflecting operating results in its regulated books of account, and

(ii) if, to compute its allowance for depreciation under this section, it uses a method of depreciation other than the method it used for the purposes described in clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from the use of such different methods of depreciation.

(H) Flow-through method of accounting.

The taxpayer used a "flow-through method of accounting" with respect to any public utility property if it used the same method of depreciation (other than a subsection (*l*) method) to compute its allowance for depreciation under this section and to compute its tax expense for purposes of reflecting operating results in its regulated books of account.

(I) July 1969 accounting period.

The term "July 1969 accounting period" means the taxpayers latest accounting period ending before August 1, 1969, for which it computed its tax expense for purposes of reflecting operating results in its regulated books of account.

For purposes of this paragraph, different declining balance rates shall be treated as different methods of depreciation.

(4) Special rules as to flow-through method.

(A) Election as to new property representing growth in capacity.

If the taxpayer makes an election under this subparagraph within 180 days after the date of the enactment of this subparagraph in the manner prescribed by the Secretary or his delegate, in the case of taxable years beginning after December 31, 1970, paragraph (2)(C) shall not apply with respect to any post-1969 public utility property, to the extent that such property constitutes property which increases the productive or operational capacity of the taxpayer with respect to the goods or services described in paragraph (3)(A) and does not represent the replacement of existing capacity.

(B) Certain pending applications for changes in method.

In applying paragraph (1)(B), the taxpayer shall be deemed to have used a flow-through method of accounting for its July 1969 accounting period with respect to any pre-1970 public utility property for which it filed a timely application for change of accounting method before August 1, 1969, if with respect to public utility property of the same (or similar) kind most re-

cently placed in service, it used a flow-through method of accounting for its July 1969 accounting period.

(5) Reorganizations, assets acquisitions, etc.

If by reason of a corporate reorganization, by reason of any other acquisition of the assets of one taxpayer by another taxpayer, by reason of the fact that any trade or business of the taxpayer is subject to ratemaking by more than one body, or by reason of other circumstances, the application of any provisions of this subsection to any public utility property does not carry out the purposes of this subsection, the Secretary or his delegate shall provide by regulations for the application of such provisions in a manner consistent with the purposes of this subsection.

(m) Depreciation of improvements in the case of mines, etc.

For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(Aug. 16, 1954, ch. 736, 68A Stat. 51; Sept. 2, 1958, Pub. L. 85–866, title I, § 89(b), 72 Stat. 1665; Oct. 16, 1962, Pub. L. 87–834, § 13(b), (c)(1), 76 Stat. 1034; Nov. 8, 1966, Pub. L. 89–800, § 2, 80 Stat. 1513; June 13, 1967, Pub. L. 90–26, §§ 1, 2(b), 81 Stat. 57, 58; Dec. 30, 1969, Pub. L. 91–172, title IV, § 441(a), title V, § 521 (a), (d), 83 Stat. 625, 649, 653.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Act of 1962, referred to in subsec. (f), means the date of the enactment of Pub. L. 87–834, which was approved on Oct. 16, 1962.

The Housing and Urban Development Act of 1968, referred to in subsec. (k)(3)(B), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, which is classified principally to section 1701t et seq. of Title 12, Banks and Banking.

The Communications Satellite Act of 1962 (47 U.S.C. 701), referred to in subsec. (*l*)(3)(A)(iii), is Pub. L. 87–624, Aug 31, 1962, 76 Stat. 419, which is classified to section 701 et seq. of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

1969—Subsec. (e). Pub. L. 91–172, § 521(d), added par. (3).

Subsecs. (j), (k). Pub. L. 91–172, § 521(a), added subsecs. (j) and (k). Former subsec. (j) redesignated (m).

Subsec. (*l*). Pub. L. 91–172, § 441(a), added subsec. (*l*).

Subsec. (m). Pub. L. 91–172, § 521(a), redesignated former subsec. (j) as (m).

1967—Subsec. (i)(1). Pub. L. 90–26, § 2(b), provided that accelerated depreciation was not to apply if the physical construction, reconstruction or erection by any person was begun during the suspension period or begun, pursuant to an order placed during such period, before May 24, 1967, subject to the proviso that only that portion of the basis which was properly attributable to construction, reconstruction or erection before May 24, 1967, shall be affected by the applicability of the suspension period.

Subsec. (i)(3). Pub. L. 90–26, § 1, substituted "March 9, 1967" for "December 31, 1967".

1966—Subsec. (i). Pub. L. 89–800 added subsec. (i). Former subsec. (i) redesignated as subsec. (j).

Subsec. (j). Pub. L. 89–800 redesignated former subsec. (i) as subsec. (j).

1962—Subsec. (e). Pub. L. 87–834, § 13(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 8–834, § 13(c)(1), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsecs. (g)—(i). Pub. L. 87–834, § 13(c)(1), redesignated former subsecs. (f), (g) and (h) as (g), (h) and (i), respectively.

1958—Subsec. (d). Pub. L. 85–866 inserted "certified mail or" preceding "registered mail".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 441(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [adding subsec. (*l*) to this section] shall apply with respect to all taxable years for which a return has not been filed before August 1, 1969."

Section 521(g) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section and sections 381 and 1250 of this title] shall apply with respect to taxable years ending after July 24, 1969."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (i) by sections 1 and 2(b) of Pub. L. 90–26 applicable with respect to taxable years ending after March 9, 1967, see section 4 of Pub. L. 90–26, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (e) of this section by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, and subsec. (f) of this section applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as a note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d) by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89 (d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

CROSS REFERENCES

Adjusted gross income as gross income minus, among others, depreciation deduction, see section 62 of this title.

Allowance of deduction for depletion, see section 611 of this title.

Capital expenditures not deductible, see section 263 of this title.

Depreciation—

- Adjustments to basis for determining gain or loss, see section 1016 of this title.
- Allocation among partners, see section 704 of this title.
- Allowed before 1952, election in respect of, see section 1020 of this title.
- Development expenses, see section 616 of this title.
- Estates or trusts, see section 642 of this title.
- Exploration expenses, see section 615 of this title.
- Payments to encourage exploration, development and mining for defense purposes, see section 621 of this title.
- Property used in trade or business as property subject to depreciation allowance, see section 1231 of this title.
- Undivided interest in property contributed to partnership, see section 704 of this title.

Taxable year deductions to be taken, see section 461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 62, 163, 168, 169, 172, 174, 175, 179, 182, 184, 187, 216, 312, 381, 615, 616, 617, 642, 817, 822, 832, 1016, 1071, 1082, 1221, 1231, 1239, 1245, 1250, 4940 of this title.

§ 168. Amortization of emergency facilities.

(a) General rule.

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any emergency facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (in-

cluding the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (f), be in lieu of the depreciation deduction with respect to such facility for such month provided by section 167. The 60-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization.

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility was completed or acquired, or with the taxable year succeeding the taxable year in which such facility was completed or acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction.

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply and the taxpayer shall not be entitled to any further amortization deduction with respect to such emergency facility.

(d) Definitions.

(1) Emergency facility.

For purposes of this section, the term "emergency facility" means any facility, land, building, machinery, or equipment, or any part thereof, the construction, reconstruction, erection, installation, or acquisition of which was completed after December 31, 1949, and with respect to which a certificate under subsection (e) has been made. In no event shall an amortization deduction be allowed in respect of any emergency facility for any taxable year unless a certificate in respect thereof under this paragraph shall have been made before the filing of the taxpayer's return for such taxable year.

(2) Emergency period.

For purposes of this section, the term "emergency period" means the period beginning January 1, 1950, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (e) have been made is no longer required in the interest of national defense.

(e) Determination of adjusted basis of emergency facility.

In determining, for purposes of subsection (a) or (g), the adjusted basis of an emergency facility—

(1) Certification on or before August 22, 1957.

In the case of a certificate made on or before August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority, designated by the President by Executive Order, has certified as necessary in the interest of national defense during the emergency period, and only such portion of such amount as such authority has certified as attributable to defense purposes. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations, but in no event shall such certificate have any effect unless an application therefor is filed before March 24, 1951, or before the expiration of 6 months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, whichever is later.

(2) Certifications after August 22, 1957.

In the case of a certificate made after August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority designated by the President by Executive order, has certified is to be used—

(A) to produce new or specialized defense items or components of new or specialized defense items (as defined in paragraph (4) during the emergency period,

(B) to provide research, developmental, or experimental services during the emergency period for the Department of Defense (or one of the component departments of such Department), or for the Atomic Energy Commission, as a part of the national defense program, or

(C) to provide primary processing for uranium ore or uranium concentrate under a program of the Atomic Energy Commission for the development of new sources of uranium ore or uranium concentrate,

and only such portion of such amount as such authority has certified is attributable to the national defense program. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations but in no event shall such certificate have any effect unless an application therefor is filed before the

expiration of 6 months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition. For purposes of the preceding sentence, an application which was timely filed under this subsection on or before August 22, 1957, and which was pending on such date, shall be considered to be an application timely filed under this paragraph.

(3) Separate facilities; special rule.

After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) or (2) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1) or (2), shall not be applied in adjustment of the basis of such facility, but a separate basis shall be computed therefor pursuant to paragraph (1) or (2), as the case may be, as if it were a new and separate emergency facility.

(4) Definitions.

For purposes of paragraph (2)—

(A) New or specialized defense item.

The term "new or specialized defense item" means only an item (excluding services)—

(i) which is produced, or will be produced, for sale to the Department of Defense (or one of the component departments of such Department), or to the Atomic Energy Commission, for use in the national defense program, and

(ii) for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features.

(B) Component of new or specialized defense item.

The term component of a new or specialized defense item means only an item—

(i) which is, or will become, a physical part of a new or specialized defense item, and

(ii) for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features.

(5) Limitation with respect to uranium ore or uranium concentrate processing facilities.

No certificate shall be made under paragraph (2) (C) with respect to any facility unless existing facilities for processing the uranium ore or uranium concentrate which will be processed by such facility are unsuitable because of their location.

(f) Depreciation deduction.

If the adjusted basis of the emergency facility (computed without regard to this section) is in excess of the adjusted basis computed under subsection (e), the depreciation deduction provided by section 167 shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis for the purpose of such deduction were an amount equal to the amount of such excess.

(g) Payment by United States of unamortized cost of facility.

If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in paragraph (1), then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be equal to the amount so includible but not in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this subsection shall be payments the amounts of which are certified, under such regulations as the President may prescribe, by the certifying authority designated by the President as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

(A) a contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

(B) the taxpayer had reasonable ground (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility, the depreciation deduction allowable under section 167 on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 167 or this paragraph).

(h) Life tenant and remainderman.

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(i) Termination.

No certificate under subsection (e) shall be made with respect to any emergency facility after December 31, 1959.

(j) Cross reference.

For special rule with respect to gain derived from the sale or exchange of property the adjusted basis of which is determined with regard to this section, see section 1238.

(Aug. 16, 1954, ch. 736, 68A Stat. 52; Aug. 26, 1957, Pub. L. 85-165, § 4, 71 Stat. 414; Sept. 2, 1958, Pub. L. 85-866, title I, § 9 (a), (b), 72 Stat. 1608, 1609.)

AMENDMENTS

1958—Subsec. (e) (2) (C). Pub. L. 85-866, § 9(a), added subsec. (e) (2) (C).

Subsec. (e) (5). Pub. L. 85-866, § 9(b), added subsec. (e) (5).

1957—Subsec. (e)(1). Pub. L. 85–165, § 4(a), limited authorization to certifications made on or before Aug. 22, 1957.

Subsec. (e)(2). Pub. L. 85–165, § 4(b), added subsec. (e)(2) and redesignated former subsec. (e)(2) as (e)(3).

Subsec. (e)(3). Pub. L. 85–165, § 4(b), redesignated former subsec. (e)(2) as (e)(3) and inserted "or (2)" following "paragraph (1)" wherever appearing and "as the case may be."

Subsec. (e)(4). Pub. L. 85–165, § 4(b), added subsec. (e)(4).

Subsec. (i). Pub. L. 85–165, § 4(c), added subsec. (i) and redesignated former subsec. (i) as (j).

Subsec. (j). Pub. L. 85–165, § 4(c), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 1958 AMENDMENT

Subsec. (e)(2)(C) of this section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

AVAILABILITY OF EMERGENCY AMORTIZATION DEDUCTION

Section 9 (c) of Pub. L. 85–866 provided that: "In the case of any certificate which is made under section 168 (e) of the Internal Revenue Code of 1954 for any facility to which the amendment made by subsection (a) [which added subsec. (e) (2) (C) of this section] applies, if application for such certificate was filed before the date of the enactment of this Act [Sept. 2, 1958] and within the time prescribed by the next to the last sentence of section 168 (e) (2) of such Code, the second sentence of section 168 (d) (1) of such Code shall not apply with respect to any taxable year of the taxpayer which ends prior to the date on which such certificate is made. In the case of any certificate which is made under such section for any facility to which the amendment made by subsection (a) [which added subsec. (e) (2) (C) of this section] applies, if application for such certificate is filed at any time within 3 months after the date of the enactment of this Act [Sept. 2, 1958], the next to the last sentence of section 168 (e) (2) shall not apply and the second sentence of section 168 (d) (1) shall not apply with respect to any taxable year of the taxpayer which ends prior to the date on which such certificate is made."

CROSS REFERENCES

Adjustments to basis for determining gain or loss, see section 1016 of this title.

Effect of amortization deduction on basis of property acquired from decedent, see section 1014 of this title.

Estates and trusts allowed deduction under this section, see section 642 (f) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 1082, 1238, 1245, 1250 of this title.

§ 169. Amortization of pollution control facilities.

(a) Allowance of deduction.

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization.

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction.

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) Definitions.

For purposes of this section—

(1) Certified pollution control facility.

The term "certified pollution control facility" means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1969, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing of pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authorty as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination; and

(B) the Federal certifying authority has certified to the Secretary or his delegate (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(2) State certifying authority.

The term "State certifying authority" means, in the case of water pollution, the State water pollution control agency as defined in section 13

(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term "State certifying authority" includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) Federal certifying authority.

The term "Federal certifying authority" means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health, Education, and Welfare.

(4) New identifiable treatment facility.

For purposes of paragraph (1), the term "new identifiable treatment facility" includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which—

(A) is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date, and

(B) is placed in service by the taxpayer before January 1, 1975.

In applying this section in the case of property described in clause (i) of subparagraph (A), there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(e) Profitmaking abatement works, etc.

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) Amortizable basis.

(1) Defined.

For purposes of this section, the term "amortizable basis" means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) Special rules.

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in effect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) Depreciation deduction.

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

(h) Investment credit not to be allowed.

In the case of any property with respect to which an election has been made under subsection (a), so much of the adjusted basis of the property as (after the application of subsection (f)) constitutes the amortizable basis for purposes of this section shall not be treated as section 38 property within the meaning of section 48(a).

(i) Life tenant and remainderman.

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) Cross reference.

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, § 704(a), Dec. 30, 1969, 83 Stat. 667.)

EFFECTIVE DATE

Section 704(c) of Pub. L. 91–172 provided that: "The amendments made by this section [adding this section and amending sections 642, 1082, 1245, and 1250 of this title] shall apply with respect to taxable years ending after December 31, 1968."

PRIOR PROVISIONS

A prior section 169, act Aug. 16, 1954, ch. 736, 68A Stat. 55, dealing with the amortization of grain-storage facilities, was stricken in the reorganization of Part VI of subchapter B of chapter 1 of this title by Pub. L. 91–172.

TRANSFER OF FUNCTIONS

The functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by subsec. (d)(1)(B) and (3) of this section were transferred to the Administrator of the Environmental Protection Agency by 1970 Reorg. Plan No. 3, § 2(a)(9), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57 169, 1082, 1245, 1250 of this title.

§ 170. Charitable, etc., contributions and gifts.

(a) Allowance of deduction.

(1) General rule.

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

(2) Corporations on accrual basis.

In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) Future interests in tangible personal property.

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations.

(1) Individuals.

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (E), or

(viii) an organization described in section 509(a) (2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions.

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 20 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (D)).

(C) Unlimited deduction for certain individuals.

Subject to the provisions of subsections (f)(6) and (g), the limitations in subparagraphs (A), (B), and (D), and the provisions of subsection (e)(1)(B), shall not apply, in the case of an individual for a taxable year beginning before January 1, 1975, if in such taxable year and in 8 of the 10 preceding taxable years, the amount of the charitable contributions, plus the amount of income tax (determined without regard to chapter 2, relating to tax on self-employment income) paid during such year in respect of such year or preceding taxable years, exceeds the transitional deduction percentage (determined under subsection (f)(6)) of the taxpayer's taxable income for such year, computed without regard to—

(i) this section,

(ii) section 151 (allowance of deductions for personal exemption), and

(iii) any net operating loss carryback to the taxable year under section 172.

In lieu of the amount of income tax paid during any such year, there may be substituted for that year the amount of income tax paid in respect of such year, provided that any amount so included in the year in respect of which payment was made shall not be included in any other year. In the case of a separate return for the taxable year by a married individual who previously filed a joint return with a former deceased spouse for any of the 10 preceding taxable years, the amount of charitable contributions and taxes paid for any such preceding taxable year, for which a joint return was filed with the former deceased spouse, shall be determined in the same manner as if the taxpayer had not remarried after the death of such former spouse.

(D) Special limitation with respect to contributions of certain capital gain property.

(i) In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions.

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this subparagraph, the term "capital gain property" means with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(E) Certain private foundations.

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is requested to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) Contribution base defined.

For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations.

In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 5 percent of the taxpayer's taxable income computed without regard to—

(A) this section,

(B) part VIII (except section 248),

(C) any net operating loss carryback to the taxable year under section 172,

(D) section 922 (special deduction for Western Hemisphere trade corporations, and

(E) any capital loss carryback to the taxable year under section 1212(a)(1).

(c) Charitable contribution defined.

For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contribution" also means an amount treated under subsection (h) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions.

(1) Individuals.

(A) In general.

In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent (30 percent, in the case of a contribution year beginning before January 1, 1970) of the taxpayer's contribution base for such year. such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations.

(A) In general.

Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two

following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.

For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property.

(1) General rule.

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

50 percent (62½ percent, in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(2) Allocation of basis.

For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary or his delegate.

(f) Disallowance of deduction in certain cases and special rules.

(1) In general.

No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust.

(A) Remainder interest.

In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.

No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments in certain trusts.

In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception.

This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property.

(A) In general.

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions.

Subparagraph (A) shall not apply to a contribution of—

(i) a remainder interest in a personal residence or farm, or

(ii) an undivided portion of the taxpayer's entire interest in property.

(4) Valuation of remainder interests in real property.

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary or his delegate may prescribe a different rate.

(5) Reduction for certain interest.

If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Partial reduction of unlimited deduction.

(A) In general.

If the limitations in subsections (b)(1) (A) and (B) do not apply because of the application of subsection (b)(1)(C), the amount otherwise allowable as a deduction under subsection (a) shall be reduced by the amount by which the taxpayer's taxable income computed without regard to this subparagraph is less than the transitional income percentage (determined under subparagraph (C)) of the taxpayer's adjusted gross income. However, in no case shall a taxpayer's deduction under this section be reduced below the amount allowable as a deduction under this section without the applicability of subsection (b)(1)(C).

(B) Transitional deduction percentage.

For purposes of applying subsection (b)(1) (C), the term "transitional deduction percentage" means—

(i) in the case of a taxable year beginning before 1970, 90 percent, and

(ii) in the case of a taxable year beginning in—

1970	80 percent
1971	74 percent
1972	68 percent
1973	62 percent
1974	56 percent

(C) Transitional income percentage.

For purposes of applying subparagraph (A), the term "transitional income percentage" means, in the case of a taxable year beginning in—

1970	20 percent
1971	26 percent
1972	32 percent
1973	38 percent
1974	44 percent

(g) Application of unlimited charitable contribution deduction.

(1) Allowance of deduction for taxable years beginning after December 31, 1963.

If the taxable year begins after December 31, 1963—

(A) subsection (b)(1)(C) shall apply only if the taxpayer so elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes); and

(B) for purposes of subsection (b)(1) (C), the amount of the charitable contributions for the taxable year (and for all prior taxable years beginning after December 31, 1963) shall be determined without the application of subsection (d)(1) and solely by reference to charitable contributions described in paragraph (2).

If the taxpayer elects to have subsection (b)(1)(C) apply for the taxable year, then for such taxable year subsection (a) shall apply only with respect to charitable contributions described in

paragraph (2), and no amount of charitable contributions made in the taxable year or any prior taxable year may be treated under subsection (d)(1) as having been made in the taxable year or in any succeeding taxable year.

(2) Qualified contributions.

The charitable contributions referred to in paragraph (1) are—

(A) any charitable contribution described in subsection (b)(1)(A);

(B) Repealed. Pub. L. 91–172, title II, § 201 (a)(2)(A), Dec. 30, 1969, 83 Stat. 558.

(C) any charitable contribution, not described in subsection (b)(1)(A), to an organization described in subsection (c)(2) which meets the requirements of paragraph (3) with respect to such charitable contribution; and

(D) any charitable contribution payment of which is made on or before the date of the enactment of the Revenue Act of 1964.

(3) Organizations expending at least 50 percent of donor's contributions.

An organization shall be an organization referred to in paragraph (2)(C), with respect to any charitable contribution, only if—

(A) not later than the close of the third year after the organization's taxable year in which the contribution is received (or before such later time as the Secretary or his delegate may allow upon good cause shown by such organization), such organization expends an amount equal to at least 50 percent of such contribution for—

(i) the active conduct of the activities constituting the purpose or function for which it is organized and operated,

(ii) assets which are directly devoted to such active conduct,

(iii) contributions to organizations which are described in subsection (b)(1)(A) or in paragraph (2)(B) of this subsection, or

(iv) any combination of the foregoing; and

(B) for the period beginning with the taxable year in which such contribution is received and ending with the taxable year in which subparagraph (A) is satisfied with respect to such contribution, such organization expends all of its net income (determined without regard to capital gains and losses) for the purposes described in clauses (i), (ii), (iii), and (iv) of subparagraph (A).

If the taxpayer so elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes) with respect to contributions made by him to any organization, then, in applying subparagraph (B) with respect to contributions made by him to such organization during his taxable year for which such election is made and during all his subsequent taxable years, amounts expended by the organization after the close of any of its taxable years and on or before the 15th day of the third month following the close of such taxable year shall be treated as expended during such taxable year.

(4) Disqualifying transactions.

An organization shall be an organization referred to in subparagraph (B) or (C) of paragraph (2) only if at no time during the period consisting of the organization's taxable year in which the contribution is received, its 3 preceding taxable years, and its 3 succeeding taxable years, such organization—

(A) lends any part of its income or corpus to,

(B) pays compensation (other than reasonable compensation for personal services actually rendered) to,

(C) makes any of its services available on a preferential basis to,

(D) purchases more than a minimal amount of securities or other property from, or

(E) sells more than a minimal amount of securities or other property to,

the donor of such contribution, any member of his family (as defined in section 267(c)(4)), any employee of the donor, any officer or employee of a corporation in which he owns (directly or indirectly) 50 percent or more in value of the outstanding stock, or any partner or employee of a partnership in which he owns (directly or indirectly) 50 percent or more of the capital interest or profits interest. This paragraph shall not apply to transactions occurring on or before the date of the enactment of the Revenue Act of 1964.

(h) Amounts paid to maintain certain students as members of taxpayer's household.

(1) In general.

Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational institution (as defined in section 151(e)(4)) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations.

(A) Amount.

Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement.

Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year

if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined.

For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152(a).

(4) No other amount allowed as deduction.

No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(i) Disallowance of deductions in certain cases.

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (60 Stat. 996; 50 U.S.C. 790).

(j) Other cross references.

(1) For charitable contributions of estates and trusts, see section 642 (c).

(2) For nondeductibility of contributions by common trust funds, see section 584.

(3) For charitable contributions of partners, see section 702.

(4) For charitable contributions of nonresident aliens, see section 873.

(5) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(6) For treatment of gifts for benefit of the library of the Post Office Department as gifts to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(7) For treatment of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021 (e) of that Act (60 Stat. 1032; 22 U. S. C. 809 (e)).

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 2 of the Act of May 15, 1952 (66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479, 31 U. S. C. 725s-4).

(Aug. 16, 1954, ch. 736, 68A Stat. 58; Aug. 7, 1956, ch. 1031, § 1, 70 Stat. 1117; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 10(a), 11, 12, 72 Stat. 1609, 1610; Sept. 14, 1960, Pub. L. 86-779, § 7(a), 74 Stat. 1002; Oct. 16, 1962, Pub. L. 87-834, § 13(d), 76 Stat. 1034; Oct. 23, 1962, Pub. L. 87-858, § 2(a), (b), 76 Stat. 1134; Feb. 26, 1964, Pub. L. 88-272, title II, §§ 209(a), (b), (c)(1), (d)(1), (e), 231(b)(1), 78 Stat. 43, 45-47, 105; Sept. 12, 1966, Pub. L. 89-570; § 1(b)(1), 80 Stat. 762; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(2), title II, § 201(a)(1), (2)(A), (h)(1), 83 Stat. 526, 549, 558, 565.)

REFERENCES IN TEXT

The Revenue Act of 1964, referred to in subsec. (g), means Pub. L. 88-272. For classification of Pub. L. 88-272, see Short Title note under section 1 of this title.

Section 3 of Act March 31, 1944 (58 Stat. 135, 34 U.S.C. 1115b), referred to in subsec. j(5), was repealed by Act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741, and is now covered by section 6973 of Title 10, Armed Forces.

Section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U.S.C. 393), referred to in subsec. j(6), was repealed by Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 708.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 201(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 91-172, § 201(a)(1)(B), (h)(1), increased the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base and provided that where a taxpayer makes a contribution to a public charity of property which has appreciated in value the taxpayer could deduct such contributions of property under the 50 per cent limitation if he elects to take the unrealized appreciation in value into account for the tax purposes, the unlimited charitable deduction is phased out over a 5-year period and contributions to a private operating foundation and contributions to a private nonoperating foundation distributing such contributions to public charities or private operating foundations within two and half months following the year of receipt are also subjected to 50 percent limitation (30 percent in the case of gifts of appreciated property), and, in par. (1)(C), added provisions relating to the determination of the amount of charitable contributions and taxes paid by a married individual who previously filed a joint return with a former deceased spouse.

Subsec. (c). Pub. L. 91-172, § 201(a)(1)(B), struck out references to "Territory" in pars. (1) and (2)(A), and inserted reference to participation in or intervention in any political campaign on behalf of any candidate for public office in par. (2)(D).

Subsec. (d). Pub. L. 91-172, § 201(a)(1)(B), added subsec. (d) consisting of provisions substantially transferred from subsec. (b) in the general amendment of subsec. (b) by Pub. L. 91-172. Former subsec. (d) redesignated as subsec. (b).

Subsec. (e). Pub. L. 91-172, §§ 201(a)(1)(B), substituted provisions covering certain contributions of ordinary income and capital gain property for provisions setting out a special rule for charitable contributions.

Subsec. (f). Pub. L. 91-172, § 201(a)(1)(B), substituted provisions for the disallowance of the deduction in specified cases for provision covering future interests in tangible personal property.

Subsec. (g). Pub. L. 91-172, § 201(a)(2)(A), substituted "subsection (d)(1)" for "subsection (b)(5)" in two places in par. (1) and struck out par. (2) (B) covering contributions to organizations substantially more than half of the assets and the total income were devoted to charitable purposes.

Subsec. (h). Pub. L. 91-172, § 201(a)(1)(A), redesignated subsec. (d) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91-172, §§ 101(j)(2), 201(a)(1)(A), redesignated former subsec. (h) as (i), and, in subsec. (i) as so redesignated struck out former par. (1) covering disallowance of deductions for gifts to charitable organizations engaging in prohibited transactions, and removed the par. (2) designation from the provisions covering disallowance of deductions for use of communist controlled organizations. Former subsec. (i) redesignated as subsec. (j).

Subsec. (j). Pub. L. 91-172, § 201(a)(1)(A), redesignated former subsec. (i) as (j).

1966—Subsec. (e). Pub. L. 89-570 included reference to section 617(d)(1).

1964—Subsec. (b)(1)(A)(v), (vi), (2), (5). Pub. L. 88-272, § 209(a), (c)(1), (d)(1), added clauses (v) and (vi) in par. (1)(A), and par. (5), and in par. (2), extended the 2-year carryforward of unused charitable contributions to 5 years and changed the method of computation by including the aggregate of the excess contributions made in taxable years before the contribution year, in clause (i), and the references to the third, fourth or fifth succeeding years in clause (ii).

Subsec. (e). Pub. L. 88-272, § 231(b)(1), substituted "certain property" for "section 1245 property" in the subsection catchline, and inserted the reference to section 1250(a) in the text.

Subsec. (f). Pub. L. 88-272, § 209(e), added subsec.(f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 88-272, § 209(b), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 88-272, 209(e), redesignated former subsec. (f)(as (h).

Subsec. (i). Pub. L. 88-272, § 209(e), redesignated former subsec. (g) as (i).

1962—Subsec. (b)(1)(A)(iv). Pub. L. 87-858, § 2(a), added clause (iv).

Subsec. (b)(1)(B). Pub. L. 87-858, § 2(b), substituted "any charitable contributions described in subparagraph (A)" for "any charitable contributions to the organizations described in clauses (i), (ii), and (iii)."

Subsec. (e). Pub. L. 87–834 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsecs. (f), (g). Pub. L. 87–834 redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1960—Subsec. (c). Pub. L. 86–779, § 7(a)(1), added the sentence additionally defining the term "charitable contribution" for the purposes of the section.

Subsec. (d). Pub. L. 86–779, § 7(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsecs. (e) and (f). Pub. L. 86–779, § 7(a)(2), redesignated former subsecs. (d) and (e) as (e) and (f).

1958—Subsec. (b)(1)(C). Pub. L. 85–866, § 10(a), added sentence allowing substitution, in lieu of amount of tax paid during year, amount of tax paid in respect of such year, provided amount so included in the year in respect of which payment was made be not included in any other year.

Subsec. (b)(3). Pub. L. 85–866, § 11, added subsec. (b)(3).

Subsec. (b)(4). Pub. L. 85–866, § 12, added subsec. (b)(4).

1956—Subsec. (b)(1)(A)(iii). Act Aug. 7, 1956, § 1, provided for the allowance, as deductions, of contributions to medical research organizations.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 201(g) of Pub. L. 91–172 provided that:

"(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section and sections 545, 556 and 809 of this title] shall apply to taxable years beginning after December 31, 1969.

"(B) Subsections (e) and (f)(1) of section 170 of the Internal Revenue Code of 1954 [subsecs. (c) and (f)(1) of this section] (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221(3) of such Code [section 1221(3) of this title] (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

"(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code [subsecs. (f)(2), (3), and (4) of this section] (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

"(D) For purposes of applying section 170(d) of such Code [subsec. (d) of this section] (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code [subsec. (b)(1), (d), (e), and (f)(1), (a), (3), and (4) of this section] shall not apply.

"(2) The amendments made by subsection (b) [amending section 642(c) of this title] shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c)(5) of the Internal Revenue Code of 1954 [section 642(c)(5) of this title] (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

"(3) The amendment made by subsection (c) [amending section 673 of this title] shall apply to transfers in trust made after April 22, 1969.

"(4)(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) [amending sections 2055(e) and 2126 of this title] shall apply in the case of decedents dying after December 31, 1969.

"(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969—

"(i) if the decedent dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

"(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a) [section 2055(a) of this title], or

"(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

"(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969—

"(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

"(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

"(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

"(D) The amendment made by paragraph (3) of subsection (d) [amending section 2522(c) of this title] shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c)(2) of the Internal Revenue Code of 1954 [section 2522(c)(2) of this title] shall apply to gifts made after July 31, 1969.

"(E) The amendments made by paragraph (4) of subsection (d) [amending sections 2055(a)(2), 2055(a)(3), 2106(a)(2)(A), 2522(a)(2), and 2522(b)(2), (3), of this title] shall apply to gifts and transfers made after December 31, 1969.

"(5) The amendment made by subsection (e) [enacting section 664 of this title] shall apply to transfers in trust made after July 31, 1969.

"(6) The amendments made by subsection (f) [amending section 1011(a) of this title] shall apply with respect to sales made after December 19, 1969."

Section 201(h)(2) of Pub. L. 91–172 provided that: "The amendment made by this subsection [amending subsec. (b)(1)(C) of this section] shall apply to taxable years beginning after December 31, 1968."

Amendment of section by section 101(j)(2) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 209(f) of Pub. L. 88–272 provided that:

"(1) The amendments made by subsections (a), (b), and (c) [to this section, and sections 545(b)(2) and 556(b)(2) of this title], shall apply with respect to contributions which are paid in taxable years beginning after December 31, 1963.

"(2) The amendments made by subsection (d) [to subsec. (b)(2) of this section, and section 381 of this title] shall apply to taxable years beginning after December 31, 1963, with respect to contributions which are paid (or treated as paid under section 170(a)(2) of the Internal Revenue Code of 1954) in taxable years beginning after December 31, 1961.

"(3) The amendments made by subsection (e) [to subsec. (f) of this title] shall apply to transfers of future interests made after December 31, 1963, in taxable years ending after such date, except that such amendments shall not apply to any transfer of a future interest made before July 1, 1964, where—

"(A) the sole intervening interest or right is a nontransferable life interest reserved by the donor, or

"(B) in the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the exception contained in the preceding sentence, a right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable."

Amendment of subsec. (e) by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–858 provided that: "The amendments made by subsections (a) and (b) [to subsec. (b)(1) (A) and (B) of this section] shall apply to taxable years beginning after December 31, 1960."

Subsec. (e) of this section applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as a note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years beginning after Dec. 31, 1959, see section 7(c) of Pub. L. 86–779, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 10 (b) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [to subsec. (b) (1) (C) of this section] shall apply with respect to taxable years beginning after December 31, 1957."

Subsec. (b)(3) of this section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 12 (b) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [which added subsec. (b) (4) of this section] shall apply to taxable years ending after December 31, 1957, but only with respect to charitable contributions made after such date."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Aug. 7, 1956, provided that: "The amendment made by this Act [to subsec. (b) (1) (A) (iii)] shall apply only with respect to taxable years beginning after December 31, 1955."

DEDUCTION OF CONTRIBUTIONS TO CERTAIN ORGANIZATIONS FOR JUDICIAL REFORM

Section 29 of Pub. L. 87–834 provided that:

"For purposes of section 170 of the Internal Revenue Code of 1954 [this section] (relating to deduction for charitable, etc., contributions and gifts), a contribution or gift made after December 31, 1961, with respect to a referendum occurring during the calendar year 1962 to or for the use of any nonprofit organization created and operated exclusively—

"(1) to consider proposals for the reorganization of the judicial branch of the government of any State of the United States or political subdivision of such State, and

"(2) to provide information, make recommendations, and seek public support or opposition as to such proposals,

shall be treated as a charitable contribution if no part of the net earnings of such organization inures to the benefit of any private shareholder or individual. The provisions of the preceding sentence shall not apply to any organization which participates in, or intervenes in, any political campaign on behalf of any candidate for public office."

CROSS REFERENCES

Application of subsec. (b)(5) of this section to charitable contributions paid in a taxable year in which taxpayer elects to compute income from an employment under former sections 1301 and 1307 of the Internal Revenue Code of 1954, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

Charitable and similar gifts deductible from amount of gift, see section 2522 of this title.

Charitable deduction for nonresident alien individual, see section 873 of this title.

Contributions and gifts excepted as business expense, see section 162 (b) of this title.

Contributions by employer to employees' pension plan, see section 404 of this title.

Gifts and bequests accepted by Secretary of Commerce under Bureau of Standards Act as gifts and bequests to United States, see section 1522 of Title 15, Commerce and Trade.

Taxable year deduction to be taken, see section 461 of this title.

Transfers to charitable uses deductible from gross estate, see section 2106 (a) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79, 101, 162, 381, 501, 507, 508, 509, 512, 514, 535, 542, 545, 556, 584, 642, 664, 677, 702, 703, 809, 832, 873, 882, 931, 1011, 2039, 2517, 4057, 4221, 4251, 4294, 4942, 4944, 4945, 4947, 4948, 5214, 6033 of this title; title 16 section 1285; title 20 section 954.

§ 171. Amortizable bond premium.

(a) General rule.

In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond:

(1) Interest wholly or partially taxable.

In the case of a bond (other than a bond the interest on which is excludable from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) Interest wholly tax-exempt.

In the case of any bond the interest on which is excludable from gross income, no deduction shall be allowed for the amortizable bond premium for the taxable year.

(3) Adjustment of credit or deduction for interest partially tax-exempt.

(A) Individuals.

In the case of any bond the interest on which is allowable as a credit under section 35, the amount which would otherwise be taken into account in computing such credit shall be reduced by the amount of the amortizable bond premium for the taxable year.

(B) Corporations.

In the case of any bond the interest on which is allowable as a deduction under section 242, such deduction shall be reduced by the amount of the amortizable bond premium for the taxable year.

(4) Cross reference.

For adjustment to basis on account of amortizable bond premium, see section 1016 (a) (5).

(b) Amortizable bond premium.

(1) Amount of bond premium.

For purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(A) with reference to the amount of the basis (for determining loss on sale or exchange) of such bond,

(B) (i) with reference to the amount payable on maturity or on earlier call date, in the case of any bond other than a bond to which clause (ii) or (iii) applies,

(ii) with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), in the case of any bond described in subsection (c) (1) (B) which is acquired after December 31, 1957, or

(iii) with reference to the amount payable on maturity, in the case of any bond described in subsection (c) (1) (B) which was acquired after January 22, 1954, and before January 1, 1958, but only if such bond was issued after January 22, 1951, and has a call date not more than 3 years after the date of such issue, and

(C) with adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) Amount amortizable.

The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond to which paragraph (1) (B) (ii) or (iii) applies and which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(3) Method of determination.

The determinations required under paragraphs (1) and (2) shall be made—

(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the Secretary or his delegate.

(c) Election as to taxable and partially taxable bonds.

(1) Eligibility to elect; bonds with respect to which election permitted.

This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply:

(A) Partially tax-exempt.

In the case of a taxpayer other than a corporation, bonds with respect to the interest on which the credit provided in section 35 is allowable; and

(B) Wholly taxable.

In the case of any taxpayer, bonds the interest on which is not excludable from gross income but with respect to which the credit provided in section 35, or the deduction provided in section 242, is not allowable.

(2) Manner and effect of election.

The election authorized under this subsection shall be made in accordance with such regulations as the Secretary or his delegate shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Secretary or his delegate permits him, subject to such conditions as the Secretary or his delegate deems necessary, to revoke such election. In the case of bonds held by a common trust fund, as defined in section 584 (a), or by a foreign personal holding company, as defined in section 552, the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund or foreign personal holding company. In case of bonds held by an estate or trust, the election authorized under this subsection shall be exercisable with respect to such bonds only by the fiduciary.

(d) Bond defined.

For purposes of this section, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(e) Dealers in tax-exempt securities.

For special rules applicable, in the case of dealers in securities, with respect to premium attributable to certain wholly tax-exempt securities, see section 75.

(Aug. 16, 1954, ch. 736, 68A Stat. 61; Sept. 2, 1958, Pub. L. 85-866, title I, § 13 (a), 72 Stat. 1610.)

AMENDMENTS

1958—Subsec. (b) (1) (B). Pub. L. 85-866, § 13(a) (1), substituted ", in the case of any bond other than a bond to which clause (ii) or (iii) applies" for "(but in the case of bonds described in subsection (c) (1) (B) issued after January 22, 1951, and acquired after January 22, 1954, only if such earlier call date is a date more than 3 years after the date of such issue), and", designated such provision as cl. (i), and added cl. (ii) and (iii).

Subsec. (b) (2). Pub. L. 85-866, § 13(a) (2), substituted "In the case of a bond to which paragraph (1) (B) (ii) or (iii) applies and which has a call date," for "In the case of a bond described in subsection (c) (1) (B) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than 3 years after the date of such issue," in the second sentence.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13 (b) of Pub. L. 85-866 provided that: "The amendments made by subsection (a) [to subsecs. (b) (1) (B), (2) of this section] shall apply with respect to taxable years ending after December 31, 1957."

CROSS REFERENCES

Partially tax-exempt interest received by individuals as credit, see section 35 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 57, 75, 163, 263, 551, 584, 642, 702, 809, 818, 822, 1016 of this title.

§ 172. Net operating loss deduction.

(a) Deduction allowed.

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of

(1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers.

(1) Years to which loss may be carried.

(A) (i) Except as provided in clause (ii) and in subparagraphs (D), (E), (F), and (G), a net operating loss for any taxable year ending after December 31, 1957, shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss.

(ii) In the case of a taxpayer with respect to a taxable year ending on or after December 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962, a net operating loss for such taxable year shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(B) Except as provided in subparagraphs (C), (D), and (E), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(C) In the case of a taxpayer which is a regulated transportation corporation (as defined in subsection (j)(1)), a net operating loss for any taxable year ending after December 31, 1955, shall (except as provided in subsection (j)) be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss.

(D) In the case of a taxpayer which has a foreign expropriation loss (as defined in subsection (k)) for any taxable year ending after December 31, 1958, the portion of the net operating loss for such year attributable to such foreign expropriation loss shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 10 taxable years following the taxable year of such loss (or, with respect to that portion of the net operating loss for such year attributable to a Cuban expropriation loss, to each of the 15 taxable years following the taxable year of such loss).

(E) In the case of a taxpayer which is a domestic corporation qualifying under paragraph (3)(E), a net operating loss for any taxable year ending after December 31, 1966, and prior to January 1, 1969, shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 3 taxable years following the taxable year of such loss.

(F) In the case of a financial institution to which section 585, 586, or 593 applies, a net operating loss for any taxable year beginning after December 31, 1975, shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(G) In the case of a Bank for Cooperatives (organized and chartered pursuant to section 2 of the Farm Credit Act of 1933 (12 U.S.C. 1134)), a net operating loss for any taxable year beginning after December 31, 1969, shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(2) Amount of carrybacks and carryovers.

Except as provided in subsections (i) and (j), the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (6) thereof; and

(B) by determining the amount of the net operating loss deduction—

(i) without regard to the net operating loss for the loss year or for any taxable year thereafter, and

(ii) without regard to that portion, if any, of a net operating loss for a taxable year attributable to a foreign expropriation loss, if such portion may not, under paragraph (1)(D), be carried back to such prior taxable year,

and the taxable income so computed shall not be considered to be less than zero. For purposes of this paragraph, if a portion of the net operating loss for the loss year is attributable to a foreign expropriation loss to which paragraph (1)(D) applies, such portion shall be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss, and, if a portion of a foreign expropriation loss for the loss year is attributable to a Cuban expropriation loss, such portion shall be considered to be a separate foreign expropriation loss for such year to be applied after the other portion of such foreign expropriation loss.

(3) Special rules.

(A) Paragraph (1)(A)(ii) shall apply only if—

(i) there has been filed, at such time and in such manner as may be prescribed by the Secretary or his delegate, a notice of filing of the application under section 317 of the Trade Expansion Act of 1962 for tax assistance, and, after its issuance, a copy of the certification under such section, and

(ii) the taxpayer consents in writing to the assessment, within such period as may be agreed upon with the Secretary or his delegate, of any deficiency for any year to the extent attributable to the disallowance of a deduction previously allowed with respect to such net operating loss, even though at the time of filing such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

(B) In the case of—

(i) a partnership and its partners, or

(ii) an electing small business corporation under subchapter S and its shareholders,

paragraph (1)(A)(ii) shall apply as determined under regulations prescribed by the Secretary or his delegate. Such paragraph shall apply to a net operating loss of a partner or such a shareholder only if it arose predominantly from losses in respect of which certifications under section 317 of the Trade Expansion Act of 1962 were filed under this section.

(C) Paragraph (1)(D) shall apply only if—

(i) the foreign expropriation loss (as defined in subsection (k)) for the taxable year equals or exceeds 50 percent of the net operating loss for the taxable year,

(ii) in the case of a foreign expropriation loss for a taxable year ending after December 31, 1963, the taxpayer elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes) to have paragraph (1)(D) apply, and

(iii) in the case of a foreign expropriation loss for a taxable year ending after December 31, 1958, and before January 1, 1964, the taxpayer elects (in such manner as the Secretary or his delegate by regulations prescribes) on or before December 31, 1965, to have paragraph (1)(D) apply.

(D) If a taxpayer makes an election under subparagraph (C)(iii), then (notwithstanding any law or rule of law), with respect to any taxable year ending before January 1, 1964, affected by the election—

(i) the time for making or changing any choice or election under subpart A of part III of subchapter N (relating to foreign tax credit) shall not expire before January 1, 1966,

(ii) any deficiency attributable to the election under subparagraph (C)(iii) or to the application of clause (i) of this subparagraph may be assessed at any time before January 1, 1969, and

(iii) refund or credit of any overpayment attributable to the election under subparagraph (C)(iii) or to the application of clause (i) of this subparagraph may be made or allowed if claim therefor is filed before January 1, 1969.

(E) Paragraph (1)(E) shall apply only if—

(i) the amount of the taxpayer's net operating loss for the taxable year exceeds the sum of the taxable income (computed as provided in paragraph (2)) for each of the 3 preceding taxable years of the taxpayer,

(ii) the amount of the taxpayer's net operating loss for the taxable year, increased by the amount of the taxpayer's net operating loss for the preceding taxable year or decreased by the amount of the taxpayer's taxable income for such preceding year, exceeds 15 percent of the sum of the money and other property (in an amount equal to its adjusted basis for determining gain) of the taxpayer, determined as of the close of the taxable year of such loss without regard to any refund or credit of any overpayment of tax to which the taxpayer may be entitled under paragraph (1)(E),

(iii) the aggregate unadjusted basis of property described in section 1231(b)(1) (without regard to any holding period therein provided), the basis for which was determined under section 1012, which was acquired by the taxpayer during the period beginning with the first day of its fifth taxable year preceding the taxable year of such loss and ending with the last day of the taxable year of such loss, equals or exceeds the aggregate adjusted basis of property of such description of the taxpayer on, and determined as of, the first day of the fifth preceding taxable year, and

(iv) the taxpayer derived 50 percent or more of its gross receipts (other than gross receipts derived from the conduct of a lending or finance business), for the taxable year of such loss and for each of its 5 preceding taxable years, from the manufacture and production of units within the same single class of products, and 3 or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured and produced in the United States, in the calendar year ending in or with the taxable year of such loss, 85 percent or more of the total number of all units within such class of products manufactured and produced in the United States in such calendar year.

(F) For purposes of subparagraph (E)(iv)—

(i) the term "class of products" means any of the categories designated and numbered as a "class of products" in the 1963 Census of Manufactures compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

(ii) information compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the census of manufactures, regarding the number of units of a class of products manufactured and produced in the United States during a calendar year, or, if such information should not be available, information so compiled or published regarding the number of such units shipped or sold by such manufacturers during a calendar year, shall constitute prima facie evidence of the total number of all units of such class

of products manufactured and produced in the United States in such calendar year.

(c) Net operating loss defined.

For purposes of this section, the term "net operating loss" means (for any taxable year ending after December 31, 1953) the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications.

The modifications referred to in this section are as follows:

(1) Net operating loss deduction.

No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations.

In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions.

No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations.

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2) (B), and (3) shall be taken into account;

(C) any deduction allowable under section 165 (c) (3) (relating to casualty losses) shall not be taken into account; and

(D) any deduction allowed under section 404 or section 405(c) to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Special deductions for corporations.

No deduction shall be allowed under section 242 (relating to partially tax-exempt interest) or under section 922 (relating to Western Hemisphere trade corporations).

(6) Computation of deduction for dividends received, etc.

The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246 (b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a) (1) (B) of such section.

(e) Law applicable to computations.

In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year. The preceding sentence shall apply with respect to all taxable years, whether they begin before, on, or after January 1, 1954.

(f) Taxable years beginning in 1953 and ending in 1954.

In the case of a taxable year beginning in 1953 and ending in 1954—

(1) In lieu of the amount specified in subsection (c), the net operating loss for such year shall be the sum of—

(A) that portion of the net operating loss for such year computed without regard to this subsection which the number of days in the loss year after December 31, 1953, bears to the total number of days in such year, and

(B) that portion of the net operating loss for such year computed under section 122 of the Internal Revenue Code of 1939 as if this section had not been enacted which the number of days in the loss year before January 1, 1954, bears to the total number of days in such year.

(2) The amount of any net operating loss for such year which shall be carried to the second preceding taxable year is the amount which bears the same ratio to such net operating loss as the number of days in the loss year after December 31, 1953, bears to the total number of days in such year. In determining the amount carried to any other taxable year, the reduction for the second taxable year preceding the loss year shall not exceed the portion of the net operating loss which is carried to the second preceding taxable year.

(3) The net operating loss deduction for such year shall be, in lieu of the amount specified in section 122 (c) of the Internal Revenue Code of 1939, the sum of—

(A) that portion of the net operating loss deduction for such year, computed as if subsection (a) of this section were applicable to the taxable year, which the number of days in such year after December 31, 1953, bears to the total number of days in such year, and

(B) that portion of the net operating loss deduction for such year, computed under section 122 (c) of the Internal Revenue Code of 1939 as if this paragraph had not been enacted, which the number of days in such year before January 1, 1954, bears to the total number of days in such year.

(4) For purposes of the second sentence of subsection (b) (2), the taxable income for such year shall be the sum of—

(A) that portion of the net income for such year, computed without regard to this paragraph, which the number of days in such year before January 1, 1954, bears to the total number of days in such year, and

(B) that portion of the net income for such year, computed—

(i) without regard to paragraphs (1) and (2) of section 122 (d) of the Internal Revenue Code of 1939, and

(ii) by allowing as a deduction an amount equal to the sum of the credits provided in subsections (b) and (h) of section 26 of such Code,

which the number of days in such year after December 31, 1953, bears to the total number of days in such year.

(g) Special transitional rules.

(1) Losses for taxable years ending before January 1, 1954.

For purposes of this section, the determination of the taxable years ending after December 31, 1953, to which a net operating loss for any taxable year ending before January 1, 1954, may be carried shall be made under the Internal Revenue Code of 1939.

(2) Losses for taxable years ending after December 31, 1953.

For purposes of section 122 of the Internal Revenue Code of 1939—

(A) the determination of the taxable years ending before January 1, 1954, to which a net operating loss for any taxable year ending after December 31, 1953, may be carried shall be made under subsection (b) (1) (A) of this section; and

(B) in determining the amount of the carryback to the first taxable year preceding the first taxable year ending after December 31, 1953, the portion of the net operating loss carried to such year shall be such net operating loss reduced by—

(i) the net income for the second preceding taxable year computed as if the second sentence of section 122 (b) (2) (B) of the Internal Revenue Code of 1939 applied, or

(ii) if smaller, the portion of the net operating loss which by reason of subsection (f) of this section is carried to the second preceding taxable year.

(3) Taxable years beginning after December 31, 1953, and ending before August 17, 1954.

In the case of a taxable year which begins after December 31, 1953, and ends before August 17, 1954—

(A) the net operating loss deduction for such year shall be computed as if subsection (a) of this section applied to such taxable year, and

(B) for purposes of the second sentence of subsection (b) (2), the taxable income for such taxable year shall be the net income for such taxable year, computed—

(i) without regard to paragraphs (1) and (2) of section 122 (d) of the Internal Revenue Code of 1939, and

(ii) by allowing as a deduction an amount equal to the sum of the credits provided in subsections (b) and (h) of section 26 of such Code.

(4) Excess profits tax not affected.

For purposes of subchapter D of chapter 1 of the Internal Revenue Code of 1939, excess profits net income shall be computed as if this section had not been enacted and as if section 122 of such Code continued to apply to taxable years to which this subtitle applies.

(h) Disallowance of net operating loss of electing small business corporations.

In determining the amount of the net operating loss deduction under subsection (a) of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which such corporation is an electing small business corporation under subchapter S.

(i) Carryback of net operating loss for taxable years beginning in 1957 and ending in 1958.

In the case of a taxable year beginning in 1957 and ending in 1958, the amount of any net operating loss for such year which shall be carried to the third preceding taxable year is the amount which bears the same ratio to such net operating loss as the number of days in the loss year after December 31, 1957, bears to the total number of days in such year. In determining the amount carried to any other taxable year, the reduction for the third taxable year preceding the loss year shall not exceed the portion of the net operating loss which is carried to the third preceding taxable year.

(j) Carryover of net operating loss for certain regulated transportation corporations.

(1) Definition

For purposes of subsection (b) (1) (C), the term "regulated transportation corporation" means a corporation—

(A) 80 percent or more of the gross income of which (computed without regard to dividends and capital gains and losses) for the taxable year is derived from the furnishing or sale of transportation described in subparagraph (A), (C) (i), (E), or (F) of section 7701(a) (33) and taken into account for purposes of the limitation contained in the last two sentences of section 7701(a) (33),

(B) which is described in subparagraph (G) or (H) of section 7701(a) (33), or

(C) which is a member of a regulated transportation system.

(2) Regulated transportation system.

For purposes of this subsection, a corporation shall be treated as a member of a regulated transportation system for a taxable year if—

(A) it is a member of an affiliated group of corporations making a consolidated return for such taxable year, and

(B) 80 percent or more of the aggregate gross income of the members of such affiliated group (computed without regard to dividends and capital gains and losses) for such taxable year is derived from sources described in paragraph (1)(A).

For purposes of subparagraph (B), income derived by a corporation described in subparagraph (G) or (H) of section 7701(a)(33) from leases described in subparagraph (G) thereof shall be considered as derived from sources described in paragraph (1)(A).

(3) Limitation.

For purposes of subsection (b)(1)(C)—

(A) a net operating loss may not be a net operating loss carryover to the 6th taxable year following the loss year unless the taxpayer is a regulated transportation corporation for such 6th taxable year; and

(B) a net operating loss may not be a net operating loss carryover to the 7th taxable year following the loss year unless the taxpayer is a regulated transportation corporation for the 6th taxable year following the loss year and for such 7th taxable year.

(4) Taxable years beginning in 1955 and ending in 1956.

In the case of a net operating loss for a taxable year beginning in 1955 and ending in 1956, the amount of such loss which may be carried—

(A) to the 6th taxable year following the loss year shall be the amount which bears the same ratio to the amount which (but for this paragraph) would be carried to such 6th taxable year as the number of days in the loss year after December 31, 1955, bears to the total number of days in the loss year, and

(B) to the 7th taxable year following the loss year shall be the amount (if any) by which (i) the amount carried to the 6th taxable year (determined under subparagraph (A)), exceeds (ii) the taxable income (computed as provided in subsection (b)(2)) for such 6th taxable year.

(k) Foreign expropriation loss defined.

For purposes of subsection (b)—

(1) The term "foreign expropriation loss" means, for any taxable year, the sum of the losses sustained by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For purposes of the preceding sentence, a debt which becomes worthless shall, to the extent of any deduction allowed under section 166(a), be treated as a loss.

(2) The portion of the net operating loss for any taxable year attributable to a foreign expropriation loss is the amount of the foreign expropriation loss for such year (but not in excess of the net operating loss for such year).

(3) The term "Cuban expropriation loss" means, for any taxable year, a foreign expropriation loss sustained by reason of the expropriation, intervention, seizure, or similar taking of property, before January 1, 1964, by the government of Cuba, any political subdivision thereof, or any agency or instrumentality of the foregoing. The portion of a foreign expropriation loss for any taxable year attributable to a Cuban expropriation loss is the amount of the Cuban expropriation loss.

(*l*) Cross references.

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(Aug. 16, 1954, ch. 736, 68A Stat. 63; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 14 (a), (b), 64 (b), title II, § 203 (a), (b), 72 Stat. 1611, 1656, 1678; Sept. 27, 1962, Pub. L. 87–710, § 1, 76 Stat. 648; Oct. 10, 1962, Pub. L. 87–792, § 7(f), 76 Stat. 829; Oct. 11, 1962, Pub. L. 87–794, title III, § 317(b), 76 Stat. 889; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 210 (a), (b), 234 (b)(5), 78 Stat. 47, 48, 115; Dec. 27, 1967, Pub. L. 90–225, § 3(a), 81 Stat. 732; Dec. 30, 1969, Pub. L. 91–172, title IV, § 431(b), 83 Stat. 619; Jan. 12, 1971, Pub. L. 91–677, § 2(a)–(c), 84 Stat. 2061.)

REFERENCES IN TEXT

Section 317 of the Trade Expansion Act of 1962, referred to in subsec. (b), probably means section 317(a) of Pub. L. 87–794, which is classified to section 1917 of Title 19, Customs Duties.

Section 2 of the Farm Credit Act of 1933 (12 U.S.C. 1134), referred to in subsec. (b)(1)(G), is classified to section 1134 of Title 12, Banks and Banking.

AMENDMENTS

1971—Subsec. (b)(1)(D). Pub. L. 91–677, § 2(a), added "(or, with respect to that portion of the net operating loss for such year attributable to a Cuban expropriation loss, to each of the 15 taxable years following the taxable year of such loss)" following "the 10 taxable years following the taxable year of such loss".

Subsec. (b)(2). Pub. L. 91–677, § 2(b), added the provisions relating to the treatment of Cuban expropriation losses.

Subsec. (k)(3). Pub. L. 91–677, § 2(c), added subsec. (k)(3).

1969—Subsec. (b)(1). Pub. L. 91–172 substituted "(E), (F), and (G)", for "and (E)" in subparagraph (A)(i) and added subpars. (F) and (G).

1967—Subsec. (b)(1). Pub. L. 90–225, § 3(a)(1)—(3) added reference to subpar. (E) in subpars. (A)(i) and (B), and added subpar. (E).

Subsec. (b)(3). Pub. L. 90–225, § 3(a)(4), added subpars. (E) and (F).

1964—Subsec. (b). Pub. L. 88–272, § 210(a)(1)—(4), (b), inserted subpar. (D) in par. (1), references to such subpar. (D) in par. (1)(A)(i) and (1)(B), subpars. (C) and (D) in par. (3), provided that the net operating loss deduction in par. (2) (B) be determined without regard to that portion of a net operating loss due to a foreign expropriation loss, if such portion may not, under par. (1)(D), be carried back to such prior taxable year, and that if a portion of the net operating loss is attributable to foreign expropriation to which par. (1)(D) applied, such portion shall be considered a separate loss for such year to be applied after the other portion of such net operating loss.

Subsec. (j) (1), (2), Pub. L. 88–272, § 234(b)(5), substituted references to section 7701(a)(33) for references to section 1503(c) (1) or (2), wherever appearing.

Subsec. (k). Pub. L. 88–272, § 210(a)(5), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 88–272, § 210(a)(5), redesignated former subsec. (k) as (*l*).

1962—Subsec. (b)(1). Pub. L. 87–794 designated existing provisions as cl. (A)(i) and eliminated provisions therefrom which authorized a net operating loss for any taxable year ending after Dec. 31, 1957, to be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss, and added cls. (A)(ii), (B), and (C).

Subsec. (b)(2). Pub. L. 87–794 inserted the reference to subsection (j), and substituted "shall be carried to the earliest of the taxable years to which (by reason of paragraph (1))" for "shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B) of paragraph (1))", and "each of the other taxable years" for "each of the other 7 taxable years."

Subsec. (b)(3). Pub. L. 87–794 added subsec. (b)(3).

Pub. L. 87–710, § 1(a), authorized a carryover of a net operating loss for any taxable year ending after Dec. 31, 1955, to each of the 5 taxable years following the taxable year of loss, or when such loss occurs in the case of regulated transportation corporation, except as provided in subsec. (j), then to each of the 7 taxable years following the taxable year of loss, and eliminated provisions authorizing a net operating loss for any taxable years ending Dec. 31, 1957, to be carried over to each of the 5 taxable years following the taxable year of such loss, in par. (1), and inserted the reference to subsec. (j) in par. (2).

Subsec. (d)(4). Pub. L. 87–792 added subpar. (D).

Subsec. (j). Pub. L. 87–710, § 1(b), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 87–710, § 1(b), redesignated former subsec. (j) as (k).

1958—Subsec. (b). Pub. L. 85–866, § 203(a), substituted "1957" for "1953", and "3" for "2" in par. (1), and substituted "subsection (i)" for "subsection (f)", "8" for "7", and "7" for "6" in par. (2).

Subsecs. (f) (3), (4). Pub. L. 85–866, § 14(a), added subsecs. (f) (3), (4).

Subsec. (g)(3). Pub. L. 85–866, § 14(b), added subsec. (g)(3) and redesignated former subsec. (g)(3) as (g)(4).

Subsec. (g)(4). Pub. L. 85–866, § 14(b), redesignated former subsec. (g)(3) as (g)(4).

Subsec. (h). Pub. L. 85–866, § 64(b), added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i). Pub. L. 85–866, § 203(b), added subsec. (i) and redesignated former subsec. (i) as redesignated by § 64(b) as (j).

Subsec. (j). Pub. L. 85–866, § 203(b), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(d) of Pub. L. 91–677 provided that: "The amendments made by this section [amending subsecs. (b) and (k) of this section] shall apply in respect of foreign expropriation losses sustained in taxable years ending after December 31, 1958."

EFFECTIVE DATE OF 1967 AMENDMENT

Section 3(b) of Pub. L. 90–225 provided that: "No interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of the amendments made by subsection (a) [amending subsec. (b) of this section] for any period prior to the date of the enactment of this Act [Dec. 27, 1967]."

Section 3(c) of Pub. L. 90–225 provided that: "The amendments made by subsection (a) [amending subsec. (b) of this section] shall apply with respect to net operating losses sustained in taxable years ending after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 210(c) of Pub. L. 88–272 provided that: "The amendments made by this section [adding subsec. (k), redesignating former subsec. (k) as (*l*), and amending subsec. (b) of this section] shall apply in respect of foreign expropriation losses (as defined in section 172(k) of the Internal Revenue Code of 1954, as amended by subsection (a)(5) of this section), sustained in taxable years ending after December 31, 1958."

Amendment of subsec. (j) of this section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 317(b) of Pub. L. 87–794 provided in part that the amendment of subsec. (b) of this section by Pub. L. 87–794 shall be effective with respect to net operating losses for taxable years ending after Dec. 31, 1955.

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under sectiion 37 of this title.

Section 2 of Pub. L. 87–710 provided that: "The amendments made by the first section of this Act [to this section] shall apply only with respect to net operating losses for taxable years ending after December 31, 1955."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 203 (c) of Pub. L. 85–866 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (b) (1), (2), and (j) of this section] shall apply in respect of net operating losses for taxable years ending after December 31, 1957."

Subsecs. (f) (3), (4), and (g) (3) of this section as applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 64 (e) of Pub. L. 85–866 provided that: "The amendments made by this section [adding sections 1016, (a) (18), 1371—1377, 1504 (b) (8) and 6037 of this title, amending subsecs. (h) and (i) of this section and renumbering former section 6037 as 6038 of this title] shall apply only with respect to taxable years beginning after December 31, 1957".

REFUND OR CREDIT OF OVERPAYMENT; LIMITATIONS; INTEREST

Section 14 (c) of Pub. L. 85–866 provided that: "If refund or credit of any overpayment resulting from the application of the amendment made by subsection (a) [to subsecs. (f) (3) and (f) (4) of this section] or (b) [to subsecs. (g) (3) and (g) 4) of this section] is prevented on the date of the enactment of this Act [Sept. 2, 1958], or within 6 months after such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within 6 months after such date. No interest shall be paid or allowed on any overpayment resulting from the application of the amendment made by subsection (a) or (b)."

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN 1954

See note set out under section 6601 of this title.

CROSS REFERENCES

Adjustments required by changes in method of accounting, see section 481(b)(3)(A) of this title.

Losses generally, see section 165 of this title.

Net operating loss—

Amount and method of adjustment, see section 1314 of this title.

Extension of time for payment of taxes by corporations expecting carrybacks under this section, see section 6164 of this title.

Partnership not allowed deduction, see section 703 of this title.

Net operating loss carryover on termination of estate or trust, see section 642 of this title.

Special limitations on net operating loss carryovers, see section 382 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 165, 170, 186, 246, 381, 382, 481, 512, 535, 545, 556, 584, 642, 703, 804,

809, 822, 823, 844, 852, 857, 1212, 1242, 1244, 1247, 1314, 1341, 1351, 1373, 1374, 1402, 6164, 6411, 6501 of this title; title 19 section 1917.

§ 173. Circulation expenditures.

Notwithstanding section 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary or his delegate, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary or his delegate permits a revocation of such election subject to such conditions as he deems necessary. (Aug. 16, 1954, ch. 736, 68A Stat. 65.)

CROSS REFERENCES

Capital expenditures not deductible, see section 263 of this title.

Trade or business expenses deductible, see section 162 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 174. Research and experimental expenditures.

(a) Treatment as expenses.

(1) In general.

A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) When method may be adopted.

(A) Without consent.

A taxpayer may, without the consent of the Secretary or his delegate, adopt the method provided in this subsection for his first taxable year—

(i) which begins after December 31, 1953, and ends after the date on which this title is enacted, and

(ii) for which expenditures described in paragraph (1) are paid or incurred.

(B) With consent.

A taxpayer may, with the consent of the Secretary or his delegate, adopt at any time the method provided in this subsection.

(3) Scope.

The method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method is authorized with respect to part or all of such expenditures.

(b) Amortization of certain research and experimental expenditures.

(1) In general.

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary or his delegate, research or experimental expenditures which are—

(A) paid or incurred by the taxpayer in connection with his trade or business,

(B) not treated as expenses under subsection (a), and

(C) chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016 (a) (1) (relating to adjustments to basis of property).

(2) Time for and scope of election.

The election provided by paragraph (1) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) Land and other property.

This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(d) Exploration expenditures.

This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) Cross reference.

For adjustments to basis of property for amounts allowed as deductions as deferred expenses under subsection (b), see section 1016 (a) (14).

(Aug. 16, 1954, ch. 736, 68A Stat. 66.)

CROSS REFERENCES

Exception from denial of deduction for capital expenditures, see section 263 (a) (1) (B) of this title.

Trade or business expenses deductible, see section 162 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1016 of this title.

§ 175. Soil and water conservation expenditures.

(a) In general.

A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation.

The amount deductible under subsection (a) for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this section for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

(c) Definitions.

For purposes of subsection (a)—

(1) The term "expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming" means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term does not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district (i) which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section, or (ii) for property of a character subject to the allowance for depreciation provided in section 167 and used in the soil or water conservation or drainage district's business as such (to the extent that the taxpayer's share of the assessment levied on the members of the district for such property does not exceed 10 percent of such assessment).

(2) The term "land used in farming" means land used (before or simultaneously with the expenditures described in paragraph (1)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(d) When method may be adopted.

(1) Without consent.

A taxpayer may, without the consent of the Secretary or his delegate, adopt the method provided in this section for his first taxable year—

(A) which begins after December 31, 1953, and ends after the date on which this title is enacted, and

(B) for which expenditures described in subsection (a) are paid or incurred.

(2) With consent.

A taxpayer may, with the consent of the Secretary or his delegate, adopt at any time the method provided in this section.

(e) Scope.

The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method is authorized with respect to part or all of such expenditures.

(f) Rules applicable to assessments for depreciable property.—

(1) Amounts treated as paid or incurred over 9-year period.

In the case of an assessment levied to defray expenditures for property described in clause (ii) of the last sentence of subsection (c)(1), if the amount of such assessment paid or incurred by the taxpayer during the taxable year (determined without the application of this paragraph) is in excess of an amount equal to 10 percent of the aggregate amounts which have been and will be assessed as the taxpayer's share of the expenditures by the district for such property, and if such excess is more than $500, the entire excess shall be treated as paid or incurred ratably over each of the 9 succeeding taxable years.

(2) Disposition of land during 9-year period.

If paragraph (1) applies to an assessment and the land with respect to which such assessment was made is sold or otherwise disposed of by the taxpayer (other than by the reason of his death) during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a tax-

able year ending on or before the sale or other disposition shall be added to the adjusted basis of such land immediately prior to its sale or other disposition and shall not thereafter be treated as paid or incurred ratably under paragraph (1).

(3) Disposition by reason of death.

If paragraph (1) applies to an assessment and the taxpayer dies during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending before his death shall be treated as paid or incurred in the taxable year in which he dies.

(Aug. 16, 1954, ch. 736, 68A Stat. 67; Oct. 22, 1968, Pub. L. 90-630, § 5(a), (b), 82 Stat. 1329.)

AMENDMENTS

1968—Subsec. (c)(1). Pub. L. 90-630, § 5(a), in the material following subpar. (B), designated as cl. (i) existing provisions covering amounts which, if paid or incurred by the taxpayer, would wthout regard to the exception constitute deductible expenditures, and added cl. (ii).

Subsec. (f). Pub. L. 90-630, § 5(b), added subsec. (f).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 5(c) of Pub. L. 90-630 provided that: "The amendments made by subsections (a) and (b) [amending subsec. (c)(i) and adding subsec. (f) of this section] shall apply to assessments levied after the date of the enactment of this Act [Oct. 22, 1968] in taxable years ending after such date."

CROSS REFERENCES

Exception from denial of deduction for capital expenditures, see section 263 (a) (1) (c) of this title.

Trade or business expenses deductible, see section 162 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1251, 1252 of this title.

§ 176. Payments with respect to employees of certain foreign corporations.

In the case of a domestic corporation, there shall be allowed as a deduction amounts (to the extent not compensated for) paid or incurred pursuant to an agreement entered into under section 3121 (*l*) with respect to services performed by United States citizens employed by foreign subsidiary corporations. Any reimbursement of any amount previously allowed as a deduction under this section shall be included in gross income for the taxable year in which received. (Added Sept. 1, 1954, ch. 1206, title II, § 210 (a), 68 Stat. 1096.)

§ 177. Trademark and trade name expenditures.

(a) Election to amortize.

Any trademark or trade name expenditure paid or incurred during a taxable year beginning after December 31, 1955, may, at the election of the taxpayer (made in accordance with regulations prescribed by the Secretary or his delegate), be treated as a deferred expense. In computing taxable income, all expenditures paid or incurred during the taxable year which are so treated shall be allowed as a deduction ratably over such period of not less than 60 months (beginning with the first month in such taxable year) as may be selected by the taxpayer in making such election. The expenditures so treated are expenditures properly chargeable to capital account for purposes of section 1016 (a) (1) (relating to adjustments to basis of property).

(b) Trademark and trade name expenditures defined.

For purposes of subsection (a), the term "trademark or trade name expenditure" means any expenditure which—

(1) is directly connected with the acquisition, protection, expansion, registration (Federal, State, or foreign), or defense of a trademark or trade name;

(2) is chargeable to capital account; and

(3) is not part of the consideration paid for a trademark, trade name, or business.

(c) Time for and scope of election.

The election provided by subsection (a) shall be made within the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which the expenditure is paid or incurred. The period selected by the taxpayer under subsection (a) with respect to the expenditures paid or incurred during the taxable year which are treated as deferred expenses shall be adhered to in computing his taxable income for the taxable year for which the election is made and all subsequent years.

(d) Cross reference.

For adjustments to basis of property for amounts allowed as deductions for expenditures treated as deferred expenses under this section, see section 1016 (a) (16).

(Added June 29, 1956, ch. 464, § 4 (a), 70 Stat. 406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 178. Depreciation or amortization of improvements made by lessee on lessor's property.

(a) General rule.

Except as provided in subsection (b), in determining the amount allowable to a lessee as a deduction for any taxable year for exhaustion, wear and tear, obsolescence, or amortization—

(1) in respect of any building erected (or other improvement made) on the leased property, if the portion of the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) remaining upon the completion of such building or other improvement is less than 60 percent of the useful life of such building or other improvement, or

(2) in respect of any cost of acquiring the lease, if less than 75 percent of such cost is attributable to the portion of the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) remaining on the date of its acquisition,

the term of the lease shall be treated as including any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, unless the lessee establishes that (as of the close of the taxable year) it is more probable that the lease will not be renewed, extended, or continued for such period than that the lease will be so renewed, extended, or continued.

(b) Related lessee and lessor.

(1) General rule.

If a lessee and lessor are related persons (as determined under paragraph (2)) at any time

during the taxable year then, in determining the amount allowable to the lessee as a deduction for such taxable year for exhaustion, wear and tear, obsolescence, or amortization in respect of any building erected (or other improvement made) on the leased property, the lease shall be treated as including a period of not less duration than the remaining useful life of such improvement.

(2) Related persons defined.

For purposes of paragraph (1), a lessor and lessee shall be considered to be related persons if—

(A) the lessor and the lessee are members of an affiliated group (as defined in section 1504), or

(B) the relationship between the lessor and lessee is one described in subsection (b) of section 267, except that, for purposes of this subparagraph, the phrase "80 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in such subsection.

For purposes of determining the ownership of stock in applying subparagraph (B), the rules of subsection (c) of section 267 shall apply, except that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(c) Reasonable certainty test.

In any case in which neither subsection (a) nor subsection (b) applies, the determination as to the amount allowable to a lessee as a deduction for any taxable year for exhaustion, wear and tear, obsolescence, or amortization—

(1) in respect of any building erected (or other improvement made) on the leased property, or

(2) in respect of any cost of acquiring the lease,

shall be made with reference to the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee), unless the lease has been renewed, extended, or continued or the facts show with reasonable certainty that the lease will be renewed, extended, or continued. (Added Pub. L. 85-866, title I, § 15 (a), Sept. 2, 1958, 72 Stat. 1612.)

EFFECTIVE DATE

Section 15 (c) of Pub. L. 85-866 provided that: "The amendments made by this section [which added this section and amended analysis preceding section 161 of this title] shall apply with respect to costs of acquiring a lease incurred, and improvements begun, after July 28, 1958 (other than improvements which, on July 28, 1958, and at all times thereafter, the lessee was under a binding legal obligation to make)."

§ 179. Additional first-year depreciation allowance for small business.

(a) General rule.

In the case of section 179 property, the term "reasonable allowance" as used in section 167 (a) may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under section 167 to the taxpayer with respect to such property, of 20 percent of the cost of such property.

(b) Dollar limitation.

If in any one taxable year the cost of section 179 property with respect to which the taxpayer may elect an allowance under subsection (a) for such taxable year exceeds $10,000, then subsection (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of $10,000. In the case of a husband and wife who file a joint return under section 6013 for the taxable year, the limitation under the preceding sentence shall be $20,000 in lieu of $10,000.

(c) Election.

(1) In general.

The election under this section for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(2) Election irrevocable.

Any election made under this section may not be revoked except with the consent of the Secretary or his delegate.

(d) Definitions and special rules.

(1) Section 179 property.

For purposes of this section, the term "section 179 property" means tangible personal property—

(A) of a character subject to the allowance for depreciation under section 167,

(B) acquired by purchase after December 31, 1957, for use in a trade or business or for holding for production of income, and

(C) with a useful life (determined at the time of such acquisition) of 6 years or more.

(2) Purchase defined.

For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707 (b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267 (c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014 (a) (relating to property acquired from a decedent).

(3) Cost.

For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) Section not to apply to trusts.

This section shall not apply to trusts.

(5) Estates.

In the case of an estate, any amount apportioned to an heir, legatee, or devisee under section 167(h) shall not be taken into account in applying subsection (b) of this section to section 179 property of such heir, legatee, or devisee not held by such estate.

(6) Dollar limitation of controlled group.

For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary or his delegate shall apportion the dollar limitation contained in such subsection (b) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) Controlled group defined.

For purposes of paragraphs (2) and (6), the term "controlled group" has the meaning assigned to it by section 1563(a); except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(8) Adjustment to basis; when made.

In applying section 167(g), the adjustment under section 1016 (a) (2) resulting by reason of an election made under this section with respect to any section 179 property shall be made before any other deduction allowed by section 167 (a) is computed.

(e) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 85-866, title II, § 204(a), Sept. 2, 1958, 72 Stat. 1679, and amended Pub. L. 87-834, § 13(c)(2), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 91-172, title IV, § 401(f), Dec. 30, 1969, 83 Stat. 603.)

AMENDMENTS

1969—Subsec. (d). Pub. L. 91-172 substituted reference to component members of a controlled group for reference to members of an affiliated group in pars. (2)(B) and (b), and substituted definition of controlled group for definition of affiliated group in par. (7).

1962—Subsec. (d)(5). Pub. L. 87-834, § 13(c)(2)(A), substituted "section 167(h)" for "section 167(g)."

Subsec. (d)(8). Pub. L. 87-834, § 13(c)(2)(B), substituted "section 167(g)" for "section 167(f)."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsecs. (d)(2)(B), (d)(6) and (7) of this section by section 401(f) of Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (d) (5), (8) of this section by Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87-834, set out as a note under section 1245 of this title.

EFFECTIVE DATE

Section 204 (c) of Pub. L. 85-866 provided that: "The amendments made by this section [which added this section and amended analysis prec. § 161 of this title] shall apply with respect to taxable years ending after June 30, 1958."

SHORT TITLE

Section as part of the Small Business Tax Revision Act of 1958, see section 201 of Pub. L. 85-866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48 of this title.

§ 180. Expenditures by farmers for fertilizer, etc.

(a) In general.

A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) Land used in farming.

For purposes of subsection (a), the term "land used in farming" means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) Election.

The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary or his delegate may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary or his delegate. (Added Pub. L. 86-779, § 6(a), Sept. 14, 1960, 74 Stat. 1001.)

EFFECTIVE DATE

Section 6(d) of Pub. L. 86-779 provided that: "The amendments made by subsections (a), (b), and (c) [adding this section and item 180 to table of sections for Part VI and amending section 263(a)(1) of this title] shall apply to taxable years beginning after December 31, 1959."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263 of this title.

§ 181. Repealed. Pub. L. 88-272, title II, § 203(a)(3)(B), Feb. 26, 1964, 78 Stat. 34.

Section, Pub. L. 87-834, § 2(c), Oct. 16, 1962, 76 Stat. 970, related to a deduction for unused investment credit.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963, see section 203(a)(4) of Pub. L. 88-272, set out as a note under section 48 of this title.

§ 182. Expenditures by farmers for clearing land.

(a) In general.

A taxpayer engaged in the business of farming may elect to treat expenditures which are paid or incurred by him during the taxable year in the clearing of land for the purpose of making such land suitable for use in farming as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation.

The amount deductible under subsection (a) for any taxable year shall not exceed whichever of the following amounts is the lesser:

(1) $5,000, or

(2) 25 percent of the taxable income derived from farming during the taxable year.

For purposes of paragraph (2), the term "taxable income derived from farming" means the gross income derived from farming reduced by the deductions allowed by this chapter (other than by this section) which are attributable to the business of farming.

(c) Definitions.

For purposes of subsection (a)—

(1) The term "clearing of land" includes (but is not limited to) the eradication of trees, stumps, and brush, the treatment or moving of earth, and the diversion of streams and watercourses.

(2) The term "land suitable for use in farming" means land which as a result of the activities described in paragraph (1) is suitable for use by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(d) Exceptions, etc.

(1) Exceptions.

The expenditures to which subsection (a) applies shall not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

(2) Certain property used in the clearing of land.

(A) Allowance for depreciation.

The expenditures to which subsection (a) applies shall include a reasonable allowance for depreciation with respect to property of the taxpayer which is used in the clearing of land for the purpose of making such land suitable for use in farming and which, if used in a trade or business, would be property subject to the allowance for depreciation provided by section 167.

(B) Treatment as depreciation deduction.

For purposes of this chapter, any expenditure described in subparagraph (A) shall, to the extent allowed as a deduction under subsection (a), be treated as an amount allowed under section 167 for exhaustion, wear and tear, or obsolescence of the property which is used in the clearing of land.

(e) Election.

The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary or his delegate may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary or his delegate. (Added Pub. L. 87–834, § 21(a), Oct. 16, 1962, 76 Stat. 1063.)

EFFECTIVE DATE

Section 21(d) of Pub. L. 87–834 provided that: "The amendments made by this section [enacting this section and amending section 263(a) of this title] shall apply with respect to taxable years beginning after December 31, 1962."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1251, 1252 of this title.

§ 183. Activities not engaged in for profit.

(a) General rule.

In the case of an activity engaged in by an individual or an electing small business corporation (as defined in section 1371(b)), if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

(b) Deductions allowable.

In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

(1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

(c) Activity not engaged in for profit defined.

For purposes of this section, the term "activity not engaged in for profit" means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.

(d) Presumption.

If the gross income derived from an activity for 2 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary or his delegate establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting the period of 7 consecutive taxable years for the period of 5 consecutive taxable years. (Added Pub. L. 91–172, title II, § 213(a), Dec. 30, 1969, 83 Stat. 571.)

EFFECTIVE DATE

Section 213(d) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section, amending section 6504 of this title, and repealing section 270 of this title] shall apply to taxable years beginning after December 31, 1969."

§ 184. Amortization of certain railroad rolling stock.

(a) Allowance of deduction.

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any qualified railroad rolling stock (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the qualified railroad rolling stock at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any qualified railroad rolling stock for any month shall be in lieu of the depreciation deduction with respect to such rolling stock for such month provided by section 167. The 60-month period shall begin, as to any qualified railroad rolling stock, at the election of the taxpayer, with the month following the month in which such rolling stock was placed in service or with the succeeding taxable year.

(b) Election of amortization.

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the qualified railroad rolling stock was placed in service, or with the taxable year succeeding the taxable year in which such rolling stock is placed in service, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction.

A taxpayer which has elected under subsection (b) to take the amortization deduction provided by subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such rolling stock.

(d) Qualified railroad rolling stock.

Except as provided in subsection (e)(4), the term "qualified railroad rolling stock" means, for purposes of this section, rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission if—

(1) such rolling stock is—

(A) used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis, or

(B) owned and used by a switching or terminal company all of whose stock is owned by one or more domestic common carriers by railroad, and

(2) the original use of such rolling stock commences with the taxpayer after December 31, 1968.

(e) Special rules.

(1) In general.

Except as otherwise provided in this subsection, this section shall apply to qualified railroad rolling stock placed in service after 1968 and before 1975.

(2) Placed in service in 1969.

If any qualified railroad rolling stock is placed in service in 1969—

(A) the month as to which the amortization period shall begin with respect to such rolling stock shall be determined as if such rolling stock were placed in service on December 31, 1969, and

(B) subsections (a) and (b) shall be applied by substituting "48" for "60" each place that it appears in such subsections.

This section shall not apply to any qualified railroad rolling stock placed in service in 1969 and owned by any person who is not a domestic common carrier by railroad, or a corporation at least 95 percent of the stock of which is owned by one or more such common carriers.

(3) Placed in service in 1970.

If any qualified railroad rolling stock is placed in service in 1970 by a domestic common carrier by rail or by a corporation at least 95 percent of the stock of which is owned by one or more such common carriers, then subsection (a) shall be applied, without regard to paragraph (2), as if such rolling stock were placed in service on December 31, 1969.

(4) Railroad rolling stock not in short supply.

The Secretary or his delegate shall determine (with the assistance of the Secretary of Transportation) which types of railroad rolling stock are not in short supply and shall prescribe regulations designating such types. The term "qualified railroad rolling stock" shall not include any rolling stock which—

(A) is of the type of rolling stock designated by such regulations as not in short supply, and

(B) is placed in service after (i) 1972, or (ii) 30 days after the date on which such regulations are promulgated, whichever is later.

(5) Adjusted basis.

(A) The adjusted basis of any qualified railroad rolling stock, with respect to which an election has been made under this section, shall not be increased, for purposes of this section, for amounts chargeable to capital account for additions or improvements after the amortization period has begun.

(B) Costs incurred in connection with a used unit of railroad rolling stock which are properly chargeable to capital account shall be treated as a separate unit of railroad rolling stock for purposes of this section.

(C) The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not taken into account in applying this section.

(6) Construction termination.

If at any time during the amortization period any qualified railroad rolling stock ceases to meet the requirements of subsection (d)(1), the taxpayer shall be deemed to have terminated under subsection (c) his election under this section. Such termination shall be effective beginning with the month following the month in which such cessation occurs.

(7) Method of accounting for date placed in service.

For purposes of subsections (a) and (b), in the case of qualified railroad rolling stock placed in service after December 31, 1969, and before January 1, 1975, the taxpayer may elect (unless paragraph (3) is applicable) to begin the 60-month period with the date when such rolling stock is treated as having been placed in service under a method of accounting for acquisitions and retirements of property which—

(A) prescribes a date when property is placed in service, and

(B) is consistently followed by the taxpayer.

(f) Life tenant and remainderman.

In the case of qualified railroad rolling stock leased to a domestic common carrier, and held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(g) Cross reference.

For treatment of certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, § 705(a), Dec. 30, 1969, 83 Stat. 670.)

EFFECTIVE DATE

Section 705(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section and section 185 of this title] shall apply with respect to taxable years beginning after December 31, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 642, 1082, 1245 of this title.

§ 185. Amortization of railroad grading and tunnel bores.

(a) General rule.

In the case of a domestic common carrier by railroad, the taxpayer shall, at his election, be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of his qualified railroad grading and tunnel bores. The amortization deduction provided by this section with respect to such property shall be in lieu of any depreciation deduction, or other amortization deduction, with respect to such property for any taxable year to which the election applies.

(b) Amount of deduction.

(1) In general.

The deduction allowable under subsection (a) for any taxable year shall be an amount determined by amortizing ratably over a period of 50 years the adjusted basis (for determining gain) of the qualified railroad grading and tunnel bores of the taxpayer. Such 50-year period shall commence with the first taxable year for which an election under this section is effective.

(2) Special rule.

In the case of qualified railroad grading and tunnel bores placed in service after the beginning of the first taxable year for which an election under this section is effective, the 50-year period with respect to such property shall begin with the year following the year the property is placed in service.

(c) Election of amortization.

The election of the taxpayer to take the amortization deduction provided in subsection (a) may be made for any taxable year beginning after December 31, 1969. Such election shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election. The election shall remain in effect for all taxable years subsequent to the first year for which it is effective and shall apply to all qualified railroad grading and tunnel bores of the taxpayer, unless, on application by the taxpayer, the Secretary or his delegate permits him, subject to such conditions as the Secretary or his delegate deems necessary to revoke such election.

(d) Definitions.

For purposes of this section—

(1) Railroad grading and tunnel bores.

The term "railroad grading and tunnel bores" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track. If expenditures for improvements described in the preceding sentence are incurred with respect to an existing roadbed or right-of-way for railroad track, such expenditures shall be considered, in applying this section, as costs for railroad grading or tunnel bores placed in service in the year in which such costs are incurred.

(2) Qualified railroad grading and tunnel bores.

The term "qualified railroad grading and tunnel bores" means railroad grading and tunnel bores the original use of which commences after December 31, 1968.

(e) Treatment upon retirement.

If any qualified railroad grading or tunnel bore is retired or abandoned during a taxable year for which an election under this section is in effect, no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this section shall continue with respect to such property. This subsection shall not apply if the retirement or abandonment is attributable primarily to fire, storm, or other casualty.

(f) Investment credit not to be allowed.

Property eligible to be amortized under this section shall not be treated as section 38 property within the meaning of section 48(a).

(g) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) Cross reference.

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, § 705(a), Dec. 30, 1969, 83 Stat. 672.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1969, see section 705(c) of Pub. L. 91–172, set out as a note under section 184 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1245, 1250 of this title.

§ 186. Recoveries of damages for antitrust violations, etc.

(a) Allowance of deduction.

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

(1) the amount of such compensatory amount, or

(2) the amount of the unrecovered losses sustained as a result of such compensable injury.

(b) Compensable injury.

For purposes of this section, the term "compensable injury" means—

(1) injuries sustained as a result of an infringement of a patent issued by the United States,

(2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or

(3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act).

(c) Compensatory amount.

For purposes of this section, the term "compensatory amount" means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

(d) Unrecovered losses.

(1) In general.

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

(A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by

(B) the sum of—

(i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and

(ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

(2) Injury period.

For purposes of paragraph (1), the injury period is—

(A) with respect to any infringement of a patent, the period in which such infringement occurred,

(B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and

(C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

(3) Net operating losses attributable to compensable injuries.

For purposes of paragraph (1)—

(A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and

(B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

(e) Effect on net operating loss carryovers.

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

(1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by

(2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91–172, title IX, § 904(a), Dec. 30, 1969, 83 Stat. 711.)

EFFECTIVE DATE

Section 904(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968."

§ 187. Amortization of certain coal mine safety equipment.

(a) Allowance of deduction.

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any certified coal mine safety equipment (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the certified coal mine safety equipment at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any certified coal mine safety equipment for any month shall be in lieu of the depreciation deduction with respect to such equipment for such month provided by section 167. The 60-month period shall begin, as to any certified coal mine safety equipment, at the election of the taxpayer, with the month following the month in which such equipment was placed in service or with the succeeding taxable year.

(b) Election of amortization.

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the certified coal mine safety equipment was placed in service, or with the taxable year succeeding the taxable year in which such equipment is placed in service, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction.

A taxpayer which has elected under subsection (b) to take the amortization deduction provided by subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such equipment.

(d) Certified coal mine safety equipment.

For purposes of this section, the term "certified coal mine safety equipment" means property which—

(1) is electric face equipment (within the meaning of section 305 of the Federal Coal Mine Health and Safety Act of 1969) required in order to meet the requirements of section 305(a)(2) of such Act,

(2) the Secretary of the Interior certifies is permissible within the meaning of such section 305 (a)(2), and

(3) is placed in service before January 1, 1975.

For purposes of this section, any property placed in service in connection with any used electric face equipment which the Secretary of the Interior certifies makes such electric face equipment permissible shall be treated as a separate item of certified coal mine safety equipment.

(e) Special rules.

(1) The adjusted basis of any certified coal mine safety equipment, with respect to which an election is made under this section, shall not be increased, for purposes of this section, for amounts chargeable to capital account for additions or improvements after the amortization period has begun.

(2) The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not taken into account in applying this section.

(Added Pub. L. 91–172, title VII, § 707(a), Dec. 30, 1969, 83 Stat. 674.)

EFFECTIVE DATE

Section 707(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years ending after December 31, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 1082, 1245 of this title.

PART VII.—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec.
211. Allowance of deductions.
212. Expenses for production of income.
213. Medical, dental, etc., expenses.
214. Expenses for care of certain dependents.
215. Alimony, etc., payments.
216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.
217. Moving expenses.
218. Cross references.

AMENDMENTS

1964—Pub. L. 88–272, title II, § 213(a)(2), Feb. 26, 1964, 78 Stat. 52, redesignated former item 217 as 218, and added item 217.

1962—Pub. L. 87–834, § 28(b), Oct. 16, 1962, 76 Stat. 1068, substituted "Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder" for "Amounts representing taxes and interest paid to cooperative housing corporation" in item 216.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 703 of this title.

§ 211. Allowance of deductions.

In computing taxable income under section 63 (a), there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (section 261 and following, relating to items not deductible). (Aug. 16, 1954, ch. 736, 68A Stat. 69.)

§ 212. Expenses for production of income.

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 69.)

CROSS REFERENCES

Adjusted gross income as gross income minus, among others, expenses for production of income, see section 62 of this title.

Trade or business expenses deductible, see section 162 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 62, 163, 164, 183, 263, 265, 267, 274, 404, 691 of this title.

§ 213. Medical, dental, etc., expenses.

(a) Allowance of deduction.

There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise—

(1) the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeds 3 percent of the adjusted gross income, and

(2) an amount (not in excess of $150) equal to one-half of the expenses paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(b) Limitation with respect to medicine and drugs.

Amounts paid during the taxable year for medicine and drugs which (but for this subsection) would be taken into account in computing the deduction under subsection (a) shall be taken into account only to the extent that the aggregate of such amounts exceeds 1 percent of the adjusted gross income.

(c) Repealed. Pub. L. 89-97, title I, § 106(d)(1), July 30, 1965, 79 Stat. 337.

(d) Special rule for decedents.

(1) Treatment of expenses paid after death.

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation.

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary or his delegate) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(e) Definitions.

For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A), or

(C) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act relating to supplementary medical care referred to in subparagraphs (A) and (B).

(2) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A) and (B) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(C) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(3) Subject to the limitations of paragraph (2), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A) and (B) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(4) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013 (d) (relating to determination of status as husband and wife).

(f) Exclusion of amounts allowed for care of certain dependents.

Any expense allowed as a deduction under section 214 shall not be treated as an expense paid for medical care. (Aug. 16, 1954, ch. 736, 68A Stat. 69; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 16, 17 (a), (b), 72 Stat.

1613, 1614; May 14, 1960, Pub. L. 86–470, § 3(a), 74 Stat. 133; Oct. 23, 1962, Pub. L. 87–863, § 1 (a), (b), 76 Stat. 1141; Feb. 26, 1964, Pub. L. 88–272, title II, § 211(a), 78 Stat. 49; July 30, 1965, Pub. L. 89–97, title I, § 106(a)—(d)(1), 79 Stat. 336, 337.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–97, § 106(a), substituted "There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise—

"(1) the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeds 3 percent of the adjusted gross income, and

"(2) an amount (not in excess of $150) equal to one-half of the expenses paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents." for

"There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152):

"(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year—

"(A) the amount of such expenses for the care of any dependent who—

"(i) is the mother or father of the taxpayer or of his spouse, and

"(ii) has attained the age of 65 before the close of the taxable year, and

"(B) the amount by which such expenses for the care of the taxpayer, his spouse, and such dependents (other than any dependent described in subparagraph (A)) exceed 3 percent of the adjusted gross income.

"(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year—

"(A) the amount of such expenses for the care of the taxpayer and his spouse.

"(B) the amount of such expenses for the care of any dependent described in paragraph (1) (A), and

"(C) the amount by which such expenses for the care of such dependents (other than any dependent described in paragraph (1)(A)) exceed 3 percent of the adjusted gross income."

Subsec. (b). Pub. L. 89–97, § 106(b), repealed the second sentence which had provided: "The preceding sentence shall not apply to amounts paid for the care of—

"(1) the taxpayer and his spouse, if either of them has attained the age of 65 before the close of the taxable year, or

"(2) any dependent described in subsection (a)(1)(A)."

Subsec. (c). Pub. L. 89–97, § 106(d)(1), struck out maximum limitations provisions.

Subsec. (e). Pub. L. 89–97, § 106(c), deleted from par. (1)(A) "including amounts paid for accident or health insurance" following "function of the body", added pars. (1)(C), (2), and (3), and renumbered former par. (2) as (4).

Subsec. (g). Pub. L. 89–97, § 106(d)(1), struck out provisions relating to maximum limitation if taxpayer or spouse has attained age 65 and is disabled, special rule, amounts taken into account, meaning of disabled, and determination of status.

1964—Subsec. (b). Pub. L. 88–272 excluded persons attaining age 65 before the close of the taxable year from the limitation, whether they are the taxpayer and his spouse, or the mother or father of the taxpayer and his spouse.

1962—Subsec. (c). Pub. L. 87–863, § 1(a), substituted "$5,000" for "$2,500", "$10,000" for "$5,000", and "$20,000" for "$10,000."

Subsec. (g). Pub. L. 87–863, § 1(b), substituted "$20,000" for "$15,000" in three instances, and "$40,000" for "$30,000."

1960—Subsec. (a). Pub. L. 86–470 authorized a taxpayer to deduct medical care expenses for dependent parents of the taxpayer or his spouse who have attained the age of 65 before the close of the taxable year without applying the three percent limitation.

1958—Subsec. (c). Pub. L. 85–866, § 17(b), substituted "Except as provided in subsection (g), the" for "The".

Subsec. (d)(2)(A). Pub. L. 85–866, § 16, eliminated "claimed or" preceding "allowed".

Subsec. (g). Pub. L. 85–866, § 17(A), added subsec. (g).

EFFECTIVE DATE OF 1965 AMENDMENT

Section 106(e) of Pub. L. 89–97 provided that: "The amendments made by this section [to sections 72, 79, 213, 401, and 405 of this title] shall apply to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 211(b) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to subsec (b) of this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(c) of Pub. L. 87–863 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (c) and (g) of this section] shall apply only with respect to taxable years beginning after December 31, 1961."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3(b) of Pub. L. 86–470 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply to taxable years beginning after December 31, 1959."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d) (2) (A) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 17 (c) of Pub. L. 85–866 provided that: "The amendments made by subsections (a) [which added subsec. (g) of this section] and (b) [to subsec. (c) of this section] shall apply only with respect to taxable years beginning after December 31, 1957."

CROSS REFERENCES

Amounts received under accident and health plans excludible from gross income, see section 105 of this title.

Compensation for injuries or sickness excludible from gross income, see section 104 of this title.

Personal, living and family expenses not deductible, see section 262 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 105 of this title.

§ 214. Expenses for care of certain dependents.

(a) General rule.

There shall be allowed as a deduction expenses paid during the taxable year by a taxpayer who is a woman or widower, or is a husband whose wife is incapacitated or is institutionalized, for the care of one or more dependents (as defined in subsection (d)(1)), but only if such care is for the purpose of enabling the taxpayer to be gainfully employed.

(b) Limitations.

(1) Dollar limit.

(A) Except as provided in subparagraph (B), the deduction under subsection (a) shall not exceed $600 for any taxable year.

(B) The $600 limit of subparagraph (A) shall be increased (to an amount not above $900) by the amount of expenses incurred by the taxpayer for any period during which the taxpayer had 2 or more dependents.

(2) Working wives and husbands with incapacitated wives.—

In the case of a woman who is married and in the case of a husband whose wife is incapacitated, the deduction under subsection (a)—

(A) shall not be allowed unless the taxpayer and his spouse file a joint return for the taxable year, and

(B) shall be reduced by the amount (if any) by which the adjusted gross income of the taxpayer and his spouse exceeds $6,000.

This paragraph shall not apply, in the case of a woman who is married, to expenses incurred while her husband is incapable of self-support because mentally or physically defective, or, in the case of a husband whose wife is incapacitated, to expenses incurred while his wife is institutionalized if such institutionalization is for a period of at least 90 consecutive days (whether or not within one taxable year) or a shorter period if terminated by her death.

(3) Certain payments not taken into account.

Subsection (a) shall not apply to any amount paid to an individual with respect to whom the taxpayer is allowed for his taxable year a deduction under section 151 (relating to deduction for personal exemptions).

(c) Special rule where wife is incapacitated or institutionalized.

In the case of a husband whose wife is incapacitated or is institutionalized, the deduction under subsection (a) shall be allowed only for expenses incurred while the wife was incapacitated or institutionalized (as the case may be) for a period of at least 90 consecutive days (whether or not within one taxable year) or a shorter period if terminated by her death.

(d) Definitions.

For purposes of this section—

(1) Dependent.

The term "dependent" means a person with respect to whom the taxpayer is entitled to an exemption under section 151(e)(1)—

(A) who has not attained the age of 13 years and who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer; or

(B) who is physically or mentally incapable of caring for himself.

(2) Widower.

The term "widower" includes an unmarried individual who is legally separated from his spouse under a decree of divorce or of separate maintenance.

(3) Incapacitated wife.

A wife shall be considered incapacitated only (A) while she is incapable of caring for herself because mentally or physically defective, or (B) while she is institutionalized.

(4) Institutionalized wife.

A wife shall be considered institutionalized only while she is, for the purpose of receiving medical care or treatment, an inpatient, resident, or inmate of a public or private hospital, sanitarium, or other similar institution.

(5) Determination of status.

A woman shall not be considered as married if—

(A) she is legally separated from her spouse under a decree of divorce or of separate maintenance at the close of the taxable year, or

(B) she has been deserted by her spouse, does not know his whereabouts (and has not known his whereabouts at any time during the taxable year), and has applied to a court of competent jurisdiction for appropriate process to compel him to pay support or otherwise to comply with the law or a judicial order, as determined under regulations prescribed by the Secretary or his delegate.

(Aug. 16, 1954, ch. 736, 68A Stat. 70; Apr. 2, 1963, Pub. L. 88–4, § 1, 77 Stat. 4; Feb. 26, 1964, Pub. L. 88–272, title II, § 212(a), 78 Stat. 49.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–272 included a husband whose wife is incapacitated or is institutionalized.

Subsec. (b). Pub. L. 88–272 added par. (1)(B), redesignated former par. (1)(B) as par. (3), inserted provisions relating to husbands with incapacitated wives in par. (2) wherever appearing, and increased the gross income figure in par. (2)(B) from $4,500 to $6,000.

Subsec. (c). Pub. L. 88–272 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 88–272 redesignated former subsec. (c) as (d), amended subsec. (d) by redefining "dependent" as a person who has not attained age 13, instead of one who has not attained age 12, and added the definitions of "Incapacitated" and "Institutionalized" wives.

1963—Subsec. (c)(3). Pub. L. 88–4 designated existing provisions following "as married if" as "(A)", and added clause "(B)".

EFFECTIVE DATE OF 1964 AMENDMENT

Section 212(b) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1963 AMENDMENT

Section 2 of Pub. L. 88–4 provided that: "The amendments made by the first section of this Act [to subsec. (c)(3) of this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Apr. 2, 1963]."

CROSS REFERENCES

Deductions for dependents generally, see section 151 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 213 of this title.

§ 215. Alimony, etc., payments.

(a) General rule.

In the case of a husband described in section 71, there shall be allowed as a deduction amounts includible under section 71 in the gross income of his wife, payment of which is made within the husband's taxable year. No deduction shall be allowed under the preceding sentence with respect to any payment if, by reason of section 71 (d) or 682, the amount thereof is not includible in the husband's gross income.

(b) Cross reference.

For definitions of "husband" and "wife," see section 7701 (a) (17).

(Aug. 16, 1954, ch. 736, 68A Stat. 71.)

CROSS REFERENCES

Alimony and separate maintenance payments as income to wife, see section 71 of this title.

Husband and wife, definition of, see section 7701 (a) (17) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 71, 7701 of this title.

§ 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.

(a) Allowance of deduction.

In the case of a tenant-stockholder (as defined in subsection (b) (2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of—

(1) the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

(2) the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses (or apartment building) are situated.

(b) Definitions.

For purposes of this section—

(1) Cooperative housing corporation.

The term "cooperative housing corporation" means a corporation—

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders.

(2) Tenant-stockholder.

The term "tenant-stockholder" means an individual who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary or his delegate as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such individual is entitled to occupy.

(3) The term "tenant-stockholder's proportionate share" means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

(4) Stock owned by governmental units.

For purposes of this subsection, in determining whether a corporation is a cooperative housing corporation, stock owned and apartments leased by the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities, shall not be taken into account.

(c) Treatment as property subject to depreciation.

So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary or his delegate, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). (Aug. 16, 1954, ch. 736, 68A Stat. 71; Oct. 16, 1962, Pub. L. 87-834, § 28(a), 76 Stat. 1068; Dec. 30, 1969, Pub. L. 91-172, title IX, § 913(a), 83 Stat. 723.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172 added par. (4).

1962—Pub. L. 87-834 substituted "Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholders" for "Amounts representing taxes and interest paid to cooperative housing corporation" in section catchline, and added subsec. (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 913(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [adding par. (4) to subsec. (b) of this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 28(c) of Pub. L. 87-834 provided that: "The amendments made by subsection (a) [amending section catchline and adding subsec. (c) of this section] shall be effective with respect to taxable years beginning after December 31, 1961."

CROSS REFERENCES

Interest deductible, see section 163 of this title.

Taxes deductible, see section 164 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 121, 1034 of this title.

§ 217. Moving expenses.

(a) Deduction allowed.

There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual, at a new principal place of work.

(b) Definition of moving expenses.

(1) In general.

For purposes of this section, the term "moving expenses" means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence,

(B) of traveling (including meals and lodging) from the former residence to the new place of residence,

(C) of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence,

(D) of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or

(E) constituting qualified residence sale, purchase, or lease expenses.

(2) Qualified residence sale, etc., expenses.

For purposes of paragraph (1)(E), the term "qualified residence sale, purchase, or lease expenses" means only reasonable expenses incident to—

(A) the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence (not including expenses for work performed on such residence in order to assist in its sale) which (but for this subsection and subsection (e)) would be taken into account in determining the amount realized on the sale or exchange,

(B) the purchase by the taxpayer or his spouse of a new residence in the general location of the new principal place of work which (but for this subsection and subsection (e)) would be taken into account in determining—

(i) the adjusted basis of the new residence, or

(ii) the cost of a loan (but not including any amounts which represent payments or prepayments of interest),

(C) the settlement of an unexpired lease held by the taxpayer or his spouse on property used by the taxpayer as his former residence, or

(D) the acquisition of a lease by the taxpayer or his spouse on property used by the taxpayer as his new residence in the general location of the new principal place of work (not including amounts which are payments or prepayments of rent).

(3) Limitations.

(A) Dollar limits.

The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1) shall not exceed $1,000. The aggregate amount allowable as a deduction under subsection (a) which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed $2,500, reduced by the aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

(B) Husband and wife.

If a husband and wife both commence work at a new principal place of work within the same general location, subparagraph (A) shall be applied as if there was only one commencement of work. In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "$500" for "$1,000", and by substituting "$1,250" for "$2,500".

(C) Individuals other than taxpayer.

In the case of any individual other than the taxpayer, expenses referred to in subparagraphs (A) through (D) of paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) Conditions for allowance.

No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 50 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) Rules for application of subsection (c)(2).

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

(e) Denial of double benefit.

The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d) (3).

(f) Rules for self-employed individuals.

(1) Definition.

For purposes of this section, the term "self-employed individual" means an individual who performs personal services—

(A) as the owner of the entire interest in an unincorporated trade or business, or

(B) as a partner in a partnership carrying on a trade or business.

(2) Rule for application of subsections (b)(1) (C) and (D).

For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.

(g) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 88–272, title II, § 213(a)(1), Feb. 26, 1964, 78 Stat. 50, and amended Pub. L. 91–172, title II, § 231(a), Dec. 30, 1969, 83 Stat. 577.)

AMENDMENTS

1969—Pub. L. 91–172 substantially reenacted existing provisions and extended the coverage to self-employed persons working at the new location for 78 weeks, made it a requirement that the new principal place of work be located 50 miles from the former residence, and redefined the deduction to include costs of house-hunting trips, temporary living expenses prior to locating a new home, and expenses of selling an old home or buying a new one.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 231(d) of Pub. L. 91–172, as amended by Pub. L. 91–642, § 2, Dec. 31, 1970, 84 Stat. 1880, provided that:

"The amendments made by this section [enacting section 82 of this title and amending this section and sections 1001 and 1016(c) of this title] shall apply to taxable years beginning after December 31, 1969, except that—

"(1) section 217 of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply to any item to the extent that the taxpayer received or accrued reimbursement or other expense allowance for such item in a taxable year beginning on or before December 31, 1969, which was not included in his gross income; and

"(2) the amendments made by this section shall not apply (at the election of the taxpayer made at such time and manner as the Secretary of the Treasury or his delegate prescribes) with respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969."

EFFECTIVE DATE

Section applicable to expenses incurred after Dec. 31, 1963, in taxable years ending after such date, see section 213(d) of Pub. L. 88–272, set out as a note under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 3121, 3306, 3401 of this title; title 42 section 409.

§ 218. Cross references.

(1) For deduction for long-term capital gains in the case of a taxpayer other than a corporation, see section 1202.

(2) For deductions in respect of a decedent, see section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 72, formerly § 217, renumbered § 218, Feb. 26, 1964, Pub. L. 88–272, title II, § 213(a)(1), 78 Stat. 50.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1402 of this title.

PART VIII.—SPECIAL DEDUCTIONS FOR CORPORATIONS

Sec.
241. Allowance of special deductions.
242. Partially tax-exempt interest.
243. Dividends received by corporations.
244. Dividends received on certain preferred stock.
245. Dividends received from certain foreign corporations.
246. Rules applying to deductions for dividends received.
247. Dividends paid on certain preferred stock of public utilities.
248. Organizational expenditures.
249. Limitation on deduction of bond premium on repurchase.
250. Certain payments to the National Railroad Passenger Corporations.

AMENDMENTS

1970—Pub. L. 91–518, title IX, § 901(b), Oct. 30, 1970, 84 Stat. 1342, added item 250.

1969—Pub. L. 91–172, title IV, § 414(b), Dec. 30, 1969, 83 Stat. 613, added item 249.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 822, 832 of this title.

§ 241. Allowance of special deductions.

In addition to the deductions provided in part VI (sec. 161 and following), there shall be allowed as deductions in computing taxable income the items specified in this part. (Aug. 16, 1954, ch. 736, 68A Stat. 72.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 832 of this title.

§ 242. Partially tax-exempt interest.

(a) Allowance of deduction.

There shall be allowed to a corporation as a deduction the amount received as interest on obligations of the United States or on obligations of corporations organized under Act of Congress which are instrumentalities of the United States, but only if—

(1) such interest is included in gross income; and

(2) such interest is exempt from normal tax under the Act authorizing the issuance of such obligations. No deduction shall be allowed under this section for purposes of any surtax imposed by this subtitle.

(b) Cross reference.

For reduction of deduction under subsection (a) on account of amortizable bond premium, see section 171.

(Aug. 16, 1954, ch. 736, 68A Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, § 123(c), 78 Stat. 30.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–272 inserted "No deduction shall be allowed under this section for purposes of any surtax imposed by this subtitle."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

CROSS REFERENCES

Consolidated return of corporations computed without regard to this section, see section 1503 (a) of this title.

Life insurance companies entitled to deduction under this section, see section 804 of this title.

Mutual insurance companies entitled to deduction under this section, see section 822 (c) (7) of this title.

Net operating loss deduction to corporations for deductions under this section, see section 172 (d) (5) of this title.

Partner entitled to separate deduction under this section, see section 702 (a) (7) of this title.

Surtax of corporation computed without regard to this section, see section 11 (c) of this title.

United States obligations and evidence of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 171, 172, 551, 584, 702, 804, 809, 815, 822, 832, 852, 857, 1244 of this title.

§ 243. Dividends received by corporations.

(a) General rule.

In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 85 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958; and

(3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).

(b) Qualifying dividends.

(1) Definition.

For purposes of subsection (a)(3), the term "qualifying dividends" means dividends received by a corporation which, at the close of the day the dividends are received, is a member of the same affiliated group of corporations (as defined in paragraph (5)) as the corporation distributing the dividends, if—

(A) such affiliated group has made an election under paragraph (2) which is effective for the taxable years of its members which include such day, and

(B) such dividends are distributed out of earnings and profits of a taxable year of the distributing corporation ending after December 31, 1963—

(i) on each day of which the distributing corporation and the corporation receiving the dividends were members of such affiliated group, and

(ii) for which an election under section 1562 (relating to election of multiple surtax exemptions) is not effective.

(2) Election.

An election under this paragraph shall be made for an affiliated group by the common parent corporation, and shall be made for any taxable year of the common parent corporation at such time and in such manner as the Secretary or his delegate by regulations prescribes. Such election may not be made for an affiliated group for any taxable year of the common parent corporation for which an election under section 1562 is effective. Each corporation which is a member of such group at any time during its taxable year which includes the last day of such taxable year of the common parent corporation must consent to such election at such time and in such manner as the Secretary or his delegate by regulations prescribes. An election under this paragraph shall be effective—

(A) for the taxable year of each member of such affiliated group which includes the last day of the taxable year of the common parent corporation with respect to which the election is made (except that in the case of a taxable year of a member beginning in 1963 and ending in 1964, if the election is effective for the taxable year of the common parent corporation which includes the last day of such taxable year of such member, such election shall be effective for such taxable year of such member, if such member consents to such election with respect to such taxable year), and

(B) for the taxable year of each member of such affiliated group which ends after the last day of such taxable year of the common parent corporation but which does not include such date, unless the election is terminated under paragraph (4).

(3) Effect of election.

If an election by an affiliated group is effective with respect to a taxable year of the common parent corporation, then under regulations prescribed by the Secretary or his delegate—

(A) no member of such affiliated group may consent to an election under section 1562 for such taxable year,

(B) the members of such affiliated group shall be treated as one taxpayer for purposes of making the elections under section 901(a) (re-

lating to allowance of foreign tax credit) and section 904(b)(1) (relating to election of overall limitation), and

(C) the members of such affiliated group shall be limited to one—

(i) $100,000 minimum accumulated earnings credit under section 535(c) (2) or (3),

(ii) $100,000 limitation for exploration expenditures under section 615 (a) and (b),

(iii) $400,000 limitation for exploration expenditures under sections 615(c)(1) and 617 (h)(1),

(iv) $25,000 limitation on small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10), and

(v) surtax exemption, and one amount under sections 6154(c)(2) and (3) and sections 6655(e)(2) and (3), for purposes of estimated tax payment requirements under section 6154 and the addition to the tax under section 6655 for failure to pay estimated tax.

(4) Termination.

An election by an affiliated group under paragraph (2) shall terminate with respect to the taxable year of the common parent corporation and with respect to the taxable years of the members of such affiliated group which include the last day of such taxable year of the common parent corporation if—

(A) Consent of members.

Such affiliated group files a termination of such election (at such time and in such manner as the Secretary or his delegate by regulations prescribes) with respect to such taxable year of the common parent corporation, and each corporation which is a member of such affiliated group at any time during its taxable year which includes the last day of such taxable year of the common parent corporation consents to such termination, or

(B) Refusal by new member to consent.

During such taxable year of the common parent corporation such affiliated group includes a member which—

(i) was not a member of such group during such common parent corporation's immediately preceding taxable year, and

(ii) such member files a statement that it does not consent to the election at such time and in such manner as the Secretary or his delegate by regulations prescribes.

(5) Definition of affiliated group.

For purposes of this subsection, the term "affiliated group" has the meaning assigned to it by section 1504(a), except that for such purposes sections 1504(b)(2) and 1504(c) shall not apply.

(6) Special rules for insurance companies.

If an election under this subsection is effective for the taxable year of an insurance company subject to taxation under section 802 or 821—

(A) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied without regard to section 1563(a)(4) (relating to certain insurance companies) and section 1563(b)(2)(D) (relating to certain excluded members) with respect to such company and the other corporations which are members of the controlled group of corporations (as determined under section 1563 without regard to subsections (a)(4) and (b)(2)(D)) of which such company is a member, and

(B) for purposes of paragraph (1), a distribution by such company out of earnings and profits of a taxable year for which an election under this subsection was not effective, and for which such company was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D), shall not be a qualifying dividend.

(c) Special rules for certain distributions.

For purposes of subsection (a)—

(1) Any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.) shall not be treated as a dividend.

(2) A dividend received from a regulated investment company shall be subject to the limitations prescribed in section 854.

(3) Any dividend received from a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following) shall not be treated as a dividend.

(4) Any dividend received which is described in section 244 (relating to dividends received on preferred stock of a public utility) shall not be treated as a dividend.

(d) Certain dividends from foreign corporations.

For purposes of subsection (a) and for purposes of section 245, any dividend from a foreign corporation from earnings and profits accumulated by a domestic corporation during a period with respect to which such domestic corporation was subject to taxation under this chapter (or corresponding provisions of prior law) shall be treated as a dividend from a domestic corporation which is subject to taxation under this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 73; Sept. 2, 1958, Pub. L. 85–866, title I, § 57(b), 72 Stat. 1645; Sept. 14, 1960, Pub. L. 86–779, §§ 3(a), 10(g), 74 Stat. 998, 1009; Feb. 26, 1964, Pub. L. 88–272, title II, § 214(a), 78 Stat. 52; June 28, 1968, Pub. L. 90–364, title I, § 103(e)(2), 82 Stat. 264; Dec. 30, 1969, Pub. L. 91–172, title V, § 504(c)(1), 83 Stat. 633.)

REFERENCES IN TEXT

Small Business Investment Act of 1958, referred to in subsec. (a)(2), is classified to chapter 14B of Title 15, Commerce and Trade.

AMENDMENTS

1969—Subsec. (b)(3)(C)(iii). Pub. L. 91–172 substituted "sections 615(c)(1) and 617(h)(1)" for "section 615(c)(1)."

1968—Subsec. (b)(3)(C)(v). Pub. L. 90–364 substituted "surtax exemption, and one amount under section 6154 (c)(2) and (3) and sections 6655(e)(2) and (3), for purposes of estimated tax payment requirements under section 6154" for "$100,000 exemption for purposes of estimated tax filing requirements under section 6016".

1964—Subsec. (a). Pub. L. 88–272 substituted provisions permitting a deduction for 85 percent of dividends

received except that it shall be 100 percent when received by a small business investment company operating under the Small Business Investment Act of 1958, and 100 percent in case of qualifying dividends, for provisions permitting an 85 percent deduction for corporations other than one operating under the Small Business Investment Act of 1958, and for other than dividends described in section 244(1) of this title.

Subsec. (b). Pub. L. 88–272 added subsec. (b) and omitted a prior subsec. (b) which allowed a 100 percent deduction of dividends received by a small business investment company operating under the Small Business Investment Act of 1958, other than dividends described in section 244(1) of this title.

Subsec. (c). Pub. L. 88–272 substituted "subsection (a)" for "subsections (a) and (b)", and added par. (4).

Subsec. (d). Pub. L. 88–272 substituted "subsection (a)" for "subsections (a) and (b)."

1960—Subsec. (c)(3). Pub. L. 86–779, § 10(g), added par. (3).

Subsec. (d). Pub. L. 86–779, § 3(a), added subsec. (d).

1958—Subsec. (a). Pub. L. 85–866, § 57 (b) (1), inserted "(other than a small business investment company operating under the Small Business Investment Act of 1958)".

Subsec. (b). Pub. L. 85–866, § 57 (b) (2), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–866, § 57 (b) (2), (3), redesignated former subsec. (b) as (c) and substituted "subsections (a) and (b)" for "subsection (a)".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90–364, set out as a note under section 6154 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 214(c) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) [to this section] and (b) [to sections 244, 246(b), 804(a)(5) and 809(d)(8)(B) of this title] shall apply with respect to dividends received in taxable years ending after December 31, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of subsec. (c)(3) by Pub. L. 86–779, § 10(g) applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

Section 3(c) of Pub. L. 86–779 provided that: "The amendments made by subsections (a) and (b) [adding subsec. (d) of this section and amending section 861 (a)(2) of this title] shall apply to dividends received after December 31, 1959, in taxable years ending after such date."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 57 (d) of Pub. L. 85–866 provided that: "The amendments [adding sections 165 (h) (3), (4) 1242 and 1243 and amending section 246 (b) (1) of this title and subsecs. (a)—(c) of this section] made by this section shall apply with respect to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1958]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 172, 245, 246, 301, 596, 804, 809, 812, 815, 854, 857, 861, 1111, 1244, 1564 of this title.

§ 244. Dividends received on certain preferred stock.

(a) General rule.

In the case of a corporation, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the deduction provided in section 247 for dividends paid is allowable.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

(3) Finally ascertain the amount which is 85 percent of the excess of—

(A) the amount determined under paragraph (1), over

(B) the amount determined under paragraph (2).

(b) Exception.

If the dividends described in subsection (a)(1) are qualifying dividends (as defined in section 243 (b)(1), but determined without regard to section 243 (c)(4))—

(1) subsection (a) shall be applied separately to such qualifying dividends, and

(2) for purposes of subsection (a)(3), the percentage applicable to such qualifying dividends shall be 100 percent in lieu of 85 percent.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Feb. 26, 1964, Pub. L. 88–272, title II, § 214(b)(1), 78 Stat. 55.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–272 designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

CROSS REFERENCES

Definition of public utility, see section 247 (b) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 57, 172, 243, 246, 247, 301, 596, 804, 809, 812, 815, 1111, 1244, 1562 of this title.

§ 245. Dividends received from certain foreign corporations.

(a) General rule.

In the case of dividends received from a foreign corporation (other than a foreign personal holding company) which is subject to taxation under this chapter, if, for an uninterrupted period of not less than 36 months ending with the close of such foreign corporation's taxable year in which such dividends are paid (or, if the corporation has not been in existence for 36 months at the close of such taxable year, for the period the foreign corporation has been in existence as of the close of such taxable year) such foreign corporation has been engaged in trade or business within the United States and if 50 percent or more of the gross income of such corporation from all sources for such period is effectively con-

nected with the conduct of a trade or business within the United States, there shall be allowed as a deduction in the case of a corporation—

(1) An amount equal to the percent (specified in section 243 for the taxable year) of the dividends received out of its earnings and profits specified in paragraph (2) of the first sentence of section 316(a), but such amount shall not exceed an amount which bears the same ratio to such percent of such dividends received out of such earnings and profits as the gross income of such foreign corporation for the taxable year which is effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources for such taxable year, and

(2) An amount equal to the percent (specified in section 243 for the taxable year) of the dividends received out of that part of its earnings and profits specified in paragraph (1) of the first sentence of section 316 (a) accumulated after the beginning of such uninterrupted period, but such amount shall not exceed an amount which bears the same ratio to such percent of such dividends received out of such accumulated earnings and profits as the gross income of such foreign corporation, which is effectively connected with the conduct of a trade or business within the United States, for the portion of such uninterrupted period ending at the beginning of such taxable year bears to its gross income from all sources for such portion of such uninterrupted period.

For purposes of this subsection, the gross income of the foreign corporation for any period before the first taxable year beginning after December 31, 1966, which is effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources within the United States. For purposes of paragraph (2), there shall not be taken into account any taxable year within such uninterrupted period if, with respect to dividends paid out of the earnings and profits of such year, the deduction provided by subsection (b) would be allowable.

(b) Certain dividends received from wholly owned foreign subsidiaries.

(1) In general.

In the case of dividends described in paragraph (2) received from a foreign corporation by a domestic corporation which, for its taxable year in which such dividends are received, owns (directly or indirectly) all of the outstanding stock of such foreign corporation, there shall be allowed as a deduction (in lieu of the deduction provided by subsection (a)) an amount equal to 100 percent of such dividends.

(2) Eligible dividends.

Paragraph (1) shall apply only to dividends which are paid out of the earnings and profits of a foreign corporation for a taxable year during which—

(A) all of its outstanding stock is owned (directly or indirectly) by the domestic corporation to which such dividends are paid; and

(B) all of its gross income from all sources is effectively connected with the conduct of a trade or business within the United States.

(3) Exception.

Paragraph (1) shall not apply to any dividends if an election under section 1562 is effective for either—

(A) the taxable year of the domestic corporation in which such dividends are received, or

(B) the taxable year of the foreign corporation out of the earnings and profits of which such dividends are paid.

(c) Property distributions.

For purposes of subsections (a) and (b), the amount of any distribution of property other than money shall be the amount determined by applying section 301(b)(1)(B). (Aug. 16, 1954, ch. 736, 68A Stat. 73; Oct. 16, 1962, Pub. L. 87-834, § 5(c), 76 Stat. 977; Nov. 13, 1966, Pub. L. 89-809, title I, § 104 (d), (e), 80 Stat. 1558.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809, § 104(d), (e)(2), substituted "and if 50 percent or more of the gross income of such corporation from all sources for such period is effectively connected with the conduct of a trade or business within the United States" for "and has derived 50 percent or more of its gross income from sources within the United States" in the material preceding par. (1), "which is effectively connected with the conduct of a trade or business within the United States" for "from sources within the United States" in par. (1), ", which is effectively connected with the conduct of a trade or business within the United States," for "from sources within the United States" in par. (2), and added material following par. (2).

Subsec. (b). Pub. L. 89-809, § 104(e)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 89-809, § 104(e)(1), (3), redesignated former subsec. (b) as (c), and substituted therein "subsections (a) and (b)" for "subsection (a)."

1962—Pub. L. 87-834 designated existing provisions as subsec. (a), inserting therein the subsection catchline, and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable to distributions made after Dec. 31, 1962, see section 5(d) of Pub. L. 87-834, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 78, 172, 243, 246, 301, 596, 804, 809, 812, 815, 861, 1111, 1244 of this title.

§ 246. Rules applying to deductions for dividends received.

(a) Deduction not allowed for dividends from certain corporations.

The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from—

(1) a corporation organized under the China Trade Act, 1922 (see sec. 941); or

(2) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is—

(A) a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

(B) a corporation to which section 931 (relating to income from sources within possessions of the United States) applies.

(b) Limitation on aggregate amount of deductions.

(1) General rule.

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall not exceed 85 percent of the taxable income computed without regard to the deductions allowed by sections 172, 243(a)(1), 244(a), 245, and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) Effect of net operating loss.

Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(c) Exclusion of certain dividends.

(1) In general.

No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock—

(A) which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 15 days or less, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make corresponding payments with respect to substantially identical stock or securities.

(2) 90-day rule in the case of certain preference dividends.

In the case of any stock having preference in dividends, the holding period specified in paragraph (1) (A) shall be 90 days in lieu of 15 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days.

(3) Determination of holding periods.

For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account.

(B) there shall not be taken into account any day which is more than 15 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and

(C) paragraph (4) of section 1223 shall not apply.

The holding periods determined under the preceding provisions of this paragraph shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary or his delegate) for any period (during such holding periods) in which the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities.

(d) Cross reference.

For special rule relating to mutual savings banks, etc., to which section 593 applies, see section 596.

(Aug. 16, 1954, ch. 736, 68A Stat. 74; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 18(a), 57(c)(2), 72 Stat. 1614, 1646; Feb. 26, 1964, Pub. L. 88-272, title II, § 214(b)(2), 78 Stat. 55; Dec. 30, 1969, Pub. L. 91-172, title IV, § 434(b)(1), title V, § 512(f)(3), 83 Stat. 625, 641.)

REFERENCES IN TEXT

The China Trade Act, 1922, referred to in subsec. (a)(1), is classified to section 141 et seq. of Title 15, Commerce and Trade.

AMENDMENTS

1969—Subsec. (b)(1). Pub. L. 91-172, § 512(f)(3), substituted "and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)" for "and 247."

Subsec. (d). Pub. L. 91-172, § 434(b)(1), added subsec. (d).

1964—Subsec. (b). Pub. L. 88-272 substituted "243(a)(1), 244(a)" for "243(a), 244" wherever appearing.

1958—Subsec. (b)(1). Pub. L. 85-866, § 57(c)(2), substituted "243(a)" for "243" wherever appearing.

Subsec. (c). Pub. L. 85-866, § 18(a), added subsec. (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (b)(1) of this section by section 512(f)(3) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Subsec. (d) of this section applicable to taxable years beginning after July 11, 1969, see section 434(c) of Pub. L. 91-172, set out as a note under section 596 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88-272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b)(1) applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57 (d) of Pub. L. 85-866, set out as a note under section 243 of this title.

Section 18 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [which added subsec. (c) of this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired or short sales made after December 31, 1957."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 172, 804, 809, 812, 822, 852, 857 of this title.

§ 247. Dividends paid on certain preferred stock of public utilities.

(a) Amount of deduction.

In the case of a public utility, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount which is the lesser of—

(A) the amount of dividends paid during the taxable year on its preferred stock, or

(B) the taxable income for the taxable year (computed without the deduction allowed by this section).

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11.

For purposes of the deduction provided in this section, the amount of dividends paid shall not include any amount distributed in the current taxable year with respect to dividends unpaid and accumulated in any taxable year ending before October 1, 1942. Amounts distributed in the current taxable year with respect to dividends unpaid and accumulated for a prior taxable year shall for purposes of this subsection be deemed to be distributed with respect to the earliest year or years for which there are dividends unpaid and accumulated.

(b) Definitions.

For purposes of this section and section 244—

(1) Public utility.

The term "public utility" means a corporation engaged in the furnishing of telephone service or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

(2) Preferred stock.

The term "preferred stock" means stock issued before October 1, 1942, which during the whole of the taxable year (or the part of the taxable year after its issue) was stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock. Stock issued on or after October 1, 1942, shall be deemed for purposes of this paragraph to have been issued before October 1, 1942, if it was issued (including issuance either by the same or another corporation in a transaction which is a reorganization (as defined in section 368 (a)), a transaction to which section 371 (relating to insolvency reorganizations) applies, or a transaction subject to part VI of subchapter O (relating to exchanges in SEC obedience orders), or the respectively corresponding provisions of the Internal Revenue Code of 1939) to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock (including stock which is preferred stock by reason of this sentence), but only to the extent that the par or stated value of the new stock does not exceed the par, stated, or face value of the bonds or debentures issued before October 1, 1942, or the other preferred stock, which such new stock is issued to refund or replace. The determination of whether stock was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock, shall be made under regulations prescribed by the Secretary or his delegate.

(Aug. 16, 1954, ch. 736, 68A Stat. 75.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 172, 244, 1562 of this title.

§ 248. Organizational expenditures.

(a) Election to amortize.

The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Secretary or his delegate), be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business).

(b) Organizational expenditures defined.

The term "organizational expenditures" means any expenditure which—

(1) is incident to the creation of the corporation;

(2) is chargeable to capital account; and

(3) is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

(c) Time for and scope of election.

The election provided by subsection (a) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The period so elected shall be adhered to in computing the taxable income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred on or after the date of enactment of this title. (Aug. 16, 1954, ch. 736, 68A Stat. 76.)

CROSS REFERENCES

Capital expenditures not deductible, see section 263 of this title.

Time for filing returns, see sections 6072, 6081 of this title.

Trade or business expenses deductible, see section 162 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 822, 1247, 1373, 1374 of this title.

§ 249. Limitation on deduction of bond premium on repurchase.

(a) General rule.

No deduction shall be allowed to the issuing corporation for any premium paid or incurred upon the repurchase of a bond, debenture, note, or certificate or other evidence of indebtedness which is convertible into the stock of the issuing corporation, or a corporation in control of, or controlled by, the issuing corporation, to the extent the repurchase price exceeds an amount equal to the adjusted issue price plus a normal call premium on bonds or other evidences of indebtedness which are not convertible. The preceding sentence shall not apply to the extent that the corporation can demonstrate to the satisfaction of the Secretary or his delegate that such excess is attributable to the cost of borrowing and is not attributable to the conversion feature.

(b) Special rules.

For purposes of subsection (a)—

(1) Adjusted issue price.

The adjusted issue price is the issue price (as defined in section 1232(b)) increased by any amount of discount deducted before repurchase, or, in the case of bonds or other evidences of indebtedness issued after February 28, 1913, decreased by any amount of premium included in gross income before repurchase by the issuing corporation.

(2) Control.

The term "control" has the meaning assigned to such term by section 368(c).

(Added Pub. L. 91–172, title IV, § 414(a), Dec. 30, 1969, 83 Stat. 612.)

EFFECTIVE DATE

Section 414(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply to a convertible bond or other convertible evidence of indebtedness repurchased after April 22, 1969, other than such a bond or other evidence of indebtedness repurchased pursuant to a binding obligation incurred on or before April 22, 1969, to repurchase such bond or other evidence of indebtedness at a specified call premium, but no inference shall be drawn from the fact that section 249 of the Internal Revenue Code of 1954 [this section] (as added by subsection (a) of this section) does not apply to the repurchase of such convertible bond or other convertible evidence of indebtedness."

§ 250. Certain payments to the National Railroad Passenger Corporation.

(a) General rule.

If—

(1) any corporation which is a common carrier by railroad (as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3) makes a payment in cash, rail passenger equipment, or services to the National Railroad Passenger Corporation (hereinafter in this section referred to as the "Passenger Corporation") pursuant to a contract entered into under section 401(a) of the Rail Passenger Service Act of 1970, and

(2) no stock in the Passenger Corporation is issued at any time to such corporation in connection with any contract entered into under such section 401(a),

then the amount of such payment shall (subject to subsection (c)) be allowed as a deduction for the taxable year in which it is made.

(b) When payment is made.

Under regulations prescribed by the Secretary or his delegate, a payment in rail passenger equipment shall be treated as made when title to the equipment is transferred, and a payment in services shall be treated as made when the services are rendered.

(c) Effect of certain subsequent acquisitions of stock.

(1) Disallowance of deductions.

If any deduction has been allowed under subsection (a) to a corporation and such corporation (or a successor corporation) acquires any stock in the Passenger Corporation (other than in a transaction described in section 374 or 381) before the close of the 36-month period which begins with the day on which the last payment is made to the Passenger Corporation pursuant to the contract entered into under such section 401(a), then such deduction shall be disallowed (as of the close of the taxable year for which it was allowed under subsection (a)).

(2) Collection of deficiency.

If any deduction is disallowed by reason of paragraph (1), then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such a disallowance, include one year following the date on which the person acquiring the stock which results in the disallowance (in accordance with regulations prescribed by the Secretary or his delegate) notifies the Secretary or his delegate of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(d) Members of controlled group.

Under regulations prescribed by the Secretary or his delegate, if a corporation is a member of a controlled group of corporations (within the meaning of section 1563), subsections (a)(2) and (c) shall be applied by treating all members of such controlled group as one corporation. (Added Pub. L. 91–518, title IX, § 901(a), Oct. 30, 1970, 84 Stat. 1341.)

REFERENCES IN TEXT

Section 1(3) of the Interstate Commerce Act, referred to in subsec. (a)(1), is section 1(3) of Title 49, Transportation.

Section 401(a) of the Rail Passenger Service Act of 1970, referred to in subsec. (a)(1), is classified to section 561(a) of Title 45, Railroads.

EFFECTIVE DATE

Section 901(c) of Pub. L. 91–518 provided that: "The amendments made by this section [adding this section] shall apply to taxable years ending after the date of the enactment of this Act [October 30, 1970]."

PART IX.—ITEMS NOT DEDUCTIBLE

Sec.
261. General rule for disallowance of deductions.
262. Personal, living, and family expenses.
263. Capital expenditures.
264. Certain amounts paid in connection with insurance contracts.
265. Expenses and interest relating to tax-exempt income.
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268. Sale of land with unharvested crop.
269. Acquisitions made to evade or avoid income tax.
271. Debts owed by political parties, etc.
272. Disposal of coal or domestic iron ore.
273. Holders of life or terminable interest.
274. Disallowance of certain entertainment, etc., expenses.
275. Certain taxes.
276. Certain indirect contributions to political parties.
277. Deductions incurred by certain membership organizations in transactions with members.
278. Capital expenditures incurred in planting and developing citrus and almond groves.
279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation.

AMENDMENTS

1971—Pub. L. 91–680, § 1(c), Jan. 12, 1971, 84 Stat. 2064, added "and almond" following "citrus" in item 278.

1969—Pub. L. 91–172, title I, § 121(b)(3)(B), title II, §§ 213(c)(2), 216(b), title IV, § 411(b), Dec. 30, 1969, 83

Stat. 541, 572, 574, 608, struck out item 270, limitation on deductions allowable to individuals in certain cases, and added items 277 to 279.

1966—Pub. L. 89-368, title III, § 301(b), Mar. 15, 1966, 80 Stat. 67, added item 276.

1964—Pub. L. 88-272, title II, §§ 207(b)(3)(B), 227(b)(4), Feb. 26, 1964, 78 Stat. 42, 98, inserted "or domestic iron ore" in item 272, and added item 275.

1962—Pub. L. 87-834, § 4(a)(2), Oct. 16, 1962, 76 Stat. 976, added item 274.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 161, 211 of this title.

§ 261. General rule for disallowance of deductions.

In computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part. (Aug. 16, 1954, ch. 736, 68A Stat. 76.)

§ 262. Personal, living, and family expenses.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses. (Aug. 16, 1954, ch. 736, 68A Stat. 76.)

CROSS REFERENCES

Additional exemption for students, see section 151 (e) of this title.

Expenses for care of dependents deductible, see section 214 of this title.

Medical and dental expenses deductible, see section 213 of this title.

Non-trade or non-business expenses deductible, see section 212 of this title.

Trade or business expenses deductible, see section 162 of this title.

Traveling expenses including meals and lodging deductible, see section 162 (a) (2) of this title.

§ 263. Capital expenditures.

(a) General rule.

No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) expenditures for the development of mines or deposits deductible under section 616,

(B) research and experimental expenditures deductible under section 174,

(C) soil and water conservation expenditures deductible under section 175,

(D) expenditures by farmers for fertilizer, etc., deductible under section 180, or

(E) expenditures by farmers for clearing land deductible under section 182.

(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

(3) Except as provided in subsection (d), any amount paid as tax under section 4911 (relating to imposition of interest equalization tax).

(b) Expenditures for advertising and good will.

If a corporation has, for the purpose of computing its excess profits tax credit under chapter 2E or subchapter D of chapter 1 of the Internal Revenue Code of 1939 claimed the benefits of the election provided in section 733 or section 451 of such code, as the case may be, no deduction shall be allowable under section 162 to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451 of such code, as the case may be, may be regarded as capital investments.

(c) Intangible drilling and development costs in the case of oil and gas wells.

Notwithstanding subsection (a), regulations shall be prescribed by the Secretary or his delegate under this subtitle corresponding to the regulations which granted the option to deduct as expenses intangible drilling and development costs in the case of oil and gas wells and which were recognized and approved by the Congress in House Concurrent Resolution 50, Seventy-ninth Congress.

(d) Reimbursement of interest equalization tax.

The deduction allowed by section 162(a) or 212 (whichever is appropriate) shall include any amount paid or accrued in the taxable year or a preceding taxable year as tax under section 4911 (relating to imposition of interest equalization tax) to the extent that any amount attributable to the amount paid or accrued as tax is included in gross income for the taxable year. Under regulations prescribed by the Secretary or his delegate, the preceding sentence shall not apply with respect to any amount attributable to that part of the tax so paid or accrued which is attributable to an amount for which a deduction has been claimed for the taxable year or a preceding taxable year under section 171 (relating to amortization of bond premium).

(e) Expenditures in connection with certain railroad rolling stock.

In the case of expenditures in connection with the rehabilitation of a unit of railroad rolling stock (except a locomotive) used by a domestic common carrier by railroad which would, but for this subsection, be properly chargeable to capital account, such expenditures, if during any 12-month period they do not exceed an amount equal to 20 percent of the basis of such unit in the hands of the taxpayer, shall be treated (notwithstanding subsection (a)) as deductible repairs under section 162 or 212. (Aug. 16, 1954, ch. 736, 68A Stat. 77; Sept. 14, 1960, Pub. L. 86-779, § 6(c), 74 Stat. 1001; Oct. 16, 1962, Pub. L. 87-834, §21(b), 76 Stat. 1064; Sept. 2, 1964, Pub. L. 88-563, § 4, 78 Stat. 845; Oct. 9, 1965, Pub. L. 89-243, § 4(p)(1), (2), 79 Stat. 964; Dec. 30, 1969, Pub. L. 91-172, title VII, § 706(a), 83 Stat. 674.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91-172 added subsec. (e).

1965—Subsec. (a)(3). Pub. L. 89-243, § 4(p)(1), inserted "Except as provided in subsection (d)", and deleted "except to the extent that any amount attributable to the amount paid as tax is included in gross income for the taxable year" following the parenthetical material.

Subsec. (d). Pub. L. 89-243, § 4(p)(2), added subsec. (d).

1964—Subsec. (a). Pub. L. 88-563 added par. (3).

1962—Subsec. (a)(1)(E). Pub. L. 87-834 added subsec. (a)(1)(E).

1960—Subsec. (a)(1)(D). Pub. L. 86-779 added subpar. (D).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 706(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4(p)(3) of Pub. L. 89-243 provided that: "The amendments made by this subsection [to this section] shall apply to taxable years ending after September 2, 1964."

Amendment of section by section 4 of Pub. L. 89-243 applicable with respect to acquisitions of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89-243 and in the amendments made by such section, see section 4(q) of Pub. L. 89-243, set out as a note under section 4914 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 21(d) of Pub. L. 87-834, set out as a note under section 182 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-779 applicable to taxable years beginning after Dec. 31, 1959, see section 6(d) of Pub. L. 86-779, set out as a note under section 180 of this title.

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89-243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(g) of Pub. L. 89-243, set out as a note under section 4931 of this title.

CROSS REFERENCES

Non-trade or non-business expenses deductible, see section 212 of this title.

Reasonable allowance for exhaustion, see section 167 of this title.

Trade or business expenses deductible, see section 162 of this title.

§ 264. Certain amounts paid in connection with insurance contracts.

(a) General rule.

No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

(2) Any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract

(3) Except as provided in subsection (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise).

Paragraph (2) shall apply in respect of annuity contracts only as to contracts purchased after March 1, 1954. Paragraph (3) shall apply only in respect of contracts purchased after August 6, 1963.

(b) Contracts treated as single premium contracts.

For purposes of subsection (a)(2), a contract shall be treated as a single premium contract—

(1) if substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or

(2) if an amount is deposited after March 1, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(c) Exceptions.

Subsection (a)(3) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in subsection (a)(3)—

(1) if no part of 4 of the annual premiums due during the 7-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by means of indebtedness,

(2) if the total of the amounts paid or accrued by such person during such taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of subsection (a)(3) does not exceed $100,

(3) if such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in his financial obligations, or

(4) if such indebtedness was incurred in connection with his trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new 7-year period described in such paragraph with respect to such contract shall commence on the date the first such increased premium is paid. (Aug. 16, 1954, ch. 736, 68A Stat. 77; Feb. 26, 1964, Pub. L. 88-272, title II, § 215 (a), (b), 78 Stat. 55.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-272 inserted par. (3), and provided that it shall apply only to contracts purchased after August 6, 1963.

Subsec. (c). Pub. L. 88-272 added subsec. (c).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 215(c) of Pub. L. 88-272 provided that: "The amendments made by this section [to this section] shall apply with respect to amounts paid or accrued in taxable years beginning after December 31, 1963."

CROSS REFERENCES

Interest paid deductible, see section 163 of this title.

§ 265. Expenses and interest relating to tax-exempt income.

No deduction shall be allowed for—

(1) Expenses.

Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) Interest.

Interest on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest on which is wholly exempt from the taxes imposed by this subtitle.

In applying the preceding sentence to a financial institution (other than a bank) which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and which is subject to the banking laws of the State in which such institution is incorporated, interest on face-amount certificates (as defined in section 2(a)(15) of such Act) issued by such institution, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle, to the extent that the average amount of such obligations held by such institution during the taxable year (as determined under regulations prescribed by the Secretary or his delegate) does not exceed 15 percent of the average of the total assets held by such institution during the taxable year (as so determined).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Feb. 26, 1964, Pub. L. 88–272, title II, § 216(a), 78 Stat. 56.)

REFERENCES IN TEXT

Section 2(a)(15) of such Act, referred to in par. (2), is classified to section 80a–2 of Title 15, Commerce and Trade.

AMENDMENTS

1964—Par. (2). Pub. L. 88–272 provided that interest on face-amount certificates issued by a face-amount certificate company, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered interest on indebtedness to purchase or carry obligations the interest on which is wholly exempt from the taxes under this subtitle, to the extent the average amount of such obligations held by such institution during the taxable year doesn't exceed 15 percent of the average total assets held by such institution during the taxable year.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 216(b) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [February 21, 1964]."

CROSS REFERENCES

Double deductions prohibited by certain insurance companies, see section 832 of this title.

Interest paid deductible, see section 163 of this title.

Tax-exempt interest relating to estates and trusts, see section 643 (a) (5) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 861, 4940, 4942 of this title.

§ 266. Carrying charges.

No deduction shall be allowed for amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the Secretary or his delegate, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable. (Aug. 16, 1954, ch. 736, 68A Stat. 78.)

CROSS REFERENCES

Adjustment to losses for carrying charges, see section 1016 (a) (1) (A) of this title.

Capital expenditures not deductible, see section 263 of this title.

Interest paid deductible, see section 163 of this title.

Taxes deductible, see section 164 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 267. Losses, expenses, and interest with respect to transactions between related taxpayers.

(a) Deductions disallowed.

No deduction shall be allowed—

(1) Losses.

In respect of losses from sales or exchanges of property (other than losses in cases of distributions in corporate liquidations), directly or indirectly, between persons specified within any one of the paragraphs of subsection (b).

(2) Unpaid expenses and interest.

In respect of expenses, otherwise deductible under section 162 or 212, or of interest, otherwise deductible under section 163,—

(A) If within the period consisting of the taxable year of the taxpayer and 2½ months after the close thereof (i) such expenses or interest are not paid, and (ii) the amount thereof is not includible in the gross income of the person to whom the payment is to be made; and

(B) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(C) If, at the close of the taxable year of the taxpayer or at any time within 2½ months thereafter, both the taxpayer and the person to whom the payment is to be made are persons specified within any one of the paragraphs of subsection (b).

(b) Relationships.

The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c) (4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust; or

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual.

(c) Constructive ownership of stock.

For purposes of determining, in applying subsection (b), the ownership of stock—

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

(d) Amount of gain where loss previously disallowed.

If—

(1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a) (1) (or by reason of section 24 (b) of the Internal Revenue Code of 1939); and

(2) after December 31, 1953, the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain,

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection applies with respect to taxable years ending after December 31, 1953. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales) or by reason of section 118 of the Internal Revenue Code of 1939. (Aug. 16, 1954, ch. 736, 68A Stat. 78.)

CROSS REFERENCES

Corporate and individual losses deductible, see section 165 of this title.

Interest paid deductible, see section 163 of this title.

Subsection (c) of this section applicable to unincorporated business enterprises, see section 1361 (g) of this title.

Transaction between partners, see section 707 (b) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 170, 178, 274, 341, 503, 514, 631, 707, 1235, 1237, 1341, 4946 of this title.

§ 268. Sale of land with unharvested crop.

Where an unharvested crop sold by the taxpayer is considered under the provisions of section 1231 as "property used in the trade or business", in computing taxable income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed. (Aug. 16, 1954, ch. 736, 68A Stat. 80.)

CROSS REFERENCES

Adjustment to basis for deductions disallowed under this section, see section 1016 (a) (11) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 269. Acquisitions made to evade or avoid income tax.

(a) In general.

If—

(1) any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary or his delegate may disallow such deduction, credit, or other allowance. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(b) Power of Secretary or his delegate to allow deduction, etc., in part.

In any case to which subsection (a) applies the Secretary or his delegate is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or

allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(c) Presumption in case of disproportionate purchase price.

The fact that the consideration paid upon an acquisition by any person or corporation described in subsection (a) is substantially disproportionate to the aggregate—

(1) of the adjusted basis of the property of the corporation (to the extent attributable to the interest acquired specified in paragraph (1) of subsection (a)), or of the property acquired specified in paragraph (2) of subsection (a); and

(2) of the tax benefits (to the extent not reflected in the adjusted basis of the property) not available to such person or corporation otherwise than as a result of such acquisition,

shall be prima facie evidence of the principal purpose of evasion or avoidance of Federal income tax. This subsection shall apply only with respect to acquisitions after March 1, 1954. (Aug. 16, 1954, ch. 736, 68A Stat. 80; Feb. 26, 1964, Pub. L. 88-272, title II, § 235(c)(2), 78 Stat. 126.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-272 substituted "the Secretary or his delegate may disallow such deduction, credit, or other allowance" for "such deduction, credit or other allowance shall not be allowed."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88-272 set out as a note under section 1551 of this title.

CROSS REFERENCES

Disallowance of surtax exemption and accumulated earnings credit, see section 1551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1551 of this title.

§ 270. Repealed. Pub. L. 91-172, title II, § 213(b), Dec. 30, 1969, 83 Stat. 572.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 81, related to the limitation on deductions allowable to certain individuals. See section 183 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to taxable years beginning after Dec. 31, 1969, see section 213(d) of Pub. L. 91-172, set out as a note under section 183 of this title.

§ 271. Debts owed by political parties, etc.

(a) General rule.

In the case of a taxpayer (other than a bank as defined in section 581) no deduction shall be allowed under section 166 (relating to bad debts) or under section 165 (g) (relating to worthlessness of securities) by reason of the worthlessness of any debt owed by a political party.

(b) Definitions.

(1) Political party.

For purposes of subsection (a), the term "political party" means—

(A) a political party;

(B) a national, State, or local committee of a political party; or

(C) a committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice-presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected.

(2) Contributions.

For purposes of paragraph (1) (C), the term "contributions" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable.

(3) Expenditures.

For purposes of paragraph (1) (C), the term "expenditures" includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

(Aug. 16, 1954, ch. 736, 68A Stat. 82.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 276 of this title.

§ 272. Disposal of coal or domestic iron ore.

Where the disposal of coal or iron ore is covered by section 631, no deduction shall be allowed for expenditures attributable to the making and administering of the contract under which such disposition occurs and to the preservation of the economic interest retained under such contract, except that if in any taxable year such expenditures plus the adjusted depletion basis of the coal or iron ore disposed of in such taxable year exceed the amount realized under such contract, such excess, to the extent not availed of as a reduction of gain under section 1231, shall be a loss deductible under section 165 (a). This section shall not apply to any taxable year during which there is no income under the contract. (Aug. 16, 1954, ch. 736, 68A Stat. 82; Feb. 26, 1964, Pub. L. 88-272, title II, § 227 (a)(3), (b)(3), 78 Stat. 98.)

AMENDMENTS

1964—Pub. L. 88-272 inserted "or domestic iron ore" in the section catchline, and "or iron ore" wherever appearing in the text.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 227(c) of Pub. L. 88-272 provided that: "The amendments made by this section [to this section, and sections 631, 1016, 1231, and 1402, and to the analysis preceding sections 261 and 631 of this title, and to section 411 of Title 42, Public Health and Welfare] shall apply with respect to amounts received or accrued in taxable years beginning after December 31, 1963, attributable to iron ore mined in such taxable years."

CROSS REFERENCES

Adjustment to basis for deductions disallowed under this section, see section 1016 (a) (15) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 1016 of this title.

§ 273. Holders of life or terminable interest.

Amounts paid under the laws of a State, a Territory, the District of Columbia, a possession of the United States, or a foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time. (Aug. 16, 1954, ch. 736, 68A Stat. 83.)

§ 274. Disallowance of certain entertainment, etc., expenses.

(a) Entertainment, amusement, or recreation.

(1) In general.

No deduction otherwise allowable under this chapter shall be allowed for any item—

(A) Activity.

With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, unless the taxpayer establishes that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct of the taxpayer's trade or business, or

(B) Facility.

With respect to a facility used in connection with an activity referred to in subparagraph (A), unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business,

and such deduction shall in no event exceed the portion of such item directly related to, or, in the case of an item described in subparagraph (A) directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), the portion of such item associated with, the active conduct of the taxpayer's trade or business.

(2) Special rules.

For purposes of applying paragraph (1)—

(A) Dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities.

(B) An activity described in section 212 shall be treated as a trade or business.

(b) Gifts.

(1) Limitation.

No deduction shall be allowed under section 162 or section 212 for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds $25. For purposes of this section, the term "gift" means any item excludable from gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of this chapter, but such term does not include—

(A) an item having a cost to the taxpayer not in excess of $4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer,

(B) a sign, display rack, or other promotional material to be used on the business premises of the recipient, or

(C) an item of tangible personal property having a cost to the taxpayer not in excess of $100 which is awarded to an employee by reason of length of service or for safety achievement.

(2) Special rules.

(A) In the case of a gift by a partnership, the limitation contained in paragraph (1) shall apply to the partnership as well as to each member thereof.

(B) For purposes of paragraph (1), a husband and wife shall be treated as one taxpayer.

(c) Certain foreign travel.

(1) In general.

In the case of any individual who travels outside the United States away from home in pursuit of a trade or business or in pursuit of an activity described in section 212, no deduction shall be allowed under section 162 or section 212 for that portion of the expenses of such travel otherwise allowable under such section which, under regulations prescribed by the Secretary or his delegate, is not allocable to such trade or business or to such activity.

(2) Exception.

Paragraph (1) shall not apply to the expenses of any travel outside the United States away from home if—

(A) such travel does not exceed one week, or

(B) the portion of the time of travel outside the United States away from home which is not attributable to the pursuit of the taxpayer's trade or business or an activity described in section 212 is less than 25 percent of the total time on such travel.

(3) Domestic travel excluded.

For purposes of this subsection, travel outside the United States does not include any travel from one point in the United States to another point in the United States.

(d) Substantiation required.

No deduction shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity, or

(3) for any expense for gifts,

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating his own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility, or the date and description of the gift, (C) the

business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility, or receiving the gift. The Secretary or his delegate may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations.

(e) Specific exceptions to application of subsection (a).

Subsection (a) shall not apply to—

(1) Business meals.

Expenses for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.

(2) Food and beverages for employees.

Expenses for food and beverages (and facilities used in connection therewith) furnished on the business premises of the taxpayer primarily for his employees.

(3) Expenses treated as compensation.

Expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

(4) Reimbursed expenses.

Expenses paid or incurred by the taxpayer, in connection with the performance by him of services for another person (whether or not such other person is his employer), under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply—

(A) where the services are performed for an employer, only if the employer has not treated such expenses in the manner provided in paragraph (3), or

(B) where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided by subsection (d)) to such person.

(5) Recreational, etc., expenses for employees.

Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees (other than employees who are officers, shareholders or other owners, or highly compensated employees). For purposes of this paragraph, an individual owning less than a 10-percent interest in the taxpayer's trade or business shall not be considered a shareholder or other owner, and for such purposes an individual shall be treated as owning any interest owned by a member of his family (within the meaning of section 267(c)(4)).

(6) Employees, stockholder, etc., business meetings.

Expenses incurred by a taxpayer which are directly related to business meetings of his employees, stockholders, agents, or directors.

(7) Meetings of business leagues, etc.

Expenses directly related and necessary to attendance at a business meeting or convention of any organization described in section 501(c)(6) (relating to business leagues, chambers of commerce, real estate boards, and boards of trade) and exempt from taxation under section 501(a).

(8) Items available to public.

Expenses for goods, services, and facilities made available by the taxpayer to the general public.

(9) Entertainment sold to customers.

Expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.

For purposes of this subsection, any item referred to in subsection (a) shall be treated as an expense.

(f) Interest, taxes, casualty losses, etc.

This section shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity). In the case of a taxpayer which is not an individual, the preceding sentence shall be applied as if it were an individual.

(g) Treatment of entertainment, etc., type facility.

For purposes of this chapter, if deductions are disallowed under subsection (a) with respect to any portion of a facility, such portion shall be treated as an asset which is used for personal, living, and family purposes (and not as an asset used in the trade or business).

(h) Regulatory authority.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to carry out the purposes of this section, including regulations prescribing whether subsection (a) or subsection (b) applies in cases where both such subsections would otherwise apply. (Added Pub. L. 87-834, § 4(a)(1), Oct. 16, 1962, 76 Stat. 974, and amended Pub. L. 88-272, title II, § 217(a), Feb. 26, 1964, 78 Stat. 56.)

AMENDMENTS

1964—Subsec. (c). Pub. L. 88-272 limited subsec. (c) to individuals traveling outside the United States.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 217(b) of Pub. L. 88-272 provided that: "The amendment made by subsection (a) [to subsec. (c) of this section] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1962, but only in respect of periods after such date, see section 4(c) of Pub. L. 87-834, set out as a note under section 162 of this title.

§ 275. Certain taxes.

(a) General rule.

No deduction shall be allowed for the following taxes:

(1) Federal income taxes, including—

(A) the tax imposed by section 3101 (relating to the tax on employees under the Federal Insurance Contributions Act);

(B) the taxes imposed by sections 3201 and 3211 (relating to the taxes on railroad employees and railroad employee representatives); and

(C) the tax withheld at source on wages under section 3402, and corresponding provisions of prior revenue laws.

(2) Federal war profits and excess profits taxes.

(3) Estate, inheritance, legacy, succession, and gift taxes.

(4) Income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States, if the taxpayer chooses to take to any extent the benefits of section 901 (relating to the foreign tax credit).

(5) Taxes on real property, to the extent that section 164(d) requires such taxes to be treated as imposed on another taxpayer.

(b) Cross reference.

For disallowance of certain other taxes, see section 164(c).

(Added Pub. L. 88–272, title II, § 207(b)(3)(A), Feb. 26, 1964, 78 Stat. 42.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (a)(1)(A), is classified to chapter 21 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 556, 903 of this title.

§ 276. Certain indirect contributions to political parties.

(a) Disallowance of deduction.

No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate,

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate, or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

(b) Definitions.

For purposes of this section—

(1) Political party.

The term "political party" means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice-presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) Proceeds inuring to or for the use of political candidates.

Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office, and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

(c) Advertising in a convention program of a national political convention.

Subsection (a) shall not apply to any amount paid or incurred for advertising in a convention program of a political party distributed in connection with a convention held for the purpose of nominating candidates for the offices of President and Vice President of the United States, if the proceeds from such program are used solely to defray the costs of conducting such convention (or a subsequent convention of such party held for such purpose) and the amount paid or incurred for such advertising is reasonable in light of the business the taxpayer may expect to receive—

(1) directly as a result of such advertising, or

(2) as a result of the convention being held in an area in which the taxpayer has a principal place of business.

(d) Cross reference.

For disallowance of certain entertainment, etc., expenses, see section 274.

(Added Pub. L. 89–368, title III, § 301(a), Mar. 15, 1966, 80 Stat. 66, and amended Pub. L. 90–364, title I, § 108(a), June 28, 1968, 82 Stat. 269.)

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 90–364 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 108(b) of Pub. L. 90–364 provided that: "The amendments made by subsection (a) [enacting subsec. (c) of this section] shall apply with respect to amounts paid or incurred on or after January 1, 1968."

EFFECTIVE DATE

Section 301(c) of Pub. L. 89–368 provided that: "The amendments made by subsections (a) and (b) [adding this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to amounts paid or incurred after the date of the enactment of this Act [Mar. 15, 1966]."

PROGRAM ADVERTISING FOR PRESIDENTIAL AND VICE-PRESIDENTIAL NOMINATING CONVENTIONS

Pub. L. 90–346, June 18, 1968, 82 Stat. 183, provided: "That subsection (a) of section 276 of the Internal Revenue Code of 1954 (relating to certain indirect contributions to political parties) [subsec. (a) of this section]

shall not apply to any amount paid or incurred for advertising in a convention program of a political party distributed in connection with a convention held for the purpose of nominating candidates for the offices of President and Vice President of the United States, if the proceeds from such program are used solely to defray the costs of conducting such convention (or a subsequent convention of such party held for such purpose) and the amount paid or incurred for such advertising is reasonable in light of the business the taxpayer may expect to receive—

"(1) directly as a result of such advertising, or

"(2) as a result of the convention being held in an area in which the taxpayer has a principal place of business.

"SEC. 2. The first section of this Act shall apply with respect to amounts paid or incurred on or after January 1, 1968."

§ 277. Deductions incurred by certain membership organizations in transactions with members.

(a) General rule.

In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members (including income derived during such year from institutes and trade shows which are primarily for the education of members). If for any taxable year such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year.

(b) Exceptions.

Subsection (a) shall not apply to any organization—

(1) which for the taxable year is subject to taxation under subchapter H or L,

(2) which has made an election before October 9, 1969, under section 456(c) or which is affiliated with such an organization, or

(3) which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act.

(Added Pub. L. 91–172, title I, § 121(b)(3)(A), Dec. 30, 1969, 83 Stat. 540.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1970, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

§ 278. Capital expenditures incurred in planting and developing citrus and almond groves.

(a) General rule.

Except as provided in subsection (b), any amount (allowable as a deduction without regard to this section), which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof), and which is incurred before the close of the fourth taxable year beginning with the taxable year in which the trees were planted, shall be charged to capital account. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in one taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(b) Exceptions.

Subsection (a) shall not apply to amounts allowable as deductions (without regard to this section), and attributable to a citrus or almond grove (or part thereof) which was:

(1) replanted after having been lost or damaged (while in the hands of the taxpayer), by reason of freeze, disease, drought, pests or casualty, or

(2) planted or replanted before—

(A) December 30, 1969, in the case of a citrus grove, or

(B) December 30, 1970, in the case of an almond grove.

(Added Pub. L. 91–172, title II, § 216(a), Dec. 30, 1969, 83 Stat. 573, and amended Pub. L. 91–680, § 1(a), (b), (d), Jan. 12, 1971, 84 Stat. 2064.)

AMENDMENTS

1971—Pub. L. 91–680, § 1(b), added "and almond" following "citrus" in the section catchline.

Subsec. (a). Pub. L. 91–680, § 1(a), added "or almond" following "citrus" wherever appearing therein.

Subsec. (b). Pub. L. 91–680, § 1(a), added "or almond" following "citrus".

Subsec. (b)(2). Pub. L. 91–680, § 1(d), substituted "before (A) December 30, 1969, in the case of a citrus grove, or (B) December 30, 1970, in the case of an almond grove" for "prior to the enactment of this section".

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 91–680 provided that: "The amendments made by the first section of this Act [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Jan. 12, 1971]."

EFFECTIVE DATE

Section 216(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1969."

§ 279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation.

(a) General rule.

No deduction shall be allowed for any interest paid or incurred by a corportation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) $5,000,000, reduced by

(2) the amount of interest paid or incurred by by such corporation during such year on obligations (A) issued after December 31, 1967, to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

(b) Corporate acquisition indebtedness.

For purposes of this section, the term "corporate acquisition indebtedness" means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as "issuing corporation") if—

(1) such obligation is issued to provide consideration for the acquisition of—

(A) stock in another corporation (hereinafter in this section referred to as "acquired corporation"), or

(B) assets of another corporation (hereinafter in this section referred to as "acquired corporation") pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) such obligation is either—

(A) subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) the bond or other evidence of indebtedness is either—

(A) convertible directly or indirectly into stock of the issuing corporation, or

(B) part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) as of a day determined under subsection (c)(1), either—

(A) the ratio of debt to equity (as defined in subsection (c)(2)) of the issuing corporation exceeds 2 to 1, or

(B) the projected earnings (as defined in subsection (c)(3)) do not exceed 3 times the annual interest to be paid or incurred (determined under subsection (c)(4)).

(c) Rules for application of subsection (b)(4).

For purposes of subsection (b)(4)—

(1) Time of determination.

Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b)(1) of stock in, or assets of, the acquired corporation.

(2) Ratio of debt to equity.

The term "ratio of debt to equity" means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) Projected earnings.

(A) The term "projected earnings" means the "average annual earnings" (as defined in subparagraph (B)) of—

(i) the issuing corporation only, if clause (ii) does not apply, or

(ii) both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) interest paid or incurred,

(ii) depreciation or amortization allowed under this chapter,

(iii) liability for tax under this chapter, and

(iv) distributions to which section 301(c)(1) applies (other than such distributions from the acquired to the issuing corporation),

and reduced to an annual average for such 3-year period pursuant to regulations prescribed by the Secretary or his delegate. Such regulations shall include rules for cases where any corporation was not in existence for all of such 3-year period or such period includes only a portion of a taxable year of any corporation.

(4) Annual interest to be paid or incurred.

The term "annual interest to be paid or incurred" means—

(A) if subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) if projected earnings are determined under clause (ii) of paragraph (3)(A), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) Special rules for banks and lending or finance companies.

With respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business—

(A) in determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) in determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in paragraph (4)(B) or by the affiliated group of which such corportation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) in determining under paragraph (3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term "lending or finance business" means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) Taxable years to which applicable.

In applying this section—

(1) First year of disallowance.

The deduction of interest on any obligation shall not be disallowed under subsection (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of subsection (b)(4) results in such obligation being corporate acquisition indebtedness.

(2) General rule for succeeding years.

Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) Redetermination where control, etc., is acquired.

If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (i) of subsection (c)(3)(A) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (ii) of subsection (c)(3)(A) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) Special 3-year rule.

If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if subsection (b)(4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such 3 consecutive taxable years.

(5) 5 percent stock rule.

In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if at some time after October 9, 1969, and before the close of such year the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) Certain nontaxable transactions.

An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in section 368(c)) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subsection (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in section 368(c)) of such corporation.

(f) Exemption for certain acquisitions of foreign corporations.

For purposes of this section, the term "corporate acquisition indebtedness" does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) Affiliated groups.

In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Secretary or his delegate, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subsection) shall be included in the determinations required under subparagraphs (A) and (B) of subsection (b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under subsection (c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includible corporations (without any exclusion under section 1504(b)) and the acquired corporation shall not be treated as an includible corporation.

(h) Changes in obligation.

For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) Certain obligations issued after October 9, 1969.

For purposes of this section, an obligation shall not be corporate acquisition indebtedness if issued after October 9, 1969, to provide consideration for the acquisition of—

(1) stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(2) stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

Paragraph (2) shall cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control (as defined in section 368(c)) of the acquired corporation.

(j) Effect on other provisions.

No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title. (Added Pub. L. 91-172, title IV, § 411(a), Dec. 30, 1969, 83 Stat. 604.)

EFFECTIVE DATE

Section 411(c) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting this section] shall apply to the determination of the allowability of the deduction of interest paid or incurred with respect to indebtedness incurred after October 9, 1969."

PART X.—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.
281. Terminal railroad corporations and their shareholders.

AMENDMENTS

1962—Pub. L. 87-870, § 1(a), Oct. 23, 1962, 76 Stat. 1158, added Part X and item 281.

§ 281. Terminal railroad corporations and their shareholders.

(a) Computation of taxable income of terminal railroad corporations.

(1) In general.

In computing the taxable income of a terminal railroad corporation—

(A) such corporation shall not be considered to have received or accrued—

(i) the portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) the portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) no deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

(2) Limitation.

In the case of any taxable year ending after the date of the enactment of this section, paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

(b) Computation of taxable income of shareholders.

Subject to the limitation in subsection (a)(2), in computing the taxable income of any shareholder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection (a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

(c) Agreement required.

In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computatioin (as the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

(d) Definitions.

For purposes of this section—

(1) Terminal railroad corporation.

The term "terminal railroad corporation" means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are domestic railroad corporations subject to part I of the Interstate Commerce Act;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to domestic railroad corporations subject to part I of the Interstate Commerce Act and to the shippers and passengers of such railroad corporations;

(C) a substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

(2) Related terminal income.

The term "related terminal income" means the income (determined in accordance with regulations prescribed by the Secretary or his delegate) of a terminal railroad corporation derived—

(A) from services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) from the use by persons other than railroad corporations of portions of a facility, or a service which is used primarily for railroad purposes;

(C) from any railroad corporation for services or facilities provided by such terminal railroad corporation in connection with railroad operations; and

(D) from the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.

(3) Related terminal services.

The term "related terminal services" includes only services, and the use of facilities, taken into account in computing related terminal income.

(e) Application to taxable years ending before the date of enactment.

In the case of any taxable year ending before the date of the enactment of this section—

(1) this section shall apply only to the extent that the taxpayer computed on its return, filed at or prior to the time (including extensions thereof) that the return for such taxable year was required to be filed, its taxable income in the manner described in subsection (a) in the case of a terminal railroad corporation, or in the manner described in subsection (b) in the case of a shareholder of a terminal railroad corporation; and

(2) this section shall apply to a taxable year for which the assessment of any deficiency, or for which refund or credit of any overpayment, whichever is applicable, was prevented, on the date of the enactment of this section, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of this title, relating to closing agreements, and section 3761 of the Internal Revenue Code of 1939 or section 7122 of this title, relating to compromises), only—

(A) to the extent any overpayment of income tax would result from the recomputation of the taxable income of a terminal railroad corporation in the manner described in subsection (a),

(B) if claim for credit or refund of such overpayment, based upon such recomputation, is filed prior to one year after the date of the enactment of this section,

(C) to the extent that paragraph (1) applies, and

(D) if each shareholder of such terminal railroad corporation consents in writing to the assessment, within such period as may be agreed upon with the Secretary or his delegate, of any deficiency for any year to the extent attributable to the recomputation of its taxable income in the manner described in subsection (b) correlative to its allocable share of the adjustment of taxable income made by the terminal railroad corporation in its recomputation under subparagraph (A).

(f) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 87-870, § 1(a), Oct. 23, 1962, 76 Stat. 1158.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2), (d)(2) and (e), refers to the date of enactment of Pub. L. 87-870, which was approved Oct. 23, 1962.

Part I of the Interstate Commerce Act, referred to in subsec. (d)(1) (A), (B), is classified to chapter 1 of Title 49, Transportation.

EFFECTIVE DATE

Section 2(a) of Pub. L. 87-870 provided that: "The amendments made by the first section of this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

INTERNAL REVENUE CODE OF 1939; INCLUSION OF TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS PROVISION

Section 2(b) of Pub. L. 87-870 provided that: "Provisions having the same effect as section 281 of the Internal Revenue Code of 1954 (as added by the first section of this Act) [this section] shall be deemed to be included in the Internal Revenue Code of 1939, effective with respect to all taxable years to which such Code applies."

Subchapter C.—Corporate Distributions and Adjustments

Part
I. Distributions by corporations.
II. Corporate liquidations.
III. Corporate organizations and reorganizations.
IV. Insolvency reorganizations.
V. Carryovers.
VI. Treatment of certain corporate interests as stock or indebtedness.
VII. Effective date of subchapter C.

AMENDMENTS

1969—Pub. L. 91-172, title IV, § 415(b), Dec. 30, 1969, 83 Stat. 614, redesignated former Part VI as Part VII and added Part VI.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1081 of this title.

PART I.—DISTRIBUTIONS BY CORPORATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
C. Definitions; constructive ownership of stock.

SUBPART A.—EFFECTS ON RECIPIENTS

Sec.
301. Distributions of property.
302. Distributions in redemption of stock.
303. Distributions in redemption of stock to pay death taxes.
304. Redemption through use of related corporations.
305. Distributions of stock and stock rights.
306. Dispositions of certain stock.
307. Basis of stock and stock rights acquired in distributions.

§ 301. Distributions of property.

(a) In general.

Except as otherwise provided in this chapter, a distribution of property (as defined in section 317 (a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) Amount distributed.

(1) General rule.

For purposes of this section, the amount of any distribution shall be—

(A) Noncorporate distributees.

If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

(B) Corporate distributees.

If the shareholder is a corporation, the amount of money received, plus whichever of the following is the lesser:

(i) the fair market value of the other property received; or

(ii) the adjusted basis (in the hands of the distributing corporation immediately before

the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

(C) Certain corporate distributees of foreign corporation.

Notwithstanding subparagraph (B), if the shareholder is a corporation and the distributing corporation is a foreign corporation, the amount taken into account with respect to property (other than money) shall be the fair market value of such property; except that if any deduction is allowable under section 245 with respect to such distribution, then the amount taken into account shall be the sum (determined under regulations prescribed by the Secretary or his delegate) of—

(i) the proportion of the adjusted basis of such property (or, if lower, its fair market value) properly attributable to gross income which is effectively connected with the conduct of a trade or business within the United States, and

(ii) the proportion of the fair market value of such property properly attributable to gross income which is not effectively connected with the conduct of a trade or business within the United States.

For purposes of clause (i), the gross income of a foreign corporation for any period before its first taxable year beginning after December 31, 1966, which is effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources within the United States. For purposes of clause (ii), the gross income of a foreign corporation for any period before its first taxable year beginning after December 31, 1966, which is not effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources without the United States.

(2) Reduction for liabilities.

The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) Determination of fair market value.

For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) Amount taxable.

In the case of a distribution to which subsection (a) applies—

(1) Amount constituting dividend.

That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) Amount applied against basis.

That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis.

(A) In general.

Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) Distributions out of increase in value accrued before March 1, 1913.

That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) Basis.

The basis of property received in a distribution to which subsection (a) applies shall be—

(1) Noncorporate distributees.

If the shareholder is not a corporation, the fair market value of such property.

(2) Corporate distributees.

If the shareholder is a corporation, whichever of the following is the lesser:

(A) the fair market value of such property; or

(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

(3) Certain corporate distributees of foreign corporation.

In the case of property described in subparagraph (C) of subsection (b)(1), the basis shall be determined by substituting the amount determined under such subparagraph (C) for the amount described in paragraph (2) of this subsection.

(e) Exception for certain distributions by personal service corporations.

Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 (40 Stat. 1070), or section 218 of the Revenue Act of 1921 (42 Stat. 245), shall be exempt from tax to the distributees.

(f) Special rules for distributions of antitrust stock to corporations.

(1) Definition of antitrust stock.

For purposes of this subsection, the term "antitrust stock" means stock received, by a corpora-

tion which is a party to a suit described in section 1111(d) (relating to definition of antitrust order), in a distribution made after September 6, 1961, either pursuant to the terms of, or in anticipation of, an antitrust order (as defined in subsection (d) of section 1111).

(2) Amount distributed.

Notwithstanding subsection (b)(1) (but subject to subsection (b)(2)), for purposes of this section the amount of a distribution of antitrust stock received by a corporation shall be the fair market value of such stock.

(3) Basis.

Notwithstanding subsection (d), the basis of antitrust stock received by a corporation in a distribution to which subsection (a) applies shall be the fair market value of such stock decreased by so much of the deduction for dividends received under the provisions of section 243, 244, or 245 as is, under regulations prescribed by the Secretary or his delegate, attributable to the excess, if any, of—

(A) the fair market value of the stock, over

(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the stock, increased by the amount of gain which is recognized to the distributing corporation by reason of the distribution.

(g) Special rules.

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in partial or complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For partial exclusion from gross income of dividends received by individuals, see section 116.

(Aug. 16, 1954, ch. 736, 68A Stat. 84; Feb. 2, 1962, Pub. L. 87-403, § 2(a), 76 Stat. 5; Oct. 16, 1962, Pub. L. 87-834, §§ 5(a), (b), 13(f)(2), 76 Stat. 977, 1035; Feb. 26, 1964, Pub. L. 88-272, title II, § 231(b)(2), 78 Stat. 105; Aug. 22, 1964, Pub. L. 88-484, § 1(b)(1), 78 Stat. 597; Sept. 12, 1966, Pub. L. 89-570, § 1(b)(2), 80 Stat. 762; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(f), 80 Stat. 1559; Dec. 30, 1969, Pub. L. 91-172, title II, § 211(b) (1), (2), title IX, § 905(b)(2), 83 Stat. 570, 714.)

AMENDMENTS

1969—Subsec. (b)(1)(B)(ii). Pub. L. 91-172, §§ 211(b)(1), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)" for "or 1250(a)" and inserted reference to section 311(a).

Subsec. (d)(2)(B). Pub. L. 91-172, §§ 211(b)(2), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)", for "or 1250(a)" and inserted reference to section 311(a).

1966—Subsec. (b)(1)(B)(ii). Pub. L. 89-570 included reference to section 617(d)(1).

Subsec. (b)(1)(C). Pub. L. 89-809 substituted "gross income which is effectively connected with the conduct of a trade or business within the United States" for "gross income from sources within the United States" in clause (i), "gross income which is not effectively connected with the conduct of a trade or business within the United States" for "gross income from sources without the United States" in clause (ii), and added material following clause (ii) setting out the treatment to be accorded gross income for any period before the first taxable year beginning after December 31, 1966.

Subsec. (d)(2)(B). Pub. L. 89-570 included reference to section 617(d)(1).

1964—Subsec. (b). Pub. L. 88-484 included the amount of the gain recognized under section 341(f).

Pub. L. 88-272 inserted reference to section 1250(a).

Subsec. (d). Pub. L. 88-484 included the amount of the gain recognized under section 341(f).

Pub. L. 88-272 inserted reference to section 1250(a).

1962—Subsec. (b)(1)(B). Pub. L. 87-834, § 13(f)(2), substituted "subsection (b) or (c) of section 311 or under section 1245(a)" for "subsection (b) or (c) of section 311."

Subsec. (b)(1)(C). Pub. L. 87-834, § 5(a), added subsec. (b)(1)(C).

Subsec. (d)(2). Pub. L. 87-834, § 13(f)(2), substituted "subsection (b) or (c) of section 311 or under section 1245(a)" for "subsection (b) or (c) of section 311."

Subsec. (d)(3). Pub. L. 87-834, § 5(b), added subsec. (d)(3).

Subsec. (f). Pub. L. 87-403 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 87-403 redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsecs. (b) and (d) by section 211(b)(1), (2) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 1251 of this title.

Amendment of subsecs. (b) and (d) by section 905(b)(2) of Pub. L. 91-172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91-172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

Amendment of section by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment of section by Pub. L. 88-484 applicable with respect to transactions after Aug. 22, 1964, in taxable years ending after such date, see section 2 of Pub. L. 88-484, set out as a note under section 341 of this title.

Amendment of section by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of subsecs. (b)(1)(B), (d)(2) of this section by Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as a note under section 1245 of this title.

Section 5(d) of Pub. L. 87-834 provided that: "The amendments made by this section [adding subsecs. (b)(1)(C) and (d)(3) of this section and amending section 245 of this title] shall apply to distributions made after December 31, 1962."

Section 2(b) of Pub. L. 87-403 provided that: "The amendments made by this section [to subsecs. (f) and (g) of this section] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

CROSS REFERENCES

Collapsible corporations, treatment of gain to shareholders, see section 341 of this title.

Controlled corporations, additional consideration received in distribution of stock and securities, see section 356 (b) of this title.

Disposition of "section 306 stock" as a redemption, see section 306 (a) (2) of this title.

Dividend, definition of, see section 316.

Gain or loss on disposition of property, generally, see section 1001 et seq. of this title.

Non-application of section to distributions of property in corporate liquidation, see section 331 of this title.

Stock and stock rights, see section 305 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 245, 279, 305, 306, 312, 316, 331, 341, 356, 535, 545, 556, 561, 877, 1111, 2107, 2501 of this title.

§ 302. Distributions in redemption of stock.

(a) General rule.

If a corporation redeems its stock (within the meaning of section 317 (b)), and if paragraph (1), (2), (3), or (4) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) Redemptions treated as exchanges.

(1) Redemptions not equivalent to dividends.

Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) Substantially disproportionate redemption of stock.

(A) In general.

Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) Limitation.

This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) Definitions.

For purposes of this paragraph, the distribution is substantially disproportionate if—

(i) the ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time,

is less than 80 percent of—

(ii) the ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph, no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) Series of redemptions.

This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) Termination of shareholder's interest.

Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) Stock issued by railroad corporations in certain reorganizations.

Subsection (a) shall apply if the redemption is of stock issued by a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act, as amended) pursuant to a plan of reorganization under section 77 of the Bankruptcy Act.

(5) Application of paragraphs.

In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of subsection (c) (2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the 10-year period beginning on the date of the distribution shall not apply.

(c) Constructive ownership of stock.

(1) In general.

Except as provided in paragraph (2) of this subsection, section 318 (a) shall apply in determining the ownership of stock for purposes of this section.

(2) For determining termination of interest.

(A) In the case of a distribution described in subsection (b) (3), section 318 (a) (1) shall not apply if—

(i) immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) the distributee, at such time and in such manner as the Secretary or his delegate by regulations prescribes, files an agreement to notify the Secretary or his delegate of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary or his delegate) notifies the Secretary or his delegate of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if—

(i) any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318 (a), or

(ii) any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318 (a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(d) Redemptions treated as distributions of property.

Except as otherwise provided in this subchapter, if a corporation redeems its stock (within the meaning of section 317 (b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) Cross references.

For special rules relating to redemption—

(1) Death Taxes.—Of stock to pay death taxes, see section 303.

(2) Section 306 Stock.—Of section 306 stock, see section 306.

(3) Liquidations.—Of stock in partial or complete liquidation, see section 331.

(Aug. 16, 1954, ch. 736, 68A Stat. 85.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (b)(4), is classified to section 205 of Title 11, Bankruptcy.

SAVINGS PROVISIONS

Applicability of subsec. (b)(1) to the determination of gross investment income under sections 4940 and 4948(a) of this title, see section 101(*l*)(8) of Pub. L. 91-172, set out as a note under section 4940 of this title.

CROSS REFERENCES

Disposition of stock to which this section applies, see section 306 (b) of this title.

Distribution of property, see section 301 of this title.

Earnings and profits, special rule for certain redemptions, see section 312 (e) of this title.

Partial liquidation defined, treatment of certain redemptions, see section 346 (c) of this title.

Redemption through use of related corporations, see section 304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 304, 306, 311, 312, 346, 1246, 1248 of this title.

§ 303. Distributions in redemption of stock to pay death taxes.

(a) In general.

A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

(1) the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) the amount of funeral and administration expenses allowable as deductions to the estate under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States),

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) Limitations on application of subsection (a).

(1) Period for distribution.

Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) within the period of limitations provided in section 6501 (a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501 (a)), or within 90 days after the expiration of such period, or

(B) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) Relationship of stock to decedent's estate.

(A) In general.

Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all the stock of such corporation which is included in determining the value of the decedent's gross estate is either—

(i) more than 35 percent of the value of the gross estate of such decedent, or

(ii) more than 50 percent of the taxable estate of such decedent.

(B) Special rule for stock of two or more corporations.

For purposes of the 35 percent and 50 percent requirements of subparagraph (A), stock of two or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate more than 75 percent in value of the outstanding stock, shall be treated as the stock of a single corporation. For the purpose of the 75 percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(c) Stock with substituted basis.

If—

(1) a shareholder owns stock of a corporation (referred to in this subsection as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as "old stock"),

(2) the old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b) (1), subsection (a) shall apply in respect of a distribution in redemption of the new stock. (Aug. 16, 1954, ch. 736, 68A Stat. 88.)

CROSS REFERENCES

Distributions in redemption of stock, see section 302 of this title.

Earnings and profits, special rule for certain redemptions, see section 312 (e) of this title.

Redemption through use of related corporations, see section 304 of this title.

Special limitations on net operating loss carryovers, exception for decrease resulting from redemption to pay death taxes, see section 382 (a) (1) (B) (ii) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 311, 312, 382, 537, 1248, 6166 of this title.

§ 304. Redemption through use of related corporations.

(a) Treatment of certain stock purchases.

(1) Acquisition by related corporation (other than subsidiary).

For purposes of sections 302 and 303, if—

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. In any such case, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.

(2) Acquisition by subsidiary.

For purposes of sections 302 and 303, if—

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation, then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) Special rules for application of subsection (a).

(1) Rule for determinations under section 302 (b).

In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302 (b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318 (a) (relating to constructive ownership of stock) with respect to section 302(b) for purposes of this paragraph, sections 318(a) (2) (C) and 318(a) (3) (C) shall be applied without regard to the 50 percent limitation contained therein.

(2) Amount constituting dividend.

(A) Where subsection (a) (1) applies.

In the case of any acquisition of stock to which paragraph (1) (and not paragraph (2)) of subsection (a) of this section applies, the determination of the amount which is a dividend shall be made solely by reference to the earnings and profits of the acquiring corporation.

(B) Where subsection (a) (2) applies.

In the case of any acquisition of stock to which subsection (a) (2) of this section applies, the determination of the amount which is a dividend shall be made as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

(c) Control.

(1) In general.

For purposes of this section, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) Constructive ownership.

Section 318(a) relating to the constructive ownership of stock) shall apply for purposes of determining control under paragraph (1). For purposes of the preceding sentence, sections 318(a) (2) (C) and 318(a) (3) (C) shall be applied without regard to the 50 percent limitation contained therein.

(Aug. 16, 1954, ch. 736, 68A Stat. 89; Aug. 31, 1964, Pub. L. 88–554, § 4(b) (1), 78 Stat. 763.)

AMENDMENTS

1964—Subsec. (b) (1). Pub. L. 88–554 inserted the reference to section 318(a) (3) (C) of this title.

Subsec. (c) (2). Pub. L. 88–554 inserted the reference to section 318(a) (3) (C) of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by section 4 of Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of this section and section 302 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisition or redemption occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554 set out as a note under section 318 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 391, 6166 of this title.

§ 305. Distributions of stock and stock rights.

(a) General rule.

Except as otherwise provided in this section, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

(b) Exceptions.

Subsection (a) shall not apply to a distribution by a corporation of its stock, and the distribution shall

be treated as a distribution of property to which section 301 applies—

(1) Distributions in lieu of money.

If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

(A) in its stock, or

(B) in property.

(2) Disproportionate distributions.

If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) the receipt of property by some shareholders, and

(B) an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

(3) Distributions of common and preferred stock.

If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) the receipt of preferred stock by some common shareholders, and

(B) the receipt of common stock by other common shareholders.

(4) Distributions on preferred stock.

If the distribution is with respect to preferred stock, other than an increase in the conversion ratio of convertible preferred stock made solely to take account of a stock dividend or stock split with respect to the stock into which such convertible stock is convertible.

(5) Distributions of convertible preferred stock.

If the distribution is of convertible preferred stock, unless it is established to the satisfaction of the Secretary or his delegate that such distribution will not have the result described in paragraph (2).

(c) Certain transactions treated as distributions.

For purposes of this section and section 301, the Secretary or his delegate shall prescribe regulations under which a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder shall be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference, redemption, or similar transaction.

(d) Definitions.

(1) Rights to acquire stock.

For purposes of this section, the term "stock" includes rights to acquire such stock.

(2) Shareholders.

For purposes of subsections (b) and (c), the term "shareholder" includes a holder of rights or of convertible securities.

(e) Cross references.

For special rules—

(1) Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (sec. 351 and following).

(2) In the case of a distribution which results in a gift, see section 2501 and following.

(3) In the case of a distribution which has the effect of the payment of compensation, see section 61 (a) (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Dec. 30, 1969, Pub. L. 91–172, title IV, § 421(a), 83 Stat. 614.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted reference to this section, for reference to subsec. (b), and omitted reference to rights to acquire its stock.

Subsec. (b). Pub. L. 91–172 omitted reference to rights to acquire its stock, in the material preceding par. (1), redesignated former par. (2) as par. (1) and added pars. (2) to (5). Former par. (1) providing for the extent to which distribution of preference dividends were to be treated as distribution of property to which section 301 applied, was stricken.

Subsec. (c). Pub. L. 91–172 added subsec. (c). Former subsec. (c) was redesignated as subsec. (e).

Subsec. (d). Pub. L. 91–172 added subsec. (d).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 421(b) of Pub. L. 91–172 provided that:

"(1) Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply with respect to distributions (or deemed distributions) made after January 10, 1969, in taxable years ending after such date.

"(2)(A) Section 305(b)(2) of the Internal Revenue Code of 1954 (as added by subsection (a)) [subsec. (b)(2) of this section] shall not apply to a distribution (or deemed distribution) of stock made before January 1, 1991, with respect to stock (i) outstanding on January 10, 1969, (ii) issued pursuant to a contract binding on January 10, 1969, on the distributing corporation, (iii) which is additional stock of that class of stock which (as of January 10, 1969) had the largest fair market value of all classes of stock of the corporation (taking into account only stock outstanding on January 10, 1969, or issued pursuant to a contract binding on January 10, 1969), (iv) described in subparagraph (C) (iii), or (v) issued in a prior distribution described in clause (i), (ii), (iii), or (iv).

"(B) Subparagraph (A) shall apply only if—

"(i) the stock as to which there is a receipt of property was outstanding on January 10, 1969 (or was issued pursuant to a contract binding on January 10, 1969, on the distributing corporation), and

(ii) if such stock and any stock described in subparagraph (A)(i) were also outstanding on January 10, 1968, a distribution of property was made on or before January 10, 1969, with respect to such stock, and a distribution of stock was made on or before January 10, 1969, with respect to such stock described in subparagraph (A)(i).

"(C) Subparagraph (A) shall cease to apply when at any time after October 9, 1969, the distributing corporation issues any of its stock (other than in a distribution of stock with respect to stock of the same class) which is not—

"(i) nonconvertible preferred stock,

"(ii) additional stock of that class of stock which meets the requirements of subparagraph (A)(iii), or

"(iii) preferred stock which is convertible into stock which meets the requirements of subparagraph (A)(iii) at a fixed conversion ratio which takes account of all stock dividends and stock splits with respect to the stock into which such convertible stock is convertible.

"(D) For purposes of this paragraph, the term 'stock' includes rights to acquire such stock.

"(3) In cases to which Treasury Decision 6990 (promulgated January 10, 1969) would not have applied, in applying paragraphs (1) and (2) April 22, 1969, shall be substituted for January 10, 1969.

"(4) Section 305(b)(4) of the Internal Revenue Code of 1954 (as added by subsection (a)) [subsec. (b)(4) of this section] shall not apply to any distribution (or deemed distribution) with respect to preferred stock (including any increase in the conversion ratio of convertible stock) made before January 1, 1991, pursuant to the terms

relating to the issuance of such stock which were in effect on January 10, 1969.

"(5) With respect to distributions made or considered as made after January 10, 1969, in taxable years ending after such date, to the extent that the amendment made by subsection (a) [amending this section] does not apply by reason of paragraph (2), (3), or (4) of this subsection, section 305 of the Internal Revenue Code of 1954 [this section] (as in effect before the amendment made by subsection (a)) shall continue to apply."

CROSS REFERENCES

Basis of stock and stock rights acquired in a distribution to which this section applies, see section 307 of this title.

Definition of "section 306 stock" as including stock distributions not includible as gross income by reason of this section, see section 306 (c) of this title.

Earnings and profits, distributions not subject to tax by reason of this section, see section 312 (d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 307, 312, 425, 1101 of this title.

§ 306. Dispositions of certain stock.

(a) General rule.

If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) Dispositions other than redemptions.

If such disposition is not a redemption (within the meaning of section 317 (b))—

(A) The amount realized shall be treated as gain from the sale of property which is not a capital asset. This subparagraph shall not apply to the extent that—

(i) the amount realized, exceeds

(ii) such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of section 306 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of—

(i) the amount treated under subparagraph (A) as gain from the sale of property which is not a capital assets, plus

(ii) the adjusted basis of the stock, shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(2) Redemption.

If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which section 301 applies.

(b) Exceptions.

Subsection (a) shall not apply—

(1) Termination of shareholder's interest.

(A) Not in redemption.

If the disposition—

(i) is not a redemption;

(ii) is not, directly or indirectly, to a person the ownership of whose stock would (under section 318 (a)) be attributable to the shareholder; and

(iii) terminates the entire stock interest of the shareholder in the corporation (and for purposes of this clause, section 318 (a) shall apply).

(B) In redemption.

If the disposition is a redemption and section 302 (b) (3) applies.

(2) Liquidations.

If the section 306 stock is redeemed in a distribution in partial or complete liquidation to which part II (sec. 331 and following) applies.

(3) Where gain or loss is not recognized.

To the extent that, under any provision of this subtitle, gain or loss to the shareholder is not recognized with respect to the disposition of the section 306 stock.

(4) Transactions not in avoidance.

If it is established to the satisfaction of the Secretary or his delegate—

(A) that the distribution, and the disposition or redemption, or

(B) in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) Section 306 stock defined.

(1) In general.

For purposes of this subchapter, the term "section 306 stock" means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) Distributed to seller.

Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305 (a), any part of such distribution was not includible in the gross income of the shareholder.

(B) Received in a corporate reorganization or separation.

Stock which is not common stock and—

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368 (a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) Stock having transferred or substituted basis.

Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing

of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) **Exception where no earnings and profits.**

For purposes of this section, the term "section 306 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(d) Stock rights.

For purposes of this section—

(1) stock rights shall be treated as stock, and

(2) stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) Convertible stock.

For purposes of subsection (c)—

(1) if section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) Source of gain.

The amount treated under subsection (a) (1) (A) as gain from the sale of property which is not a capital asset shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871 (a) or section 881 (a), as the case may be.

(g) Change in terms and conditions of stock.

If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) the fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) subsection (c) (2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(h) Stock received in distributions and reorganizations to which 1939 Code applied.

If stock—

(1) was received in a distribution or reorganization to which the Internal Revenue Code of 1939 (or the corresponding provisions of prior law) applied,

(2) such stock would have been section 306 stock if this Code applied to such distribution or reorganization, and

(3) such stock is disposed of or redeemed on or after June 22, 1954,

then the foregoing subsections of this section shall not apply in respect of such disposition or redemption. The extent to which such disposition or redemption shall be treated as a dividend shall be determined as if the Internal Revenue Code of 1939 (as modified by the provisions of this Code other than the foregoing subsections of this section) continued to apply in respect of such disposition or redemption. (Aug. 16, 1954, ch. 736, 68A Stat. 89.)

CROSS REFERENCES

Constructive ownership of stock, see section 318 of this title.

Distributions in redemption of stock, see section 302 of this title.

Effective date, section 306 shall apply only with respect to dispositions (or redemptions) occurring on or after June 22, 1954, see section 391 of this title.

Receipt of additional consideration, exchanges for section 306 stock, see section 356 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 356, 391 of this title.

§ 307. Basis of stock and stock rights acquired in distributions.

(a) General rule.

If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as "new stock") in a distribution to which section 305 (a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary or his delegate.

(b) Exception for certain stock rights.

(1) In general.

If—

(A) a corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305 (a) applies, and

(B) the fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) Election.

The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary or his delegate may by regulations prescribe, and shall be irrevocable when made.

(c) Cross reference.

For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

(Aug. 16, 1954, ch. 736, 68A Stat. 93.)

CROSS REFERENCES

Capital gains and losses, determination of period for which taxpayer has held stock or rights to acquire stock received on a distribution, if basis is determined under this section, see section 1223 (5) of this title.

Corporate—

Liquidations, basis of property received in corporate liquidations, see section 334 of this title.

Organizations, basis to distributees, see section 358 of this title.

Effect on earnings and profits of receipt of tax free distributions, see section 312 (f) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 1223 of this title.

SUBPART B.—EFFECTS ON CORPORATION

Sec.
311. Taxability of corporation on distribution.
312. Effect on earnings and profits.

§ 311. Taxability of corporation on distribution.

(a) General rule.

Except as provided in subsections (b), (c), and (d) of this section and section 453(d), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of—

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) LIFO inventory.

(1) Recognition of gain.

If a corporation inventorying goods under the method provided in section 472 (relating to last-in, first-out inventories) distributes inventory assets (as defined in paragraph (2) (A)), then the amount (if any) by which—

(A) the inventory amount (as defined in paragraph (2) (B)) of such assets under a method authorized by section 471 (relating to general rule for inventories), exceeds

(B) the inventory amount of such assets under the method provided in section 472,

shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(2) Definitions.

For purposes of paragraph (1)—

(A) Inventory assets.

The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(B) Inventory amount.

The term "inventory amount" means, in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(3) Method of determining inventory amount.

For purposes of this subsection, the inventory amount of assets under a method authorized by section 471 shall be determined—

(A) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(B) if subparagraph (A) does not apply, by using cost or market, whichever is lower.

(c) Liability in excess of basis.

If—

(1) a corporation distributes property to a shareholder with respect to its stock,

(2) such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and

(3) the amount of such liability exceeds the adjusted basis (in the hands of the distributing corporation) of such property,

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its adjusted basis.

(d) Appreciated property used to redeem stock.

(1) In general.

If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a redemption (to which subpart A applies) of part or all of his stock in such corporation, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then again shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. Subsections (b) and (c) shall not apply to any distribution to which this subsection applies.

(2) Exceptions and limitations.

Paragraph (1) shall not apply to—

(A) a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution, owns at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualifies under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii));

(B) a distribution of stock or an obligation of a corporation—

(i) which is engaged in at least one trade or business,

(ii) which has not received property constituting a substantial part of its assets from the distributing corporation. in a transaction

to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and

(iii) at least 50 percent in value of the outstanding stock of which is owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution;

(C) a distribution before December 1, 1974, of stock of a corporation substantially all of the assets of which the distributing corporation (or a corporation which is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation) held on November 30, 1969, if such assets constitute a trade or business which has been actively conducted throughout the one-year period ending on the date of the distribution;

(D) a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1–7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12–27), or both, to which the United States is a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock is in furtherance of the purposes of the judgment;

(E) a distribution to the extent that section 303(a) (relating to distribuions in redempion of stock to pay death taxes) applies to such distribution;

(F) a distribution to a private foundation in redemption of stock which is described in section 537(b)(2) (A) and (B); and

(G) a distribution by a corporation to which part I of subchapter M (relating to regulated investment companies) applies, if such distribution is in redemption of its stock upon the demand of the shareholder.

(Aug. 16, 1954, ch. 736, 68A Stat. 94; Dec. 30, 1969, Pub. L. 91–172, title IX, § 905(a), (b)(1), 83 Stat. 713, 714.)

REFERENCES IN TEXT

The Sherman Act (26 Stat. 209; 15 U.S.C. 1–7) and the Clayton Act (38 Stat. 730; 15 U.S.C. 12–27), referred to in subsec. (d)(2)(D), are classified, respectively, to sections 1 to 7 and 12 to 27 of Title 15, Commerce and Trade.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 905(b)(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 91–172, § 905(a), added subsec. (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 905(c) of Pub. L. 91–172, as amended by Pub. L. 91–675, Jan. 12, 1971, 84 Stat. 2059, provided that:

"(1) Except as provided in paragraphs (2), (3), (4), and (5), the amendments made by subsections (a) and (b) [adding subsec. (d) of this section and amending sections 301(b)(1)(B)(ii), (d)(2)(B) and 312(c)(3) of this title] shall apply with respect to distributions after November 30, 1969.

"(2) The amendments made by subsections (a) and (b) shall not apply to a distribution before April 1, 1970, pursuant to the terms of—

"(A) a written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

"(B) an offer made by the distributing corporation before December 1, 1969,

"(C) an offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or

"(D) an offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subparagraphs (B), (C), and (D), an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

"(3) The amendments made by subsections (a) and (b) [adding subsec. (d) of this section and amending sections 301(b)(1)(B)(ii), (d)(2)(B), and 312(c)(3) of this title] shall not apply to a distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

"(A) every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

"(B) the corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock.

For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

"(4) The amendments made by subsections (a) and (b) [adding subsec. (d), of this section and amending sections 301(b)(1)(B)(ii), (d)(2)(B), and 312(c)(3) of this title] shall not apply to a distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

"(A) such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and

"(B) more than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

"(5) The amendments made by subsections (a) and (b) [adding subsec. (d) of this section and amending sections 301(b)(1)(B)(ii), (d)(2)(B) and 312(c)(3) of this title] shall not apply to a distribution of stock, by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the 'employer corporation') if—

"(A) the stock being distributed was owned by the distributing corporation on November 30, 1969,

"(B) the stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

"(C) the employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

"(D) at least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

"(E) at least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the nine-year period ending one year before the date of such distribution."

CROSS REFERENCES

Corporate—

Liquidations, gain or loss on sales or exchanges with certain liquidations, see section 337 of this title.

Organizations, nonrecognition of gain or loss to corporations, see section 361 of this title.

Distributions of property, corporate distributees, see section 301 of this title.

Effect on earnings and profits, adjustment shall be made for any gain recognized under subsection (b) or (c) of this section, see section 312 (c) (3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 312 of this title.

§ 312. Effect on earnings and profits.

(a) General rule.

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation, and

(3) the adjusted basis of the other property, so distributed.

(b) Certain inventory assets.

(1) In general.

On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in paragraph (2) (A)) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation—

(A) shall be increased by the amount of such excess; and

(B) shall be decreased by whichever of the following is the lesser:

(i) the fair market value of the inventory assets distributed, or

(ii) the earnings and profits (as increased under subparagraph (A)).

(2) Definitions.

(A) Inventory assets.

For purposes of paragraph (1), the term "inventory assets" means—

(i) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(ii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and

(iii) unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subparagraph.

(B) Unrealized receivables or fees.

For purposes of subparagraph (A) (iii), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(i) goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(ii) services rendered or to be rendered.

(c) Adjustments for liabilities, etc.

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) the amount of any liability to which the property distributed is subject,

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(3) any gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

(d) Certain distributions of stock and securities.

(1) In general.

The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this Code applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this Code, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305 (a).

(2) Prior distributions.

In the case of a distribution of stock or securities, or property, to which section 115 (h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115 (h), or the corresponding provision of prior law, as the case may be.

(3) Stock or securities.

For purposes of this subsection, the term "stock or securities" includes rights to acquire stock or securities.

(e) Special rule for partial liquidations and certain redemptions.

In the case of amounts distributed in partial liquidation (whether before, on, or after June 22, 1954) or in a redemption to which section 302 (a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.

(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions.

(1) Effect on earnings and profits of gain or loss.

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions.

Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307 (b), be so allocated).

(g) Earnings and profits—increase in value accrued before March 1, 1913.

(1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) Earnings and profits of personal service corporations.

In the case of a personal service corporation subject for any taxable year to supplement S of the Internal Revenue Code of 1939, an amount equal to the undistributed supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

(i) Allocation in certain corporate separations.

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary or his delegate.

(j) Distribution of proceeds of loan insured by the United States.

(1) In general.

If a corporation distributes property with respect to its stock, and if, at the time of the distribution—

(A) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(B) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of subparagraph (B) of the preceding sentence, the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016 (a) (2)) relating to adjustment for depreciation, etc.). For purposes of this paragraph, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

(2) Effective date.

Paragraph (1) shall apply only with respect to distributions made on or after June 22, 1954.

(k) Special adjustment on disposition of antitrust stock received as a dividend.

If a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied, and the amount of the distribution determined under section 301(f)(2) exceeded

the basis of the stock determined under section 301 (f)(3), then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, to the earnings and profits of such corporation at the time such stock (or other property the basis of which is determined by reference to the basis of such stock) is disposed of by such corporation.

(*l*) Earnings and profits of foreign investment companies.

(1) Allocation within affiliated group.

In the case of a sale or exchange of stock in a foreign investment company (as defined in section 1246(b)) by a United States person (as defined in section 7701(a)(30)), if such company is a member of an affiliated group, then the accumulated earnings and profits of all members of such affiliated group shall be allocated, under regulations prescribed by the Secretary or his delegate, in such manner as is proper to carry out the purposes of section 1246.

(2) Affiliated group defined.

For purposes of paragraph (1) of this subsection, the term "affiliated group" has the meaning assigned to such term by section 1504(a); except that (A) "more than 50 percent" shall be substituted for "80 percent or more", and (B) all corporations shall be treated as includible corporations (without regard to the provisions of section 1504(b)).

(3) Partial liquidations and redemptions.

(A) In general.

If a foreign investment company (as defined in section 1246) distributes amounts in partial liquidation or in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed.

(B) Effective date.

Subparagraph (A) shall apply only with respect to distributions made after December 31, 1962.

(m) Effect of depreciation on earnings and profits.

(1) General rule.

For purposes of computing the earnings and profits of a corporation for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for each taxable year beginning after June 30, 1972.

(2) Exceptions.

If for any taxable year beginning after June 30, 1972, a method of depreciation was used by the taxpayer which the Secretary or his delegate has determined results in a reasonable allowance under section 167(a), and which is not—

(A) a declining balance method,

(B) the sum of the years-digit method, or

(C) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167,

then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of under the straight line method).

(3) Certain foreign corporations.

The provisions of paragraph (1) shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 95; Feb. 2, 1962, Pub. L. 87–403, § 3(a), 76 Stat. 6; Oct. 16, 1962, Pub. L. 87–834, §§ 13(f)(3), 14(b)(1), 76 Stat. 1035, 1040; Feb. 26, 1964, Pub. L. 88–272, title II, § 231 (b)(3), 78 Stat. 105; Aug. 22, 1964, Pub. L. 88–484, § 1(b)(1), 78 Stat. 597; Sept. 12, 1966, Pub. L. 89–570, § 1(b)(3), 80 Stat. 762; Dec. 30, 1969, Pub. L. 91–172, title II, § 211(b)(3), title IV, § 442(a), title IX, § 905(b)(2), 83 Stat. 570, 628, 714.)

AMENDMENTS

1969—Subsec. (c)(3). Pub. L. 91–172, §§ 211(b)(3), 905 (b)(2), substituted "1250(a), 1251(c), or 1252(a)", for "or 1250(a)" and inserted reference to section 311(d).

Subsec. (m). Pub. L. 91–172, § 442(a), added subsec. (m).

1966—Subsec. (c)(3). Pub. L. 89–570 included reference to section 617(d)(1).

1964—Subsec. (c)(3). Pub. L. 88–484 authorized adjustment for the amount of the gain recognized under section 341(f).

Pub. L. 88–272 inserted the reference to section 1250(a).

1962—Subsec. (c)(3). Pub. L. 87–834, § 13(f)(3), included any gain recognized under section 1245(a).

Subsec. (k). Pub. L. 87–403 added subsec. (k).

Subsec. (*l*). Pub. L. 87–834, § 14(b)(1), added subsec. (*l*).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (c)(3) by section 211(b)(3) of Pub. L. 91–172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 1251 of this title.

Amendment of subsec. (c)(3) by section 905(b)(2) Pub. L. 91–172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91–172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment of section by Pub. L. 88–484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88–484, set out as a note under section 341 of this title.

Amendment of section by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of subsec. (c)(3) of this section by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as a note under section 1245 of this title.

Section 3(g) of Pub. L. 87–403 provided that: "The amendments made by this section [to this section and sections 535, 543, 545, 556 and 561 of this title] shall

apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

Subsec. (*l*) of this section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87-834, set out as a note under section 1246 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 964, 1111, 1248, 3122 of this title.

SUBPART C.—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

Sec.
316. Dividend defined.
317. Other definitions.
318. Constructive ownership of stock.

§ 316. Dividend defined.

(a) General rule.

For purposes of this subtitle, the term "dividend" means any distribution of property made by a corporation to its shareholders—

(1) out of its earnings and profits accumulated after February 28, 1913, or

(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) Special rules.

(1) Certain insurance company dividends.

The definition in subsection (a) shall not apply to the term "dividend" as used in subchapter L in any case where the reference is to dividends of insurance companies paid to policyholders as such.

(2) Distributions by personal holding companies.

(A) In the case of a corporation which—

(i) under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(ii) for the taxable year in respect of which the distribution is made under section 563(b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

(B) For purposes of subparagraph (A), the term "distribution of property" includes a distribution in complete liquidation occuring within 24 months after the adoption of a plan of liquidation, but—

(i) only to the extent of the amounts distributed to distributees other than corporate shareholders, and

(ii) only to the extent that the corporation designates such amounts as a dividend distribution and duly notifies such distributees of such designation, under regulations prescribed by the Secretary or his delegate, but

(iii) not in excess of the sum of such distributees' allocable share of the undistributed personal holding company income for such year, computed without regard to this subparagraph or section 562(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 98; Mar. 13, 1956, ch. 83, § 5(1), 70 Stat. 49; Feb. 26, 1964, Pub. L. 88-272, title II, § 225(f)(1), 78 Stat. 87.)

AMENDMENTS

1964—Subsec. (b)(2). Pub. L. 88-272 inserted the definition of "distribution of property."

1956—Subsec. (b)(1). Act Mar. 13, 1956, substituted "subchapter L" for "sections 803(e), 821(a)(2), and 832(c)(11)".

EFFECTIVE DATE OF 1964 AMENDMENT

Section 225(*l*) of Pub. L. 88-272 provided that:

"(1) The amendments made by this section [adding section 1022 and redesignating former section 1022 as 1023, amending this section, and sections 331, 333, 381, 541, 542, 543, 544, 545, 551, 553, 554, 562, 856, 1016, 1361, 6501 and the analysis preceding section 1011, and enacting provisions set out as a note under section 333 of this title] (other than by subsections (c) (1), (f), (g), and (j) [adding section 1022, redesignating former section 1022 as 1023, amending this section, and sections 331, 333, 542(c)(2), 551, 562, 1016, and the analysis preceding section 1011 of this title]) shall apply to taxable years beginning after December 31, 1963.

"(2) The amendment made by subsection (c)(1) [to section 542(c)(2) of this title] shall apply to taxable years beginning after October 16, 1962.

"(3) The amendments made by subsections (f) and (g) [to this section, and to sections 331, 333, 551 and 562 of this title] shall apply to distributions made in any taxable year of the distributing corporation beginning after December 31, 1963.

"(4) The amendments made by subsection (j) [adding section 1022, redesignating former section 1022 as 1023 amending section 1016 and the analysis preceding section 1011 of this title] shall apply in respect of decedents dying after December 31, 1963.

"(5) Subsection (h) [set out as a note under § 333 of this title] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

CROSS REFERENCES

Consent dividend as not including an amount specified in a consent which would not constitute a dividend as defined in this section, see section 565 (b) (2) of this title.

Dividends received from certain foreign corporations, deduction in amount equal to percent of dividends received out of earnings and profits specified in subsection (a)(1) of this section, see section 245(a)(2) of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88-272, set out as a note under section 333 of this title.

Rules applicable in determining dividends eligible for dividends paid credit deduction, see section 562 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 245, 301, 331, 562, 565, 959, 1373, 1375, 6042 of this title.

§ 317. Other definitions.

(a) Property.

For purposes of this part, the term "property" means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) Redemption of stock.

For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock. (Aug. 16, 1954, ch. 736, 68A Stat. 99.)

CROSS REFERENCES

Dispositions other than redemptions, see section 306 (a) (1) of this title.

Distributions of property, see section 301 of this title.

Redemptions treated as distributions of property, see section 302 (d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 302, 306, 593 of this title.

§ 318. Constructive ownership of stock.

(a) General rule.

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) Members of family.

(A) In general.

An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) his children, grandchildren, and parents.

(B) Effect of adoption.

For purposes of subparagraph (A) (ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) Attribution from partnerships, estates, trusts, and corporations.

(A) From partnerships and estates.

Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) From trusts.

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(ii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) From corporations.

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(3) Attribution to partnerships, estates, trusts, and corporations.

(A) To partnerships and estates.

Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) To trusts.

(i) Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(ii) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by the trust.

(C) To corporations.

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) Options.

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Operating rules.

(A) In general.

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family.

Stock constructively owned by an individual by reason of the application of paragraph (1)

shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations.

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule.

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(b) Cross references.

For provisions to which the rules contained in subsection (a) apply, see—

(1) section 302 (relating to redemption of stock);

(2) section 304 (relating to redemption by related corporations);

(3) section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries);

(5) section 382(a)(3) (relating to special limitations on net operating loss carryovers);

(6) section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);

(7) section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and

(8) section 6038(d)(1) (relating to information with respect to certain foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 99; Sept. 14, 1960, Pub. L. 86-779, § 10(h), 74 Stat. 1009; Oct. 16, 1962, Pub. L. 87-834, § 20(d)(1), 76 Stat. 1063; Aug. 31, 1964, Pub. L. 88-554, § 4 (a), (b)(2), 78 Stat. 762, 763.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-554, § 4(a), eliminated sidewise attribution by providing that when stock is attributed to a partnership, estate, trust, or corporation from a partner, shareholder, or beneficiary, this stock is not to be attributed again to another partner, beneficiary, or shareholder.

Subsec. (b). Pub. L. 88-554, § 4(b)(2), added paragraph (7), and redesignated former paragraph (7) as (8).

1962—Subsec. (b). Pub. L. 87-834 added paragraph (7).

1960—Subsec. (b). Pub. L. 86-779 added paragraph (6).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4(c) of Pub. L. 88-554 provided that: "The amendments made by this section [to this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of this Act, [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1954 [sections 302 and 304 of this title], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act [Aug. 31, 1964,]."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as a note under section 856 of this title.

CROSS REFERENCES

Basis of property received in liquidations, purchase defined, see section 334 (b) (3) of this title.

Distributions in redemption of stock, this section to apply in determining ownership, see section 302 (c) of this title.

Redemption through use of related corporations, this section to apply in determining control, see section 304 (c) (2) of this title.

Special limitations on net operating loss carryovers, this section to apply in determining ownership of stock, see section 382 (a) (3) of this title.

Termination of shareholder's interest, this section to apply, see section 306 (b) (1) (A) (iii) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 302, 303, 304, 306, 334, 367, 382, 856, 958, 1379, 4914, 6038 of this title.

PART II.—CORPORATE LIQUIDATIONS

Subpart

A. Effects on recipients.
B. Effects on corporation.
C. Collapsible corporations; foreign personal holding companies.
D. Definition.

SUBPART A.—EFFECTS ON RECIPIENTS

Sec.

331. Gain or loss to shareholder in corporate liquidations.
332. Complete liquidations of subsidiaries.
333. Election as to recognition of gain in certain liquidations.
334. Basis of property received in liquidations.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 306 of this title.

§ 331. Gain or loss to shareholders in corporate liquidations.

(a) General rule.

(1) Complete liquidations.

Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(2) Partial liquidations.

Amounts distributed in partial liquidation of a corporation (as defined in section 346) shall be treated as in part or full payment in exchange for the stock.

(b) Nonapplication of section 301.

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in partial or complete liquidation.

(c) Cross references.

(1) For general rule for determination of the amount of gain or loss to the distributee, see section 1001.

(2) For general rule for determination of the amount of gain or loss recognized, see section 1002.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Feb. 26, 1964, Pub. L. 88-272, title II, § 225(f)(2), 78 Stat. 88.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88-272 inserted "(other than a distribution referred to in paragraph (2)(B) of section 316(b))."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section Pub. L. 88-272 applicable to distribution made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(1) of Pub. L. 88-272, set out as a note under section 316 of this title.

CROSS REFERENCES

Distributions in redemption of stock, see section 302 of this title.

Earnings and profits, special rule for partial liquidations, see section 312 (e) of this title.

Extension of time for payment of tax on gain attributable to liquidation of personal holding companies, see section 6162 of this title.

Gain or loss on sales or exchanges in connection with certain liquidations, see section 337 of this title.

Liquidation of certain foreign personal holding companies, see section 342 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88-272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1246, 1248, 1372, 6162 of this title.

§ 332. Complete liquidations of subsidiaries.

(a) General rule.

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies.

For purposes of subsection (a), a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary or his delegate may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Special rule for indebtedness of subsidiary to parent.

If—

(1) a corporation is liquidated and subsection (a) applies to such liquidation, and

(2) on the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80 percent stock ownership requirements specified in subsection (b),

then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness. (Aug. 16, 1954, ch. 736, 68A Stat. 102.)

CROSS REFERENCES

Basis of property received in liquidations, see section 334 of this title.

Carryovers in corporate acquisitions to which this section applies, see section 381 (a) of this title.

Foreign corporations, not considered as a corporation in determining the extent to which gain shall be recognized in the case of exchanges described in this section, see section 367 of this title.

Gain or loss on sales or exchanges in connection with certain liquidations, liquidations to which this section applies, see section 337 (c) (2) of this title.

Installment obligation, effect of distribution in liquidation on recognition of gain or loss, see section 453 (d) (4) (A) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 333, 334, 337, 341, 367, 381, 453, 1101, 1245, 1250, 1251 of this title.

§ 333. Election as to recognition of gain in certain liquidations.

(a) General rule.

In the case of property distributed in complete liquidation of a domestic corporation (other than a collapsible corporation to which section 341 (a) applies), if—

(1) the liquidation is made in pursuance of a plan of liquidation adopted on or after June 22, 1954, and

(2) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month,

then in the case of each qualified electing shareholder (as defined in subsection (c)) gain on the

shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subsections (e) and (f).

(b) Excluded corporation.

For purposes of this section, the term "excluded corporation" means a corporation which at any time between January 1, 1954, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(c) Qualified electing shareholders.

For purposes of this section, the term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subsection (a) has been made and filed in accordance with subsection (d), but—

(1) in the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

(2) in the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 percent of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(d) Making and filing of elections.

The written elections referred to in subsection (c) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Secretary or his delegate. The filing must be within 30 days after the date of the adoption of the plan of liquidation.

(e) Noncorporate shareholders.

In the case of a qualified electing shareholder other than a corporation—

(1) there shall be recognized, and treated as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

(2) there shall be recognized, and treated as short-term or long-term capital gain, as the case may be, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1953, exceeds his ratable share of such earnings and profits.

(f) Corporate shareholders.

In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized only to the extent of the greater of the two following—

(1) the portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after December 31, 1953; or

(2) its ratable share of the earnings and profits of the liquidating corporation accummulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (a) (2), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

(g) Special rule.

(1) Liquidations before January 1, 1967.

In the case of a liquidation occurring before January 1, 1967, of a corporation referred to in paragraph (3)—

(A) the date "December 31, 1953" referred to in subsection (e) (2) and (f) (1) shall be treated as if such date were "December 31, 1962", and

(B) in the case of stock in such corporation held for more than 6 months, the term "a dividend" as used in subsection (e) (1) shall be treated as if such term were "long-term capital gain".

Subparagraph (B) shall not apply to any earnings and profits to which the corporation succeeds after December 31, 1963, pursuant to any corporate reorganization or pursuant to any liquidation to which section 332 applies, except earnings and profits which on December 31, 1963, constituted earnings and profits of a corporation referred to in paragraph (3), and except earnings and profits which were earned after such date by a corporation referred to in paragraph (3).

(2) Liquidations after December 31, 1966.

(A) In general.

In the case of a liquidation occurring after December 31, 1966, of a corporation to which this subparagraph applies—

(i) the date "December 31, 1953" referred to in subsections (e) (2) and (f) (1) shall be treated as if such date were "December 31, 1962", and

(ii) so much of the gain recognized under subsection (e) (1) as is attributable to the earnings and profits accumulated after February 28, 1913, and before January 1, 1967,

shall, in the case of stock in such corporation held for more than 6 months, be treated as long-term capital gain, and only the remainder of such gain shall be treated as a dividend.

Clause (ii) shall not apply to any earnings and profits to which the corporation succeeds after December 31, 1963, pursuant to any corporate reorganization or pursuant to any liquidation to which section 332 applies, except earnings and profits which on December 31, 1963, constituted earnings and profits of a corporation referred to in paragraph (3), and except earnings and profits which were earned after such date by a corporation referred to in paragraph (3).

(B) Corporations to which applicable.

Subparagraph (A) shall apply only with respect to a corporation which is referred to in paragraph (3) and which—

(i) on January 1, 1964, owes qualified indebtedness (as defined in section 545(c)),

(ii) before January 1, 1968, notifies the Secretary or his delegate that it may wish to have subparagraph (A) apply to it and submits such information as may be required by regulations prescribed by the Secretary or his delegate, and

(iii) liquidates before the close of the taxable year in which such corporation ceases to owe such qualified indebtedness or (if earlier) the taxable year referred to in subparagraph (C).

(C) Adjusted post-1963 earnings and profits exceed qualified indebtedness.

In the case of any corporation, the taxable year referred to in this subparagraph is the first taxable year at the close of which its adjusted post-1963 earnings and profits equal or exceed the amount of such corporation's qualified indebtedness on January 1, 1964. For purposes of the preceding sentence, the term "adjusted post-1963 earnings and profits" means the sum of—

(i) the earnings and profits of such corporation for taxable years beginning after December 31, 1963, without diminution by reason of any distributions made out of such earnings and profits, and

(ii) the deductions allowed for taxable years beginning after December 31, 1963, for exhaustion, wear and tear, obsolescence, amortization, or depletion.

(3) Corporations referred to.

For purposes of paragraphs (1) and (2), a corporation referred to in this paragraph is a corporation which for at least one of the two most recent taxable years ending before the date of the enactment of this subsection was not a personal holding company under section 542, but would have been a personal holding company under section 542 for such taxable year if the law applicable for the first taxable year beginning after December 31, 1963, had been applicable to such taxable year.

(4) Mistake as to applicability of subsection.

An election made under this section by a qualified electing shareholder of a corporation in which such shareholder states that such election is made on the assumption that such corporation is a corporation referred to in paragraph (3) shall have no force or effect if it is determined that the corporation is not a corporation referred to in paragraph (3).

(Aug. 16, 1954, ch. 736, 68A Stat. 103; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(g), 78 Stat. 89.)

AMENDMENTS

1964—Subsec. (g). Pub. L. 88–272 added subsection (g).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section Pub. L. 88–272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(1) of Pub. L. 88–272, set out as a note under section 316 of this title.

RECOGNITION OF GAIN IN CERTAIN LIQUIDATIONS

Pub. L. 91–172, title IX, § 917, Dec. 30, 1969, 83 Stat. 724, provided that:

"For purposes of applying section 333 (e) and (f) of the Internal Revenue Code of 1954 [subsecs. (e) and (f) of this section] to a distribution in liquidation of a corporation during 1970, stock (including stock received in respect of such stock by reason of a stock dividend or stock split) or securities received by a qualified electing shareholder in exchange for his stock in the liquidating corporation shall be considered as having been acquired by the liquidating corporation before January 1, 1954, if—

"(1) such stock or securities were acquired by the the liquidating corporation after December 31, 1953, from such qualified electing shareholder (or from a person from whom such qualified electing shareholder acquired such stock in the liquidating corporation by gift, bequest, or inheritance) solely in exchange for its stock in a transaction to which section 351 of such Code [section 351 of this title] (or the corresponding provisions of prior law) applied, and

"(2) the holding period of such stock or securities in the hands of the liquidating corporation, determined under section 1223(2) of such Code [section 1223(2) of this title], includes any period before January 1, 1954."

LIQUIDATION BEFORE JANUARY 1, 1966

Section 225(h) of Pub. L. 88–272 provided that:

"(1) General rule.—

"Except as provided in paragraph (2), in the case of a corporation referred to in section 333(g)(3) of the Internal Revenue Code of 1954 (as added by subsection (g) of this section), the amendments made by this section [adding section 1022 and redesignating former section 1022 as 1023, amending this section, and sections 316, 331, 381, 541, 542, 543, 544, 545, 551, 553, 554, 562, 856, 1016, 1361, 6501, and the analysis preceding section 1011, and enacting provisions set out as a note under section 316 of this title] (other than subsections (f) and (g) [amending this section and sections 316, 331, 551, and 562 of this title]) shall not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before January 1, 1966.

"(2) Exception.—

"Paragraph (1) shall not apply to any liquidation to which section 332 of the Internal Revenue Code of 1954 applies unless—

"(A) the corporate distributee (referred to in subsection (b)(1) of such section 332) in such liquidation is liquidated in a complete liquidation to which such section 332 does not apply, and

"(B) the distribution of all the property under such liquidation occurs before the 91st day after the last distribution referred to in paragraph (1) and before January 1, 1966."

CROSS REFERENCES

Basis of property received in liquidation under this section, see section 334 (c) of this title.

For application of section 225(h) of Pub. L. 88–272 to taxable years beginning after Dec. 31, 1963, see section 225(1) of Pub. L. 88–272, set out as a note under section 316 of this title.

Gain or loss, section as not applicable to any sale or exchange following adoption of a plan of complete liquidation to which this section applies, see section 337 (c) (1) of this title.

Partial liquidation defined, see section 346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 334, 337 of this title.

§ 334. Basis of property received in liquidations.

(a) General rule.

If property is received in a distribution in partial or complete liquidation (other than a distribution to which section 333 applies), and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) Liquidation of subsidiary.

(1) In general.

If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of section 332 (b)), then, except as provided in paragraph (2), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which section 332 (c) applies, and if paragraph (2) of this subsection does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(2) Exception.

If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of section 332 (b)), and if—

(A) the distribution is pursuant to a plan of liquidation adopted—

(i) on or after June 22, 1954, and

(ii) not more than 2 years after the date of the transaction described in subparagraph (B) (or, in the case of a series of transactions, the date of the last such transaction); and

(B) stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in paragraph (3)) during a 12-month period beginning with the earlier of—

(i) the date of the first acquisition by purchase of such stock, or

(ii) if any of such stock was acquired in an acquisition which is a purchase within the meaning of the second sentence of paragraph (3), the date on which the distributee is first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made,

then the basis of the property in the hands of the distributee shall be the adjusted basis of the stock with respect to which the distribution was made. For purposes of the preceding sentence, under regulations prescribed by the Secretary or his delegate, proper adjustment in the adjusted basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items.

(3) Purchase defined.

For purposes of paragraph (2) (B), the term "purchase" means any acquisition of stock, but only if—

(A) the basis of the stock in the hands of the distributee is not determined (i) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (ii) under section 1014 (a) (relating to property acquired from a decedent),

(B) the stock is not acquired in an exchange to which section 351 applies, and

(C) the stock is not acquired from a person the ownership of whose stock would, under section 318 (a), be attributed to the person acquiring such stock.

Notwithstanding subparagraph (C) of this paragraph, for purposes of paragraph (2)(B), the term "purchase" also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase (within the meaning of the preceding sentence).

(4) Distributee defined.

For purposes of this subsection, the term "distributee" means only the corporation which meets the 80 percent stock ownership requirements specified in section 332 (b).

(c) Property received in liquidation under section 333.

If—

(1) property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and

(2) with respect to such acquisition—

(A) gain was realized, but

(B) as the result of an election made by the shareholder under section 333, the extent to which gain was recognized was determined under section 333,

then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him. (Aug. 16, 1954, ch. 736, 68A Stat. 104; Nov. 13, 1966, Pub. L. 89–809, title II, § 202(a), (b), 80 Stat. 1576.)

AMENDMENTS

1966—Subsec. (b)(2)(B). Pub. L. 89–809, § 202(b), inserted provisions for the determination of the date on

which to commence the running of the 12-month period during which the distributee must have acquired the stock by purchase by adding clauses (i) and (ii).

Subsec. (b)(3). Pub. L. 89-809, § 202(a), added provision that, for purposes of par. (2)(B), the term "purchase" also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 202(d) of Pub. L. 89-809 provided that: "The amendment made by subsection (a) [amending subsec. (b)(3) of this section] shall apply only with respect to acquisitions of stock after December 31, 1965. The amendments made by subsections (b) and (c) [amending subsec. (b)(2)(B) of this section and section 453(d)(4)(A) of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [November 13, 1966]."

CROSS REFERENCES

Carryovers in corporate acquisitions, exception where basis of assets distributed is determined under subsection (b)(2) of this section, see section 381 (a)(1) of this section.

Corporate organizations, basis to distributees, see section 358 of this title.

Exploration expenditures, limitation, see section 615 (c) of this title.

Gain or loss on sales or exchanges in connection with liquidations to which section 332 applies, see section 337 (c)(2) of this title.

Partial liquidation defined, see section 346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 337, 381, 453, 615, 617 of this title.

SUBPART B.—EFFECTS ON CORPORATION

Sec.
336. General rule.
337. Gain or loss on sales or exchanges in connection with certain liquidations.
338. Effect on earnings and profits.

§ 336. General rule.

Except as provided in section 453 (d) (relating to disposition of installment obligations), no gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation. (Aug. 16, 1954, ch. 736, 68A Stat. 106.)

§ 337. Gain or loss on sales or exchanges in connection with certain liquidations.

(a) General rule.

If—

(1) a corporation adopts a plan of complete liquidation on or after June 22, 1954, and

(2) within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims,

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(b) Property defined.

(1) In general.

For purposes of subsection (a), the term "property" does not include—

(A) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

(B) installment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in subsection (a)) of stock in trade or other property described in subparagraph (A) of this paragraph, and

(C) installment obligations acquired in respect of property (other than property described in subparagraph (A)) sold or exchanged before the date of the adoption of such plan of liquidation.

(2) Nonrecognition with respect to inventory in certain cases.

Notwithstanding paragraph (1) of this subsection, if substantially all of the property described in subparagraph (A) of such paragraph (1) which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of subsection (a) the term "property" includes—

(A) such property so sold or exchanged, and

(B) installment obligations acquired in respect of such sale or exchange.

(c) Limitations.

(1) Collapsible corporations and liquidations to which section 333 applies.

This section shall not apply to any sale or exchange—

(A) made by a collapsible corporation (as defined in section 341 (b)), or

(B) following the adoption of a plan of complete liquidation, if section 333 applies with respect to such liquidation.

(2) Liquidations to which section 332 applies.

In the case of a sale or exchange following the adoption of a plan of complete liquidation, if section 332 applies with respect to such liquidation, then—

(A) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334 (b)(1), this section shall not apply; or

(B) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334 (b)(2), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of (i) that portion of the adjusted basis (adjusted for any adjustment required under the second sentence of section 334 (b)(2)) of the stock of the liquidating corporation which is allocable, under regulations prescribed by the Secretary or his delegate, to the property sold or exchanged, over (ii) the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

(d) Special rule for certain minority shareholders.

If a corporation adopts a plan of complete liquidation on or after January 1, 1958, and if subsection (a) does not apply to sales or exchanges of property

by such corporation, solely by reason of the application of subsection (c) (2) (A), then for the first taxable year of any share holder (other than a corporation which meets the 80 percent stock ownership requirement specified in section 332 (b) (1)) in which he receives a distribution in complete liquidation—

(1) the amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by this subtitle on such corporation would have been reduced if subsection (c) (2) (A) had not been applicable, and

(2) for purposes of this title, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by this subtitle on such shareholder for such taxable year, an amount of tax equal to the amount of the increase described in paragraph (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 106; Sept. 2, 1958, Pub. L. 85-866, title I, § 19, 72 Stat. 1615.)

AMENDMENTS

1958—Subsec. (d). Pub. L. 85-866 added subsection (d).

EFFECTIVE DATE OF 1958 AMENDMENT

Subsection (d) of this section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Effective date of part II of subchapter C, certain provisions of this section made applicable, see section 392 (b) (2) of this title.

Gain or loss to shareholders in corporate liquidations, see section 331 of this title.

Installment obligation, effect of distribution in liquidation on recognition of gain or loss, see section 453 (d) (4) (B) of this title.

Partial liquidation defined, see section 346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 341, 392, 453, 1248 of this title.

§ 338. Effect on earnings and profits.

For special rule relating to the effect on earnings and profits of certain distributions in partial liquidation, see section 312 (e).

(Aug. 16, 1954, ch. 736, 68A Stat. 107.)

SUBPART C.—COLLAPSIBLE CORPORATIONS; FOREIGN PERSONAL HOLDING COMPANIES

Sec.
341. Collapsible corporations.
342. Liquidation of certain foreign personal holding companies.

§ 341. Collapsible corporations.

(a) Treatment of gain to shareholders.

Gain from—

(1) the sale or exchange of stock of a collapsible corporation,

(2) a distribution in partial or complete liquidation of a collapsible corporation, which distribution is treated under this part as in part or full payment in exchange for stock, and

(3) a distribution made by a collapsible corporation which, under section 301 (c) (3) (A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property,

to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset held for more than 6 months shall, except as otherwise provided in this section, be considered as gain from the sale or exchange of property which is not a capital asset.

(b) Definitions.

(1) Collapsible corporation.

For purposes of this section, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to—

(A) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and

(B) the realization by such shareholders of gain attributable to such property.

(2) Production or purchase of property.

For purposes of paragraph (1), a corporation shall be deemed to have manufactured, conconstructed, produced, or purchased property, if—

(A) it engaged in the manufacture, construction, or production of such property to any extent,

(B) it holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

(C) it holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) Section 341 assets.

For purposes of this section, the term "section 341 assets" means property held for a period of less than 3 years which is—

(A) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(B) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business;

(C) unrealized receivables or fees, except receivables from sales of property other than property described in this paragraph; or

(D) property described in section 1231 (b) (without regard to any holding period therein provided), except such property which is or has been used in connection with the manufacture, construction, production, or sale of property described in subparagraph (A) or (B).

In determining whether the 3-year holding period specified in this paragraph has been satisfied, section 1223 shall apply, but no such period shall be deemed to begin before the completion of the

manufacture, construction, production, or purchase.

(4) Unrealized receivables.

For purposes of paragraph (3) (C), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(A) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(B) services rendered or to be rendered.

(c) Presumption in certain cases.

(1) In general.

For purposes of this section, a corporation shall, unless shown to the contrary, be deemed to be a collapsible corporation if (at the time of the sale or exchange, or the distribution, described in subsection (a)) the fair market value of its section 341 assets (as defined in subsection (b) (3)) is—

(A) 50 percent or more of the fair market value of its total assets, and

(B) 120 percent or more of the adjusted basis of such section 341 assets.

Absence of the conditions described in subparagraphs (A) and (B) shall not give rise to a presumption that the corporation was not a collapsible corporation.

(2) Determination of total assets.

In determining the fair market value of the total assets of a corporation for purposes of paragraph (1) (A), there shall not be taken into account—

(A) cash,

(B) obligations which are capital assets in the hands of the corporation (and governmental obligations described in section 1221 (5)), and

(C) stock in any other corporation.

(d) Limitations on application of section.

In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this section shall not apply—

(1) unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (b) (3) or at any time thereafter, such shareholder (A) owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation, or (B) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation;

(2) to the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(3) to gain realized after the expiration of 3 years following the completion of such manufacture, construction, production, or purchase.

For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544 (a) (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

(e) Exceptions to application of section.

(1) Sales or exchanges of stock.

For purposes of subsection (a) (1), a corporation shall not be considered to be a collapsible corporation with respect to any sale or exchange of stock of the corporation by a shareholder, if, at the time of such sale or exchange, the sum of—

(A) the net unrealized appreciation in subsection (e) assets of the corporation (as defined in paragraph (5) (A)), plus

(B) if the shareholder owns more than 5 percent in value of the outstanding stock of the corporation the net unrealized appreciation in assets of the corporation (other than assets described in subparagraph (A)) which would be subsection (e) assets under clauses (i) and (iii) of paragraph (5) (A) if the shareholder owned more than 20 percent in value of such stock, plus

(C) if the shareholder owns more than 20 percent in value of the outstanding stock of the corporation and owns, or at any time during the preceding 3-year period owned, more than 20 percent in value of the outstanding stock of any other corporation more than 70 percent in value of the assets of which are, or were at any time during which such shareholder owned during such 3-year period more than 20 percent in value of the outstanding stock, assets similar or related in service or use to assets comprising more than 70 percent in value of the assets of the corporation, the net unrealized appreciation in assets of the corporation (other than assets described in subparagraph (A)) which would be subsection (e) assets under clauses (i) and (iii) of paragraph (5) (A) if the determination whether the property, in the hands of such shareholder, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b), were made—

(i) by treating any sale or exchange by such shareholder of stock in such other corporation within the preceding 3-year period (but only if at the time of such sale or exchange the shareholder owned more than 20 percent in value of the outstanding stock in such other corporation) as a sale or exchange by such shareholder of his proportionate share of the assets of such other corporation, and

(ii) by treating any sale or exchange of property by such other corporation within such 3-year period (but only if at the time of such sale or exchange the shareholder owned more than 20 percent in value of the outstanding stock in such other corporation), gain or loss on which was not recognized to such other corporation under section 337 (a), as a sale or exchange by such shareholder of his proportionate share of the property sold or exchanged,

does not exceed an amount equal to 15 percent of the net worth of the corporation. This paragraph shall not apply to any sale or exchange of stock to the issuing corporation or, in the case of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, to any sale or exchange of stock by such shareholder to any person related to him (within the meaning of paragraph (8)).

(2) Distributions in liquidation.

For purposes of subsection (a) (2), a corporation shall not be considered to be a collapsible corporation with respect to any distribution to a shareholder pursuant to a plan of complete liquidation if, by reason of the application of paragraph (4) of this subsection, section 337 (a) applies to sales or exchanges of property by the corporation within the 12-month period beginning on the date of the adoption of such plan, and if, at all times after the adoption of the plan of liquidation, the sum of—

(A) the net unrealized appreciation in subsection (e) assets of the corporation (as defined in paragraph (5) (A)), plus

(B) if the shareholder owns more than 5 percent in value of the outstanding stock of the corporation, the net unrealized appreciation in assets of the corporation described in paragraph (1) (B) (other than assets described in subparagraph (A) of this paragraph), plus

(C) if the shareholder owns more than 20 percent in value of the outstanding stock of the corporation and owns, or at any time during the preceding 3-year period owned, more than 20 percent in value of the outstanding stock of any other corporation more than 70 percent in value of the assets of which are, or were at any time during which such shareholder owned during such 3-year period more than 20 percent in value of the outstanding stock, assets similar or related in service or use to assets comprising more than 70 percent in value of the assets of the corporation, the net unrealized appreciation in assets of the corporation described in paragraph (1) (C) (other than assets described in subparagraph (A) of this paragraph),

does not exceed an amount equal to 15 percent of the net worth of the corporation.

(3) Recognition of gain in certain liquidations.

For purposes of section 333, a corporation shall not be considered to be a collapsible corporation if at all times after the adoption of the plan of liquidation, the net unrealized appreciation in subsection (e) assets of the corporation (as defined in paragraph (5) (B)) does not exceed an amount equal to 15 percent of the net worth of the corporation.

(4) Gain or loss on sales or exchanges in connection with certain liquidations.

For purposes of section 337, a corporation shall not be considered to be a collapsible corporation with respect to any sale or exchange by it of property within the 12-month period beginning on the date of the adoption of a plan of complete liquidation, if—

(A) at all times after the adoption of such plan, the net unrealized appreciation in subsection (e) assets of the corporation (as defined in paragraph (5) (A)) does not exceed an amount equal to 15 percent of the net worth of the corporation,

(B) within the 12-month period beginning on the date of the adoption of such plan, the corporation sells substantially all of the properties held by it on such date, and

(C) following the adoption of such plan, no distribution is made of any property which in the hands of the corporation or in the hands of the distributee is property in respect of which a deduction for exhaustion, wear and tear, obsolescence, amortization, or depletion is allowable.

This paragraph shall not apply with respect to any sale or exchange of property by the corporation to any shareholder who owns more than 20 percent in value of the outstanding stock of the corporation or to any person related to such shareholder (within the meaning of paragraph (8)), if such property in the hands of the corporation or in the hands of such shareholder or related person is property in respect of which a deduction for exhaustion, wear and tear, obsolescence, amortization, or depletion is allowable.

(5) Subsection (e) asset defined.

(A) For purposes of paragraphs (1), (2), and (4), the term "subsection (e) asset" means, with respect to property held by any corporation—

(i) property (except property used in the trade or business, as defined in paragraph (9)) which in the hands of the corporation is, or, in the hands of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, would be, property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (b);

(ii) property used in the trade or business (as defined in paragraph (9)), but only if the unrealized depreciation on all such property on which there is unrealized depreciation exceeds the unrealized appreciation on all such property on which there is unrealized appreciation;

(iii) if there is net unrealized appreciation on all property used in the trade or business (as defined in paragraph (9)), property used in the trade or business (as defined in paragraph (9)) which, in the hands of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (b); and

(iv) property (unless included under clause (i), (ii), or (iii)) which consists of a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, or any interest in any such property, if the property was created in whole or in part by the personal efforts of, or (in the case of a letter, memorandum, or similar property) was prepared, or produced in whole or in part for, any individual who owns more than 5 percent in value of the stock of the corporation.

The determination as to whether property of the corporation in the hands of the corporation is, or in the hands of a shareholder would be, property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (b) shall be made as if all property of the corporation had been sold or exchanged to one person in one transaction.

(B) For purposes of paragraph (3), the term "subsection (e) asset" means, with respect to property held by any corporation, property described in clauses (i), (ii), (iii), and (iv) of subparagraph (A), except that clauses (i) and (iii) shall apply in respect of any shareholder who owns more than 5 percent in value of the outstanding stock of the corporation (in lieu of any shareholder who owns more than 20 percent in value of such stock).

(6) Net unrealized appreciation defined.

(A) For purposes of this subsection, the term "net unrealized appreciation" means, with respect to the assets of a corporation, the amount by which—

(i) the unrealized appreciation in such assets on which there is unrealized appreciation, exceeds

(ii) the unrealized depreciation in such assets on which there is unrealized depreciation.

(B) For purposes of subparagraph (A) and paragraph (5) (A), the term "unrealized appreciation" means, with respect to any asset, the amount by which—

(i) the fair market value of such asset, exceeds

(ii) the adjusted basis for determining gain from the sale or other disposition of such asset.

(C) For purposes of subparagraph (A) and paragraph (5) (A), the term "unrealized depreciation" means, with respect to any asset, the amount by which—

(i) the adjusted basis for determining gain from the sale or other disposition of such asset, exceeds

(ii) the fair market value of such asset.

(D) For purposes of this paragraph (but not paragraph (5) (A)), in the case of any asset on the sale or exchange of which only a portion of the gain would under any provision of this chapter be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (b), there shall be taken into account only an amount of the unrealized appreciation in such asset which is equal to such portion of the gain.

(7) Net worth defined.

For purposes of this subsection, the net worth of a corporation, as of any day, is the amount by which—

(A) (i) the fair market value of all its assets at the close of such day, plus

(ii) the amount of any distribution in complete liquidation made by it on or before such day, exceeds

(B) all its liabilities at the close of such day.

For purposes of this paragraph, the net worth of a corporation as of any day shall not take into account any increase in net worth during the one-year period ending on such day to the extent attributable to any amount received by it for stock, or as a contribution to capital or as paid-in surplus, if it appears that there was not a bona fide business purpose for the transaction in respect of which such amount was received.

(8) Related person defined.

For purposes of paragraphs (1) and (4), the following persons shall be considered to be related to a shareholder:

(A) If the shareholder is an individual—

(i) his spouse, ancestors, and lineal descendants, and

(ii) a corporation which is controlled by such shareholder.

(B) If the shareholder is a corporation—

(i) a corporation which controls, or is controlled by, the shareholder, and

(ii) if more than 50 percent in value of the outstanding stock of the shareholder is owned by any person, a corporation more than 50 percent in value of the outstanding stock of which is owned by the same person.

For purposes of determining the ownership of stock in applying subparagraphs (A) and (B), the rules of section 267 (c) shall apply, except that the family of an individual shall include only his spouse, ancestors, and lineal descendants. For purposes of this paragraph, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all

classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(9) Property used in the trade or business.

For purposes of this subsection, the term "property used in the trade or business" means property described in section 1231 (b), without regard to any holding period therein provided.

(10) Ownership of stock.

For purposes of this subsection (other than paragraph (8)), the ownership of stock shall be determined in the manner prescribed in subsection (d).

(11) Corporations and shareholders not meeting requirements.

In determining whether or not any corporation is a collapsible corporation within the meaning of subsection (b), the fact that such corporation, or such corporation with respect to any of its shareholders, does not meet the requirements of paragraph (1), (2), (3), or (4) of this subsection shall not be taken into account, and such determination, in the case of a corporation which does not meet such requirements, shall be made as if this subsection had not been enacted.

(12) Nonapplication of section 1245(a).[1]

For purposes of this subsection, the determination of whether gain from the sale or exchange of property would under any provision of this chapter be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) shall be made without regard to the application of sections 617(d)(1), 1245(a), 1250(a), 1251(c), and 1252(a).

(f) Certain sales of stock of consenting corporations.

(1) In general.

Subsection (a)(1) shall not apply to a sale of stock of a corporation (other than a sale to the issuing corporation) if such corporation (hereinafter in this subsection referred to as "consenting corporation") consents (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have the provisions of paragraph (2) apply. Such consent shall apply with respect to each sale of stock of such corporation made within the 6-month period beginning with the date on which such consent is filed.

(2) Recognition of gain.

Except as provided in paragraph (3), if a subsection (f) asset (as defined in paragraph (4)) is disposed of at any time by a consenting corporation (or, if paragraph (3) applies, by a transferee corporation), then the amount by which—

(A) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(B) in the case of any other disposition, the fair market value of such asset,

exceeds the adjusted basis of such asset shall be treated as gain from the sale or exchange of such asset. Such gain shall be recognized notwithstanding any other provision of this subtitle, but only to the extent such gain is not recognized under any other provision of this subtitle.

(3) Exception for certain tax-free transactions.

If the basis of a subsection (f) asset in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), or 374(a), then the amount of gain taken into account by the transferor under paragraph (2) shall not exceed the amount of gain recognized to the transferor on the transfer of such asset (determined without regard to this subsection). This paragraph shall apply only if the transferee—

(A) is not an organization which is exempt from tax imposed by this chapter, and

(B) agrees (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have the provisions of paragraph (2) apply to any disposition by it of such subsection (f) asset.

(4) Subsection (f) asset defined.

For purposes of this subsection—

(A) In general.

The term "subsection (f) asset" means any property which, as of the date of any sale of stock referred to in paragraph (1), is not a capital asset and is property owned by, or subject to an option to acquire held by, the consenting corporation. For purposes of this subparagraph, land or any interest in real property (other than a security interest), and unrealized receivables or fees (as defined in subsection (b)(4)), shall be treated as property which is not a capital asset.

(B) Property under construction.

If manufacture, construction, or production with respect to any property described in subparagraph (A) has commenced before any date of sale described therein, the term "subsection (f) asset" includes the property resulting from such manufacture, construction, or production.

(C) Special rule for land.

In the case of land or any interest in real property (other than a security interest) described in subparagraph (A), the term "subsection (f) asset" includes any improvements resulting from construction with respect to such property if such construction is commenced (by the consenting corporation or by a transferee corporation which has agreed to the application of paragraph (2)) within 2 years after the date of any sale described in subparagraph (A).

(5) 5-year limitation as to shareholder.

Paragraph (1) shall not apply to the sale of stock of a corporation by a shareholder if, during the 5-year period ending on the date of such sale, such shareholder (or any related person within the meaning of subsection (e)(8)(A)) sold any stock of another consenting corporation within any 6-month period beginning on a date on which a consent was filed under paragraph (1) by such other corporation.

[1] Paragraph amended without amendment to paragraph catchline to reflect change.

(6) Special rule for stock ownership in other corporations.

If a corporation (hereinafter in this paragraph referred to as "owning corporation") owns 5 percent or more in value of the outstanding stock of another corporation on the date of any sale of stock of the owning corporation during a 6-month period with respect to which a consent under paragraph (1) was filed by the owning corporation, such consent shall not be valid with respect to such sale unless such other corporation has (within the 6-month period ending on the date of such sale) filed a valid consent under paragraph (1) with respect to sales of its stock. For purposes of applying paragraph (4) to such other corporation, a sale of stock of the owning corporation to which paragraph (1) applies shall be treated as a sale of stock of such other corporation. In the case of a chain of corporations connected by the 5-percent ownership requirements of this paragraph, rules similar to the rules of the two preceding sentences shall be applied.

(7) Adjustments to basis.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 107; Sept. 2, 1958, Pub. L. 85-866, title I, § 20 (a), 72 Stat. 1615; Oct. 16, 1962, Pub. L. 87-834, § 13 (f) (4), 76 Stat. 1035; Feb. 26, 1964, Pub. L. 88-272, title II, § 231 (b) (4), 78 Stat. 105; Aug. 22, 1964, Pub. L. 88-484, § 1 (a), 78 Stat. 596; Sept. 12, 1966, Pub. L. 89-570, § 1(b) (4), 80 Stat. 762; Dec. 30, 1969, Pub. L 91-172, title II, § 211(b) (4), title V, § 514(b) (1), 83 Stat. 570, 643.)

AMENDMENTS

1969—Subsec. (e) (5) (A) (iv). Pub. L. 91-172, § 514(b) (1), added reference to a letter or memorandum.

Subsec. (e) (12). Pub. L. 91-172, § 211 (b) (4), substituted "1250(a), 1251(c), and 1252(a)" for "and 1250(a)".

1966—Subsec. (e) (12). Pub. L. 89-570 included reference to section 617(d) (1).

1964—Subsec. (a). Pub. L. 88-484 substituted "except as otherwise provided in this section" for "except as provided in subsection (d)."

Subsec. (e) (12). Pub. L. 88-272 inserted the reference to section 1250(a).

Subsec. (f). Pub. L. 88-484 added subsection (f).

1962—Subsec. (e) (12). Pub. L. 87-834 added subsec. (e) (12).

1958—Subsec. (e). Pub. L. 85-866 added subsec. (e).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (e) (5) (A) (iv) by section 514 (b) (1) of Pub. L. 91-172 applicable to sales and other dispositions occurring after July 25, 1969, see section 514(c) of Pub. L. 91-172, set out as a note under section 1221 of this title.

Amendment of subsec. (e) (12) by section 211(b) (4) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 1251 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-570 applicable to taxable years ending after Sept. 12. 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 2 of Pub. L. 88-484 provided that: "The amendments made by the first section of this Act [to this section and sections 301, 312, and 453 of this title] shall apply with respect to transactions after the date of the enactment of this Act [Aug. 22, 1964] in taxable years ending after such date."

Amendment of section by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Subsec. (e) (12) of this section applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as a note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 20 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [which added subsec. (e) of this section] shall apply with respect to taxable years beginning after December 31, 1957, but only with respect to sales, exchanges, and distributions after the date of the enactment of this Act [Sept. 2, 1958]."

CROSS REFERENCES

Effective date of part II of subchapter C, this section applicable only with respect to sales, exchanges, and distributions on or after June 22, 1954, see section 392 (a) of this title.

Election as to recognition of gain in liquidations other than distributions of property of a collapsible corporation to which subsection (a) of this section applies, see section 333 (a) of this title.

Gain or loss on sales or exchanges in connection with liquidations, section as not applicable to any sale or exchange made by a collapsible corporation, see section 337 (c) (1) (A) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 312, 333, 337, 392, 453 of this title.

§ 342. Liquidation of certain foreign personal holding companies.

(a) In general.

If any distribution—

(1) is, within the meaning of the Internal Revenue Code of 1939, a distribution in partial liquidation or in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) and

(2) is made by a foreign corporation which, with respect to any taxable year beginning on or before, and ending after, August 26, 1937, was a foreign personal holding company, and with respect to which a United States group (as defined in section 552 (a) (2)) existed after August 26, 1937, and before January 1, 1938,

then the distribution shall be treated as a distribution in full or part payment in exchange for the stock, and the amount of the gain recognized (determined under section 1002 without regard to this part) resulting from such distribution shall be considered as a gain from the sale or exchange of a capital asset held for not more than 6 months.

(b) Special rule for certain liquidations before 1956.

Subsection (a) shall not apply in the case of a series of distributions in complete liquidation described in subsection (a) if—

(1) the first distribution is made on or after June 22, 1954, and

(2) the final distribution is made before January 1, 1956;

and the amount of the gain recognized (determined under section 1002 without regard to this part) resulting from such distributions shall be considered

as a gain from the sale or exchange of a capital asset, or of property which is not a capital asset, as the case may be. (Aug. 16, 1954, ch. 736, 68A Stat. 110.)

CROSS REFERENCES

Income tax, foreign personal holding companies—
Generally, see sections 551—558 of this title.
Deductions, amortizable bond premium, see section 171 of this title.
Gain or loss on property acquired from decedent, see section 1014 of this title.
Liquidations, extension of time for payment of tax on gain attributable to liquidation of personal holding companies, see section 6162 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1022, 6162 of this title.

SUBPART D.—DEFINITION

Sec.
346. Partial liquidation defined.

§ 346. Partial liquidation defined.

(a) In general.

For purposes of this subchapter, a distribution shall be treated as in partial liquidation of a corporation if—

(1) the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(2) the distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the requirements of subsection (b).

For purposes of section 562 (b) (relating to the dividends paid deduction) and section 6043 (relating to information returns), a partial liquidation includes a redemption of stock to which section 302 applies.

(b) Termination of a business.

A distribution shall be treated as a distribution described in subsection (a) (2) if the requirements of paragraphs (1) and (2) of this subsection are met.

(1) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the 5-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the 5-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

Whether or not a distribution meets the requirements of paragraphs (1) and (2) of this subsection shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

(c) Treatment of certain redemptions.

The fact that, with respect to a shareholder, a distribution qualifies under section 302 (a) (relating to redemptions treated as distributions in part or full payment in exchange for stock) by reason of section 302 (b) shall not be taken into account in determining whether the distribution, with respect to such shareholder, is also a distribution in partial liquidation of the corporation. (Aug. 16, 1954, ch. 736, 68A Stat. 110.)

CROSS REFERENCES

Corporations, gain or loss on sales or exchanges in connection with liquidations, see section 337 of this title.
Dividend defined, see section 316 of this title.
Effect on earnings and profits of certain distributions in partial liquidation, see section 312 (e) of this title.
Gain or loss to shareholders in corporate liquidations, partial liquidations, see section 331 (a) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 331 of this title.

PART III.—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart
A. Corporate organizations.
B. Effects on shareholders and security holders.
C. Effects on corporations.
D. Special rule; definitions.

SUBPART A.—CORPORATE ORGANIZATIONS

Sec.
351. Transfer to corporation controlled by transferor.

§ 351. Transfer to corporation controlled by transferor.

(a) General rule.

No gain or loss shall be recognized if property is transferred to a corporation (including, in the case of transfers made on or before June 30, 1967, an investment company) by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation. For purposes of this section, stock or securities issued for services shall not be considered as issued in return for property.

(b) Receipt of property.

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock or securities permitted to be received under subsection (a), other property or money, then—

(1) gain (if any) to such recipient shall be recognized, but not in excess of—

(A) the amount of money received, plus

(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rule.

In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

(d) Application of June 30, 1967, date.

For purposes of this section, if, in connection with the transaction, a registration statement is required to be filed with the Securities and Exchange Com-

mission, a transfer of property to an investment company shall be treated as made on or before June 30, 1967, only if—

(1) such transfer is made on or before such date,

(2) the registration statement was filed with the Securities and Exchange Commission before January 1, 1967, and the aggregate issue price of the stock and securities of the investment company which are issued in the transaction does not exceed the aggregate amount therefor specified in the registration statement as of the close of December 31, 1966, and

(3) the transfer of property to the investment company in the transaction includes only property deposited before May 1, 1967.

(e) Cross references.

(1) For special rule where another party to the exchange assumes a liability, or acquires property subject to a liability, see section 357.

(2) For the basis of stock, securities, or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61 (a) (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 111; Nov. 13, 1966, Pub. L. 89-809, title II, § 203(a), (b), 80 Stat. 1577.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809, § 203(a), inserted "(including, in the case of transfers made on or before June 30, 1967, an investment company)" following "if property is transferred to a corporation".

Subsec. (d). Pub. L. 89-809, § 203(b), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 89-809, § 203(b), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1966 AMENDMENT

Section 203(c) of Pub. L. 89-809 provided that: "The amendments made by subsections (a) and (b) [amending subsec. (a) of this section, adding subsec. (d), and redesignating former subsec. (d) as (e)] shall apply with respect to transfers of property to investment companies whether made before, on, or after the date of the enactment of this Act [November 13, 1966]."

CROSS REFERENCES

Assumption of liability, see section 357 of this title.

Basis of property received in liquidations, purchase defined, see section 334 (b) (3) of this title.

Basis to corporations, see section 362 of this title.

Basis to distributees, see section 358 of this title.

Effective dates of parts III and IV of subchapter C, special rules for plans of reorganization, see section 393 (b) of this title.

Foreign corporations, see section 367 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 311, 334, 341, 357, 358, 362, 367, 1245, 1250, 1251 of this title.

SUBPART B.—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

Sec.
354. Exchanges of stock and securities in certain reorganizations.
355. Distribution of stock and securities of a controlled corporation.
356. Receipt of additional consideration.
357. Assumption of liability.
358. Basis to distributees.

§ 354. Exchanges of stock and securities in certain reorganizations.

(a) General rule.

(1) In general.

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Limitation.

Paragraph (1) shall not apply if—

(A) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(B) any such securities are received and no such securities are surrendered.

(3) Cross reference.

For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered), see section 356.

(b) Exception.

(1) In general.

Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of section 368 (a) (1) (D), unless—

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(2) Cross reference.

For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of section 368 (a) (1) (D), see section 355.

(c) Certain railroad reorganizations.

Notwithstanding any other provision of this subchapter, subsection (a) (1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368 (a)) for a railroad approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or under section 20b of the Interstate Commerce Act, as being in the public interest. (Aug. 16, 1954, ch. 736, 68A Stat. 112.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (c), is classified to section 205 of Title 11, Bankruptcy.

Section 20b of the Interstate Commerce Act, referred to in subsec. (c), is classified to section 20b of Title 49, Transportation.

CROSS REFERENCES

Basis to distributees, see section 358 of this title.

Carryovers in corporate acquisitions, see section 381 of this title.

Complete liquidations of subsidiaries, liquidations to which section applies, see section 332 (b) of this title.

Foreign corporations, see section 367 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81, 332, 356, 358, 367, 368, 381, 425, 1101, 4912 of this title.

§ 355. Distribution of stock and securities of a controlled corporation.

(a) Effect on distributees.

(1) General rule.

If—

(A) a corporation (referred to in this section as the "distributing corporation")—

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and

(D) as part of the distribution, the distributing corporation distributes—

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368 (c), and it is established to the satisfaction of the Secretary or his delegate that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Non pro rata distributions, etc.

Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368 (a) (1) (D)).

(3) Limitation.

Paragraph (1) shall not apply if—

(A) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(B) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

For purposes of this section (other than paragraph (1) (D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction which occurs within 5 years of the distribution of such stock and in which gain or loss was recognized in whole or in part, shall not be treated as stock of such controlled corporation, but as other property.

(4) Cross reference.

For treatment of the distribution if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered), see section 356.

(b) Requirements as to active business.

(1) In general.

Subsection (a) shall apply only if either—

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) Definition.

For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if—

(A) it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,

(B) such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business—

(i) was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or

(ii) was so acquired by another corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 113.)

CROSS REFERENCES

Allocation of earnings and profits in distributions or exchanges to which this section applies, see section 312 (i) of this title.

Basis to distributees, see section 358 of this title.

Capital gains and losses, distribution to which this section applies to be treated as an exchange, see section 1223 (1) (B) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81, 306, 312, 356, 358, 367, 368, 393, 425, 815, 877, 1223, 2107, 2501, 4912, 6166 of this title.

§ 356. Receipt of additional consideration.

(a) Gain on exchanges.

(1) Recognition of gain.

If—

(A) section 354 or 355 would apply to an exchange but for the fact that

(B) the property received in the exchange consists not only of property permitted by section 354 or 355 to be received without the recognition of gain but also of other property or money,

then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) Treatment as dividend.

If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

(b) Additional consideration received in certain distributions.

If—

(1) section 355 would apply to a distribution but for the fact that

(2) the property received in the distribution consists not only of property permitted by section 355 to be received without the recognition of gain, but also of other property or money,

then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 301 applies.

(c) Loss.

If—

(1) section 354 would apply to an exchange, or section 355 would apply to an exchange or distribution, but for the fact that

(2) the property received in the exchange or distribution consists not only of property permitted by section 354 or 355 to be received without the recognition of gain or loss, but also of other property or money,

then no loss from the exchange or distribution shall be recognized.

(d) Securities as other property.

For purposes of this section—

(1) In general.

Except as provided in paragraph (2), the term "other property" includes securities.

(2) Exceptions.

(A) Securities with respect to which nonrecognition of gain would be permitted.

The term "other property" does not include securities to the extent that, under section 354 or 355, such securities would be permitted to be received without the recognition of gain.

(B) Greater principal amount in section 354 exchange.

If—

(i) in an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) the principal amount of such securities received exceeds the principal amount of such securities surrendered,

then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C), if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(C) Greater principal amount in section 355 transaction.

If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

(e) Exchanges for section 306 stock.

Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

(f) Transactions involving gift or compensation.

For special rules for a transaction described in section 354, 355, or this section, but which—

(1) results in a gift, see section 2501 and following, or

(2) has the effect of the payment of compensation, see section 61 (a) (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 115.)

CROSS REFERENCES

Basis to distributees, see section 358 of this title.

Capital gains and losses, distributions under this section relating to section 355 to be treated as exchanges, see section 1223 (1) (B) of this title.

Definitions relating to corporate reorganizations, see section 368 of this title.

Effect on earnings and profits, allocation in corporate separations, see section 312 (i) of this title.

Effective dates of parts III and IV of subchapter C, special rules for plans of reorganization, see section 393 (b) of this title.

Foreign corporations, see section 367 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81, 306, 312, 355, 358, 367, 368, 393, 425, 1223, 4912, 6166 of this title.

§ 357. Assumption of liability.

(a) General rule.

Except as provided in subsections (b) and (c), if—

(1) the taxpayer receives property which would be permitted to be received under section 351, 361, 371, or 374 without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability,

then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351, 361, 371, or 374, as the case may be.

(b) Tax avoidance purpose.

(1) In general.

If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in subsection (a)—

(A) was a purpose to avoid Federal income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose,

then such assumption or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall, for purposes of section 351, 361, 371, or 374 (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) Burden of proof.

In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) Liabilities in excess of basis.

(1) In general.

In the case of an exchange—

(A) to which section 351 applies, or

(B) to which section 361 applies by reason of a plan of reorganization within the meaning of section 368 (a) (1) (D),

if the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Exceptions.

Paragraph (1) shall not apply to any exchange to which—

(A) subsection (b) (1) of this section applies, or

(B) section 371 or 374 applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 116; June 29, 1956, ch. 463, § 2, 70 Stat. 403.)

AMENDMENTS

1956—Subsec. (a). Act June 29, 1956, § 2(1), substituted "371, or 374" for "or 371", in two instances.

Subsec. (b). Act June 29, 1956, § 2 (1), substituted "371, or 374" for "or 371".

Subsec. (c) (2) (B). Act June 29, 1956, § 2 (2), substituted "371 or 374" for "371".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 371 of this title.

§ 358. Basis to distributees.

(a) General rule.

In the case of an exchange to which section 351, 354, 355, 356, 361, or 371 (b) applies—

(1) Nonrecognition property.

The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) decreased by—

(i) the fair market value of any other property (except money) received by the taxpayer,

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by—

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) Other property.

The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Allocation of basis.

(1) In general.

Under regulations prescribed by the Secretary or his delegate, the basis determined under subsection (a) (1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) Special rule for section 355.

In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) Section 355 transactions which are not exchanges.

For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Assumption of liability.

Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(e) Exception.

This section shall not apply to property acquired by a corporation by the exchange of its stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it. (Aug. 16, 1954, ch. 736, 68A Stat. 117; Sept. 2, 1958, Pub. L. 85-866, title I, § 21(a), 72 Stat. 1620; Oct. 22, 1968, Pub. L. 90-621, § 2(a), 82 Stat. 1311.)

AMENDMENTS

1968—Subsec. (e). Pub. L. 90-621 substituted exchange of stock and securities for issuance of stock or securities as the transaction involved and added parenthetical provisions making reference to stock or securities of a corporation which is in control of the acquiring corporation.

1958—Subsec. (a) (1) (A) (iii). Pub. L. 85-866 added subsec. (a) (1) (A) (iii).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2(c) of Pub. L. 90-621 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 362(b) of this title] shall apply only in respect of plans of reorganization adopted after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 21 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [to subsec. (a) (1) (A) of this section] shall apply as provided in section 393 of the Internal Revenue Code of 1954 as if the clause (iii) added by such amendment had been included in such Code at the time of its enactment [Aug. 16, 1954]."

SUBPART C.—EFFECTS ON CORPORATION

Sec.
361. Nonrecognition of gain or loss to corporations.
362. Basis to corporations.
363. Effect on earnings and profits.

§ 361. Nonrecognition of gain or loss to corporations.

(a) General rule.

No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) Exchanges not solely in kind.

(1) Gain.

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

(A) if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(2) Loss.

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(Aug. 16, 1954, ch. 736, 68A Stat. 118.)

CROSS REFERENCES

Assumption of liability, see section 357 of this title.

Basis to distributees, see section 358 of this title.

Carryovers in corporate acquisitions, see section 381 of this title.

Complete liquidations of subsidiaries, exchange described in this section, see section 332 of this title.

Foreign corporations, see section 367 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49, 332, 341, 357, 358, 367, 1245, 1250, 1251, 4914 of this title.

§ 362. Basis to corporations.

(a) Property acquired by issuance of stock or as paid-in surplus.

If property was acquired on or after June 22, 1954, by a corporation—

(1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) Transfers to corporations.

If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(c) Special rule for certain contributions to capital.

(1) Property other than money.

Notwithstanding subsection (a) (2), if property other than money—

(A) is acquired by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of such property shall be zero.

(2) Money.

Notwithstanding subsection (a) (2), if money—

(A) is received by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 118; Oct. 22, 1968, Pub. L. 90–621, § 2(b), 82 Stat. 1311.)

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90–621, set out as a note under section 358 of this title.

CROSS REFERENCES

Basis to distributees, see section 358 of this title.

Contributions to capital of corporation, see section 118 of this title.

Exchange of stock for property, nonrecognition of gain or loss, see section 1032 of this title.

Exploration expenditures, see section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 617 of this title.

§ 363. Effect on earnings and profits.

For rules relating to the effect on earnings and profits of transactions to which this part applies, see sections 312 and 381.

(Aug. 16, 1954, ch. 736, 68A Stat. 119.)

SUBPART D.—SPECIAL RULE; DEFINITIONS

Sec.
367. Foreign corporations.
368. Definitions relating to corporate reorganizations.

§ 367. Foreign corporations.

(a) General rule.

In determining the extent to which gain shall be recognized in the case of any of the exchanges described in section 332, 351, 354, 355, 356, or 361, a foreign corporation shall not be considered as a corporation unless—

(1) before such exchange, or

(2) in the case of an exchange described in subsection (b), either before or after such exchange, it has been established to the satisfaction of the Secretary or his delegate that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(b) Application of subsections (a)(2).

Subsection (a)(2) shall apply in the case of a mere change in form in which there is an exchange by a foreign corporation of—

(1) stock in one foreign corporation for,

(2) stock in another foreign corporation,

if the corporations referred to in paragraphs (1) and (2) differ only in their form of organization, and if the ownership of the corporation referred to in paragraph (1) immediately before such exchange is identical to the ownership of the corporation referred to in paragraph (2) immediately after such exchange.

(c) Section 355 distributions treated as exchanges.

For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

(d) Contributions of capital to controlled corporations.

For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred unless, before such transfer, it has been established to the satisfaction of the Secretary or his delegate that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. (Aug. 16, 1954, ch. 736, 68A Stat. 119; Jan. 12, 1971, Pub. L. 91–681, § 1(a), 84 Stat. 2065.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 91–681 designated existing provisions as subsec. (a), and, as so designated, added provisions relating to instances of an exchange, described in subsection (b). Provisions relating to distributions described in section 355 (or so much of section 356 as relates to section 355) were stricken and were transferred to subsec. (c).

Subsec. (b). Pub. L. 91–681 added subsec. (b)

Subsec. (c). Pub. L. 91–681 designated as subsec. (c) provisions relating to distribution described in section 355 (or so much of section 356 as relates to section 355).

Subsec. (d). Pub. L. 91–681 added subsec. (d).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91–681 provided that: "The amendments made by this section [amending this section and section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1954 (as amended by this section) shall apply only with respect to transfers made after December 31, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1492, 4912, 4914 of this title.

§ 368. Definitions relating to corporate reorganizations.

(a) Reorganization.

(1) In general.

For purposes of parts I and II and this part, the term "reorganization" means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization; or

(F) a mere change in identity, form, or place of organization, however effected.

(2) Special rules relating to paragraph (1).

(A) Reorganizations described in both paragraph (1) (C) and paragraph (1) (D).

If a transaction is described in both paragraph (1) (C) and paragraph (1) (D), then, for purposes of this subchapter, such transaction shall be treated as described only in paragraph (1) (D).

(B) Additional consideration in certain paragraph (1) (C) cases.

If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1) (C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1) (C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1) (C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), and (1)(C) cases.

A transaction otherwise qualifying under paragraph (1) (A), (1) (B), or (1) (C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock.

(D) Statutory merger using stock of controlling corporation.

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under paragraph (1) (A) if (i) such transaction would have qualified under paragraph (1) (A) if the merger had been into the controlling corporation, and (ii) no stock of the acquiring corporation is used in the transaction.

(E) Statutory merger using voting stock of corporation controlling merged corporation.

A transaction otherwise qualifying under paragraph (1) (A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if—

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(b) Party to a reorganization.

For purposes of this part, the term "a party to a reorganization" includes—

(1) a corporation resulting from a reorganization, and

(2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another

In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), or (1)(C) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term "a party to a reorganization" includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term "party to a reorganization" includes the controlling corporation referred to in subsection (a)(2)(E).

(c) Control.

For purposes of part I (other than section 304), part II, and this part, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation. (Aug. 16, 1954, ch. 736, 68A Stat. 120; Feb. 26, 1964, Pub. L. 88-272, title II, § 218(a), (b), 78 Stat. 57; Oct. 22, 1968, Pub. L. 90-621, § 1(a), (b), 82 Stat. 1310, 1311; Jan. 12, 1971, Pub. L. 91-693, § 1(a), (b), 84 Stat. 2077.)

AMENDMENTS

1971—Subsec. (a)(2). Pub. L. 91-693, § 1(a), added subpar. (E).

Subsec. (b). Pub. L. 91-693, § 1(b), defined the term "party to a reorganization" in the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E).

1968—Subsec. (a)(2). Pub. L. 90-621, § 1(a), added subpar. (D).

Subsec. (b). Pub. L. 90-621, § 1(b), added reference to the inclusion of the controlling corporation in the term "a party to a reorganization" in reorganizations qualifying under paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D) of subsection (a).

1964—Subsec. (a). Pub. L. 88-272, § 218(a), (b)(1), inserted "(or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation)" in par. (1)(B), and in par. (2)(C), inserted references to par. (1)(B), and substituted "assets or stock" for "assets" wherever appearing.

Subsec. (b). Pub. L. 88-272, § 218(b)(2), inserted references to par. (1)(B) wherever appearing.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91-693 provided that: "The amendments made by this section [to subsecs. (a)(2) and (b) of this section] shall apply to statutory mergers occurring after December 31, 1970."

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(c) of Pub. L. 90-621 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 218(c) of Pub. L. 88-272 provided that: "The amendments made by this section [to this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date."

CROSS REFERENCES

Assumption of liability, liabilities in excess of basis, see section 357 (c) of this title.

Carryovers in certain corporate acquisitions, operating rules, see section 381 (b) of this title.

Dividends paid on certain preferred stock of public utilities, stock issued in reorganization as defined in this section, see section 247 (b) (2) of this title.

Section 306 stock defined, stock received in reorganization within meaning of this section, see section 306 (c) (1) (B) of this title.

Taxability of beneficiary of employees' trust, certain plan terminations, see section 402 (e) of this title.

Transfer to corporation controlled by transferor, definition of control, see section 351 (a) of this title.

Transferred assets, other taxes, see section 6901 (a) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247, 249, 279, 306, 351, 354, 355, 357, 381, 402, 512, 815, 1101, 1232, 1244, 4912, 4920, 6166, 6901 of this title; title 12 section 1717.

PART IV.—INSOLVENCY REORGANIZATIONS

Sec.
371. Reorganization in certain receivership and bankruptcy proceedings.
372. Basis in connection with certain receivership and bankruptcy proceedings.
373. Loss not recognized in certain railroad reorganizations.
374. Gain or loss not recognized in certain railroad reorganizations.

AMENDMENTS

1956—Act June 29, 1956, ch. 463, § 4, 70 Stat. 403, added item 374.

§ 371. Reorganization in certain receivership and bankruptcy proceedings.

(a) Exchanges by corporations.

(1) In general.

No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205)) is transferred in pursuance of an order of the court having jurisdiction of such corporation—

(A) in a receivership, foreclosure, or similar proceeding, or

(B) in a proceeding under chapter X of the Bankruptcy Act (52 Stat. 883-905; 11 U. S. C., chapter 10) or the corresponding provisions of prior law,

to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(2) Gain from exchanges not solely in kind.

If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then—

(A) if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(b) Exchanges by security holders.

(1) In general.

No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in subsection (a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(2) Gain from exchanges not solely in kind.

If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of property permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind.

If an exchange would be within the provisions of subsection (a) (1) or (b) (1) if it were not for the fact that the property received in exchange consists not only of property permitted by subsection (a) (1) or (b) (1) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Assumption of liabilities.

In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in section 357 shall apply. (Aug. 16, 1954, ch. 736, 68A Stat. 121.)

CROSS REFERENCES

Assumption of liability, see section 357 of this title.

Basis in connection with receivership and bankruptcy proceedings to which this section applies, see section 372 of this title.

Basis to distributees, see section 358 of this title.

Dividends paid on certain preferred stock of public utilities, transactions to which this section applies, see section 247 (b) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 247, 341, 357, 372, 1232, 1245, 1250, 1251 of this title.

§ 372. Basis in connection with certain receivership and bankruptcy proceedings.

(a) Corporation.

If property was acquired by a corporation in a transfer to which—

(1) section 371 (a) applies,

(2) so much of section 371 (c) as relates to section 371 (a) (1) applies, or

(3) the corresponding provisions of prior law apply,

then notwithstanding the provisions of section 270 of the Bankruptcy Act (54 Stat. 709; 11 U. S. C. 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted under section 1017 by reason of a discharge of indebtedness in pursuance of the plan of reorganization under which such transfer was made.

(b) Adjustment for depreciation sustained before March 1, 1913, in certain cases of property acquired from retirement method corporations.

(1) In general.

If the taxpayer has acquired property in a transaction described in section 373 (b) or 374 (b), and if any such property constitutes retirement-straight line property, then, in determining the adjusted basis of all retirement-straight line property held by the taxpayer on his adjustment date, adjustment shall be made (in lieu of the adjustment provided in section 1016 (a) (3) (A)) for depreciation sustained before March 1, 1913, on retirement-straight line property which was held on such date for which cost was or is claimed as basis, and which either—

(A) Retired before acquisition by taxpayer.

Was retired before the acquisition of the retirement-straight line property by the taxpayer, but only if a deduction was allowed in computing net income by reason of such retirement, and such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under this subtitle or prior income, war-profits, or excess-profits tax laws.

(B) Acquired by taxpayer.

Was acquired by the taxpayer.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary or his delegate) among all retirement-straight line property held by the taxpayer on his adjustment date. Such adjustment shall apply to all periods on and after the adjustment date.

(2) Retirement-straight line property defined.

For purposes of this subsection, the term "retirement-straight line property" means any property of a kind or class with respect to which (A) the corporation transferring such property to the taxpayer was using (at the time of transfer) the retirement method of computing the allowance of deductions for depreciation, and (B) the acquiring corporation has adopted any other method of computing such allowance.

(3) Other definitions.

For purposes of this subsection:

(A) Depreciation.

The term "depreciation" means exhaustion, wear and tear, and obsolescence.

(B) Adjustment date.

In the case of any kind or class of property, the term "adjustment date" means whichever of the following is the later:

(i) the first day of the taxpayer's first taxable year beginning after December 31, 1955, or

(ii) the first day of the first taxable year in which the taxpayer uses a method of computing the allowance of deductions for depreciation other than the retirement method.

(c) Stock or security holder.

For basis of stock or securities acquired under section 371 (b), see section 358.

(Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85-866, title I, § 95(a), 72 Stat. 1671.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-866 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85-866 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 95 (b) of Pub. L. 85-866 provided that:

"(1) **In general.**—The amendments made by subsection (a) [to subsecs. (b) and (c) of this section] shall apply only to taxable years beginning after December 31, 1955.

"(2) **Exception.**—The amendments made by subsection (a) shall not apply with respect to any taxpayer if, before the date of the enactment of this Act [Sept. 2, 1958], there has been a determination, for any taxable year, of the adjusted basis of retirement-straight line property of the taxpayer of the type described in section 372 (b) of the Internal Revenue Code of 1954 (as added by subsection (a)) by the Tax Court of the United States, or by any other court of competent jurisdiction, in any proceeding in which the decision of the court became final after December 31, 1955, and which established the right of the taxpayer to use the straight line depreciation method of computing the annual depreciation allowance with respect to such property for Federal tax purposes for any year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 617 of this title.

§ 373. Loss not recognized in certain railroad reorganizations.

(a) Nonrecognition of loss.

No loss shall be recognized if property of a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205), is transferred before August 1, 1955, in pursuance of an order of the court having jurisdiction of such corporation—

(1) in a receivership proceeding, or

(2) in a proceeding under section 77 of the Bankruptcy Act,

to a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding.

(b) Basis.

(1) Railroad corporations.

If the property of a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) was acquired after December 31, 1938, and before August 1, 1955, in pursuance of an order of the court having jurisdiction of such corporation—

(A) in a receivership proceeding, or

(B) in a proceeding under section 77 of the Bankruptcy Act,

and the acquiring corporation is a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired.

(2) Property acquired by street, suburban, or interurban electric railway corporation.

If the property of any street, suburban, or interurban electric railway corporation engaged as a common carrier in the transportation of persons or property in interstate commerce was acquired after December 31, 1934, in pursuance of an order of the court having jurisdiction of such corporation in a proceeding under section 77B of the Bankruptcy Act (48 Stat. 912), and the acquiring corporation is a street, suburban, or interurban electric railway engaged as a common carrier in the transportation of persons or property in interstate commerce, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, then, notwithstanding the provisions of section 270 of the Bankruptcy Act (52 Stat. 904; 11 U. S. C. 670), the basis shall be the same as it would be in the hands of the corporation whose property was so acquired.

(Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, § 3, 70 Stat. 403.)

AMENDMENTS

1956—Subsec. (a). Act June 29, 1956, § 3(1), substituted "transferred before August 1, 1955, in pursuance" for "transferred in pursuance".

Subsec. (b)(1). Act June 29, 1956, § 3(2), substituted "December 31, 1938, and before August 1, 1955" for "December 31, 1938"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 372, 615, 617, 1232 of this title.

§ 374. Gain or loss not recognized in certain railroad reorganizations.

(a) Exchanges by corporations.

(1) Nonrecognition of gain or loss.

No gain or loss shall be recognized if property of a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act (49 Stat. 922; 11 U. S. C. 205), is transferred after July 31, 1955, in pursuance of an order of the court having jurisdiction of such corporation—

(A) in a receivership proceeding, or

(B) in a proceeding under section 77 of the Bankruptcy Act,

to another railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in ex-

change solely for stock or securities in such other railroad corporation.

(2) Gain from exchanges not solely in kind.

If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by paragraph (1) to be received without the recognition of gain, but also of other property or money, then—

(A) if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(3) Loss from exchanges not solely in kind.

If an exchange would be within the provisions of paragraph (1) if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(b) Basis.

If the property of a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) was acquired after July 31, 1955, in pursuance of an order of the court having jurisdiction of such corporation—

(1) in a receivership proceeding, or

(2) in a proceeding under section 77 of the Bankruptcy Act, and the acquiring corporation is a railroad corporation (as defined in section 77 (m) of the Bankruptcy Act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired, increased in the amount of gain recognized under subsection (a) (2) to the transferor on such transfer.

(c) Assumption of liabilities.

In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in section 357 shall apply. (Added June 29, 1956, ch. 463, § 1, 70 Stat. 402.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 250, 341, 357, 372, 1232, 1245, 1250, 1251 of this title.

PART V.—CARRYOVERS

Sec.
381. Carryovers in certain corporate acquisitions.
382. Special limitations on net operating loss carryovers.

§ 381. Carryovers in certain corporate acquisitions.

(a) General rule.

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies, except in a case in which the basis of the assets distributed is determined under section 334 (b) (2); or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354 (b) (1) are met), or (F) of section 368 (a) (1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c).

(b) Operating rules.

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368 (a) (1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary or his delegate, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation.

The items referred to in subsection (a) are:

(1) Net operating loss carryovers.

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the tax-

able year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172 (b) (2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172 (b) (2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172 (b) (2) (A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172 (b) (2) (B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172 (b) (2) (B).

(2) Earnings and profits.

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover.

The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the net capital gain (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the net capital gain in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting.

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary or his delegate.

(5) Inventories.

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the

method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary or his delegate.

(6) Method of computing depreciation allowance.

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under subsections (b), (j), and (k) of section 167 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

(7) Repealed. June 15, 1955, ch. 143, § 2 (1), 69 Stat. 134.

(8) Installment method.

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation has elected, under section 453, to report on the installment basis) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium.

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining exploration and development expenses of distributor of transferor corporation.

The acquiring corporation shall be entitled to deduct, as if it were the distributor or transferor corporation, expenses deferred under sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected. For the purpose of applying the limitation provided in section 615, if, for any taxable year, the distributor or transferor corporation was allowed the deduction in section 615(a) or made the election in section 615(b), the acquiring corporation shall be deemed to have been allowed such deduction or to have made such election, as the case may be. For the purpose of applying the limitation provided in section 617, if, for any taxable year, the distributor or transferor corporation was allowed the deduction in section 615(a) or section 617(a) or made the election provided in section 615(b), the acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of bad debts, prior taxes, or delinquency amounts.

If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).

(13) Involuntary conversions under section 1033.

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company.

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

(15) Indebtedness of certain personal holding companies.

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsections (b)(7) and (c) of section 545, relating to deduction with respect to payment of certain indebtedness.

(16) Certain obligations of distributor or transferor corporation.

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company.

If the acquiring corporation pays a deficiency dividend (as defined in section 547 (d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining.

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613 (c) (3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitation.

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

(20) Carry-over of unused pension trust deductions in certain cases.

Notwithstanding the other provisions of this section, or section 394 (a), a corporation which has acquired the properties and assumed the liabilities of a wholly owned subsidiary shall be considered to have succeeded to and to be entitled to take into account contributions of the subsidiary to a pension plan, and shall be considered to be the distributor or transferor corporation after the date of distribution or transfer (but not for taxable years with respect to which this paragraph does not apply) for the purpose of determining the amounts deductible under section 404 with respect to contributions to a pension plan if—

(A) the corporate laws of the State of incorporation of the subsidiary required the surviving corporation in the case of merger to be incorporated under the laws of the State of incorporation of the subsidiary; and

(B) the properties were acquired in a liquidation of the subsidiary in a transaction subject to section 112 (b) (6) of the Internal Revenue Code of 1939.

(21) Pre-1954 adjustments resulting from change in method of accounting.

The acquiring corporation shall take into account any net amount of any adjustment described in section 481 (b) (4) of the distributor or transferor corporation—

(A) to the extent such net amount of such adjustment has not been taken into account by the distributor or transferor corporation, and

(B) in the same manner and at the same time as such net amount would have been taken into account by the distributor or transferor corporation.

(22) Successor insurance company.

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary or his delegate) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Credit under section 38 for investment in certain depreciable property.

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary or his delegate) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(d) Operations loss carrybacks and carryovers of life insurance companies.

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 812(f).

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, § 2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, § 1, 70 Stat. 7; Sept. 2, 1958, Pub. L. 85–866, title I, § 29 (c), 72 Stat. 1628; June 25, 1959, Pub. L. 86–69, § 3(c), 73 Stat. 139; Oct. 16, 1962, Pub. L. 87–834, § 2(d), 76 Stat. 971; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 209(d)(2), 225(i)(3), 78 Stat. 46, 92; Jan. 2, 1968, Pub. L. 90–240, § 5(d), 81 Stat. 778; Dec. 30, 1969, Pub. L. 91–172, title V, §§ 504(c)(2), 512(c), 521(f), 83 Stat. 633, 639, 654.)

AMENDMENTS

1969—Subsec. (b)(3). Pub. L. 91–172, § 512(c), substituted "a net operating loss or a net capital loss" for "a net operating loss."

Subsec. (c)(6). Pub. L. 91–172, § 521(f), substituted "subsections (b), (j) and (k) of section 167" for "paragraphs (2), (3) and (4) of section 167(b)" and added reference to adjusted basis in the hands of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91–172, § 504(c)(2), substituted "Treatment of certain mining exploration and development expenses of distributor or transferor corporation" for "Treatment of certain expenses deferred by the election of distributor or transferor corporation" in the par. catchline, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and added provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90–240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88-272, § 225(i)(3), substituted "subsections (b)(7) and (c) of section 545, relating to deduction with respect to payment of certain indebtedness" for "section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934."

Subsec. (c)(19). Pub. L. 88-272, § 209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87-834 added subsec. (c)(23).

1959—Subsec. (c)(22). Pub. L. 86-69, § 3(c)(1), added subsec. (c)(22).

Subsec. (d). Pub. L. 86-69, § 3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85-866 added subsec. (c)(21).

1956—Subsec. (c), (20). Act Jan. 28, 1956 added subsec. (c)(20).

1955—Subsec. (c), (7). Act June 15, 1955, repealed subsec. (c)(7), which related to carryover of prepaid income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (b)(3) by section 512(c) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Amendment of subsec. (c)(6) by section 521(f) of Pub. L. 91-172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91-172, set out as a note under section 167 of this title.

Amendment of subsec. (c)(10) by section 504(c)(2) of Pub. L. 91-172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91-172, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment of subsec. (c)(22) of this section by Pub. L. 90-240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90-240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (c)(15) by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88-272 set out as a note under section 316 of this title.

Amendment of subsec. (c)(19) by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88-272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Subsec. (c)(23) of this section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-69 applicable only with respect to taxable years beginning after December 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85-866, which added subsec. (c)(21), see section 29 (d) of Pub. L. 85-866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: "The amendments made by the first section of this Act [adding subsec. (c), par. (20) of this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act June 15, 1955, provided that the repeal of sections 452 and 462 of this title and par. (7), subsec. (c) of this section, should apply with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954.

SAVINGS PROVISIONS

Section 4 of act June 15, 1955, provided:

"(a) FILING OF STATEMENT.—If—

"(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [repealing sections 452 and 462, and par. (7) of subsec. (c) of this section], and

"(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

"(b) FORM AND EFFECT OF STATEMENT.—

"(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

"(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

"(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1954, as those sections existed before the enactment of this Act.

"(c) SPECIAL RULES.—

"(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

"(2) ESTIMATED TAX.—Any addition to the tax under section 294 (d) of the Internal Revenue Code of 1939 shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1954 shall be computed as if this Act had not been enacted.

"(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

"(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

"(B) the Internal Revenue Code of 1954 prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

"(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561 (a)(1) of the Internal Revenue Code of 1954, dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

"(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

"(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805 (a) of the Internal Revenue Code of 1954."

CROSS REFERENCES

Effect on earnings and profits, see section 312 of this title.

Effective date of part V of subchapter C, this section as applicable to liquidations and reorganizations, see section 394 (a) of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88-272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48, 166, 250, 382, 394, 481, 545, 593, 615, 617, 805, 810, 812, 815, 818, 832, 1251 of this title.

§ 382. Special limitations on net operating loss carryovers.

(a) Purchase of a corporation and change in its trade or business.

(1) In general.

If, at the end of a taxable year of a corporation—

(A) any one or more of those persons described in paragraph (2) own a percentage of the total fair market value of the outstanding stock of such corporation which is at least 50 percentage points more than such person or persons owned at—

(i) the beginning of such taxable year, or

(ii) the beginning of the prior taxable year,

(B) the increase in percentage points at the end of such taxable year is attributable to—

(i) a purchase by such person or persons of such stock, the stock of another corporation owning stock in such corporation, or an interest in a partnership or trust owning stock in such corporation, or

(ii) a decrease in the amount of such stock outstanding or the amount of stock outstanding of another corporation owning stock in such corporation, except a decrease resulting from a redemption to pay death taxes to which section 303 applies, and

(C) such corporation has not continued to carry on a trade or business substantially the same as that conducted before any change in the percentage ownership of the fair market value of such stock,

the net operating loss carryovers, if any, from prior taxable years of such corporation to such taxable year and subsequent taxable years shall not be included in the net operating loss deduction for such taxable year and subsequent taxable years.

(2) Description of person or persons.

The person or persons referred to in paragraph (1) shall be the 10 persons (or such lesser number as there are persons owning the outstanding stock at the end of such taxable year) who own the greatest percentage of the fair market value of such stock at the end of such taxable year; except that, if any other person owns the same percentage of such stock at such time as is owned by one of the 10 persons, such person shall also be included. If any of the persons are so related that such stock owned by one is attributed to the other under the rules specified in paragraph (3), such persons shall be considered as only one person solely for the purpose of selecting the 10 persons (more or less) who own the greatest percentage of the fair market value of such outstanding stock.

(3) Attribution of ownership.

Section 318 (relating to constructive ownership of stock) shall apply in determining the ownership of stock, except that sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.

(4) Definition of purchase.

For purposes of this subsection, the term "purchase" means the acquisition of stock, the basis of which is determined solely by reference to its cost to the holder thereof, in a transaction from a person or persons other than the person or persons the ownership of whose stock would be attributed to the holder by application of paragraph (3).

(b) Change of ownership as the result of a reorganization.

(1) In general.

If, in the case of a reorganization specified in paragraph (2) of section 381 (a), the transferor corporation or the acquiring corporation—

(A) has a net operating loss which is a net operating loss carryover to the first taxable year of the acquiring corporation ending after the date of transfer, and

(B) the stockholders (immediately before the reorganization) of such corporation (hereinafter in this subsection referred to as the "loss corporation"), as the result of owning stock of the loss corporation, own (immediately after the reorganization) less than 20 percent of the fair market value of the outstanding stock of the acquiring corporation,

the total net operating loss carryover from prior taxable years of the loss corporation to the first taxable year of the acquiring corporation ending

after the date of transfer shall be reduced by the percentage determined under paragraph (2).

(2) Reduction of net operating loss carryover.

The reduction applicable under paragraph (1) shall be the percentage determined by subtracting from 100 percent—

(A) the percent of the fair market value of the outstanding stock of the acquiring corporation owned (immediately after the reorganization) by the stockholders (immediately before the reorganization) of the loss corporation, as the result of owning stock of the loss corporation, multiplied by

(B) five.

(3) Exception to limitation in this subsection.

The limitation in this subsection shall not apply if the transferor corporation and the acquiring corporation are owned substantially by the same persons in the same proportion.

(4) Net operating loss carryovers to subsequent years.

In computing the net operating loss carryovers to taxable years subsequent to a taxable year in which there was a limitation applicable to a net operating loss carryover by operation of this subsection, the income in such taxable year, as computed under section 172 (b) (2), shall be increased by the amount of the reduction of the total net operating loss carryover determined under paragraph (2).

(5) Attribution of ownership.

If the transferor corporation or the acquiring corporation owns (immediately before the reorganization) any of the outstanding stock of the loss corporation, such transferor corporation or acquiring corporation shall, for purposes of this subsection, be treated as owning (immediately after the reorganization) a percentage of the fair market value of the acquiring corporation's outstanding stock which bears the same ratio to the percentage of the fair market value of the outstanding stock of the loss corporation (immediately before the reorganization) owned by such transferor corporation or acquiring corporation as the fair market value of the total outstanding stock of the loss corporation (immediately before the reorganization) bears to the fair market value of the total outstanding stock of the acquiring corporation (immediately after the reorganization).

(6) Stock of corporation controlling acquiring corporation.

If the stockholders of the loss corporation (immediately before the reorganization) own, as a result of the reorganization, stock in a corporation controlling the acquiring corporation, such stock of the controlling corporation shall, for purposes of this subsection, be treated as stock of the acquiring corporation in an amount valued at an equivalent fair market value.

(c) Definition of stock.

For purposes of this section, "stock" means all shares except nonvoting stock which is limited and preferred as to dividends. (Aug. 16, 1954, ch. 736, 68A Stat. 129; Aug. 31, 1964, Pub. L. 88-554, § 4(b) (3), 78 Stat. 763.)

AMENDMENTS

1964—Subsec. (a)(3). Pub. L. 88-554 inserted the reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by section 4 of Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 394 of this title.

PART VI.—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91-172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613, added Part heading and analysis of sections.

§ 385. Treatment of certain interests in corporations as stock or indebtedness.

(a) Authority to prescribe regulations.

The Secretary or his delegate is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness.

(b) Factors.

The regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

(1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,

(2) whether there is subordination to or preference over any indebtedness of the corporation,

(3) the ratio of debt to equity of the corporation,

(4) whether there is convertibility into the stock of the corporation, and

(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(Added Pub. L. 91-172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613.)

PART VII.—EFFECTIVE DATE OF SUBCHAPTER C

Sec.
391. Effective date of part I.
392. Effective date of part II.
393. Effective dates of parts III and IV.
394. Effective date of part V.
395. Special rules for application of this subchapter.

AMENDMENTS

1969—Pub. L. 91-172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613, substituted "Part VII" for "Part VI" as the Part designation.

§ 391. Effective date of part I.

Except as otherwise provided in this subchapter, part I shall take effect on June 22, 1954. Section 306 shall apply only with respect to dispositions (or redemptions) occurring on or after June 22, 1954. In the case of—

(1) any acquisition of stock described in section 304 which occurred before June 22, 1954, and

(2) any acquisition of stock described in such section which occurred on or after June 22, 1954, and on or before December 31, 1958, pursuant to a contract entered into before June 22, 1954,

the extent to which the property received in return for such acquisition shall be treated as a dividend shall be determined as if the Internal Revenue Code of 1939 continued to apply in respect of such acquisition and as if this Code had not been enacted.

(Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85-866, title I, § 22(a), 72 Stat. 1620.)

AMENDMENTS

1958—Pub. L. 85-866 added sentence relating to acquisition of stock before June 22, 1954, and acquisition of stock on or after June 22, 1954, and on or before Dec. 31, 1958.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 22 (b) of Pub. L. 85-866 provided that: "The third sentence of section 391 of the Internal Revenue Code of 1954, as added by subsection (a) of this section, shall apply as if included in such section on the date of the enactment of such Code [Aug. 16, 1954]."

§ 392. Effective date of part II.

(a) General rule.

Except as otherwise provided in this subchapter, part II shall apply with respect to a plan of liquidation only if the first distribution in pursuance of such plan occurs on or after June 22, 1954. Section 341 shall apply only with respect to sales, exchanges, and distributions on or after June 22, 1954.

(b) Special rule for certain sales during 1954.

(1) Nonrecognition of gain or loss.

If—

(A) all of the assets of a corporation (less assets retained to meet claims) are distributed before January 1, 1955, in complete liquidation of such corporation; and

(B) the corporation elects (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this subsection apply,

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property during the calendar year 1954.

(2) Certain provisions of section 337 made applicable.

For purposes of paragraph (1)—

(A) the term "property" has the meaning given to such term by section 337 (b); except that any determination required by section 337 (b) to be made by reference to the date of the adoption of the plan of liquidation shall be made by reference to January 1, 1954; and

(B) the limitations of section 337 (c) shall apply.

For purposes of section 453 (d) (4) (B) (relating to disposition of installment obligations), nonrecognition of gain or loss under paragraph (1) of this subsection shall be treated as nonrecognition of gain or loss under section 337.

(3) Plans of liquidation adopted after December 31, 1953, and before June 22, 1954.

If the plan of complete liquidation was adopted after December 31, 1953, and before June 22, 1954, then, at the election of the corporation (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe)—

(A) the 12-month period beginning on the date of the adoption of such plan shall be (i) the period for distribution (in lieu of the requirement in paragraph (1) (A) of this subsection that the assets be distributed before January 1, 1955), and (ii) the period during which, by reason of paragraph (1) of this subsection, gain or loss to the corporation is not recognized (in lieu of nonrecognition of gain or loss during the calendar year 1954); and

(B) notwithstanding paragraph (2) (A) of this subsection, any determination required by section 337 (b) to be made by reference to the date of the adoption of the plan of liquidation shall be made by reference to such date (and not by reference to January 1, 1954).

(Aug. 16, 1954, ch. 736, 68A Stat. 131.)

§ 393. Effective dates of parts III and IV.

(a) General rule.

Except as otherwise provided in this subchapter, parts III and IV shall take effect on June 22, 1954.

(b) Special rules for plans of reorganization.

(1) In general.

Except as provided in paragraphs (2) and (3), parts III and IV shall apply only in respect of plans of reorganization adopted on or after June 22, 1954. For purposes of this paragraph and paragraphs (2) and (3), a plan to make a transfer to a controlled corporation described in section 351, or a plan to make an exchange or distribution which is described in section 355 (or so much of section 356 as relates to section 355) shall be treated as a plan of reorganization.

(2) Election to have 1939 Code apply.

If—

(A) a plan of reorganization was submitted to the Secretary or his delegate before June 22, 1954, but such plan was not adopted before such date,

(B) the Secretary or his delegate issues (whether before, on, or after such date) a ruling with respect to such plan, and

(C) the corporations which are parties to the reorganization elect (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this paragraph apply,

then, if such reorganization is completed in accordance with the plan so submitted, the tax treatment of such reorganization (as to the corporations which are parties to the reorganization and as to their shareholders and security holders) shall be determined under the Internal Revenue Code of 1939 (in accordance with the contents of such ruling) and not under this Code.

(3) Election to have 1954 Code apply.

If—

(A) a plan of reorganization—

(i) was adopted after March 1, 1954, and before June 22, 1954, or

(ii) was adopted before June 22, 1954, in pursuance of a court order and all distributions under the plan occur after March 1, 1954, and before July 1, 1954, and

(B) the corporations which are parties to the reorganization elect (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have this paragraph apply,

then the tax treatment of such reorganization (as to the corporations which are parties to the reorganization and as to their shareholders and security holders) shall be determined under this Code and not under the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 132.)

§ 394. Effective date of part V.

(a) Section 381.

Except as otherwise provided in this subchapter, section 381 shall apply to liquidations and reorganizations, the tax treatment of which is determined under this Code.

(b) Section 382 (a).

For purposes of applying the special limitation on net operating loss carryovers in section 382 (a), the beginning of the taxable years specified in clauses (i) and (ii) of section 382 (a) (1) (A) shall be considered to be the beginning of such taxable years or June 22, 1954, whichever occurs later.

(c) Section 382 (b).

Section 382 (b) shall apply to reorganizations, the tax treatment of which is determined under this Code. (Aug. 16, 1954, ch. 736, 68A Stat. 133.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 381 of this title.

§ 395. Special rules for application of this subchapter.

(a) Taxable years affected.

Any provision of this subchapter the applicability of which is stated in terms of a specific date shall apply with respect to taxable years ending after such date. Each provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall apply only to taxable years ending after such specific date.

(b) Repeal and continuance of Internal Revenue Code of 1939.

To the extent that the provisions of this subchapter supersede the provisions of the Internal Revenue Code of 1939, such provisions of the Internal Revenue Code of 1939 are hereby repealed. The provisions of the Internal Revenue Code of 1939 shall continue to apply with respect to transactions for which rules are provided in this subchapter until such rules take effect. (Aug. 16, 1954, ch. 736, 68A Stat. 133.)

Subchapter D.—Deferred Compensation, Etc.

Part
I. Pension, profit-sharing, stock bonus plans, etc.
II. Certain stock options.

AMENDMENTS

1964—Pub. L. 88-272, title II, § 221(d)(1), Feb. 26, 1964, 78 Stat. 75, substituted "Certain stock options" for "Miscellaneous provisions" in the heading to Part II.

PART I.—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Sec.
401. Qualified pension, profit-sharing, and stock bonus plans.
402. Taxability of beneficiary of employees' trust.
403. Taxation of employee annuities.
404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.
405. Qualified bond purchase plans.
406. Certain employees of foreign subsidiaries.
407. Certain employees of domestic subsidiaries engaged in business outside the United States.

AMENDMENTS

1964—Pub. L. 88-272, title II, § 220(c)(1), Feb. 26, 1964, 78 Stat. 62, added items 406 and 407.

1962—Pub. L. 87-792, § 5(b), Oct. 10, 1962, 76 Stat. 827, added item 405.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 72 of this title.

§ 401. Qualified pension, profit-sharing, and stock bonus plans.

(a) Requirements for qualification.

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404 (a) (3) (B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either—

(A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20

hours in any one week, and employees whose customary employment is for not more than 5 months in any calendar year, or

(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees;

and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(5) A classification shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4) merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 3121(a)(1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation. or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121(a)(1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law. For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c)(1) means such individual's earned income (as defined in subsection (c)(2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by paragraph (4), may not be used for designated employees in the event of early termination of the plan.

(8) A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), a trust forming part of such plan shall not constitute a qualified trust under this section unless, under the plan, the entire interest of each employee—

(A) either will be distributed to him not later than his taxable year in which he attains the age of 70½ years, or, in the case of an employee other than an owner-employee (as defined in subsection (c)(3)), in which he retires, whichever is the later, or

(B) will be distributed, commencing not later than such taxable year, (i) in accordance with regulations prescribed by the Secretary or his delegate, over the life of such employee or over the lives of such employee and his spouse, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.

(10) In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3))—

(A) paragraph (3) and the first and second sentences of paragraph (5) shall not apply, but—

(i) such plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of or on behalf of employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, and

(ii) such plan shall not be considered discriminatory within the meaning of paragraph (4) solely because under the plan contributions described in subsection (e)(3)(A) which are in excess of the amounts which may be deducted under section 404 for the taxable year may be made on behalf of any owner-employee; and

(B) a trust forming a part of such plan shall constitute a qualified trust under this section only if the requirements in subsection (d) are also met.

(b) Certain retroactive changes in plan.

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the re-

quirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees.

For purposes of this section—

(1) Employee.

The term "employee" includes, for any taxable year, an individual who has earned income (as defined in paragraph (2)) for the taxable year. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also includes, for any taxable year—

(A) an individual who would be an employee within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(B) an individual who has been an employee within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income.

(A) In general.

The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121 (d)(3) (A), (C); or (D), without regard to paragraph (2) of section 1402(c), and

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

(B) Omitted. Pub. L. 89-809, title II, § 204(c), Nov. 13, 1966, 80 Stat. 1577.

(C) Income from disposition of certain property.

For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee.

The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer.

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees.

The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(d) Additional requirements for qualification of trusts and plans benefiting owner-employees.

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1) In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the trustee is a bank, but a person (including the employer) other than a bank may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, and exchanges). This paragraph shall not apply to a trust created or organized outside the United States before the date of the enactment of this subsection if, under section 402(c), it is treated as exempt from tax under section 501(a) on the day before such date; or, to the extent provided under regulations prescribed by the Secretary or his delegate, to a trust which uses annuity, endowment, or life insurance contracts of a life insurance company exclusively to fund the benefits prescribed by the trust, if the life insurance company supplies annually such information about trust transactions affecting owner-employees as the Secretary or his delegate shall by forms or regulations prescribe. For purposes of this paragraph, the term "bank"

means a bank as defined in section 581, a corporation which under the laws of the State of its incorporation is subject to supervision and examination by the commissioner of banking or other officer of such State in charge of the administration of the banking laws of such State, and, in the case of a trust created or organized outside the United States, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to supervision and examination by governmental authority.

(2) Under the plan—

(A) the employees' rights to or derived from the contributions under the plan are nonforfeitable at the time the contributions are paid to or under the plan; and

(B) in the case of a profit-sharing plan, there is a definite formula for determining the contributions to be made by the employer on behalf of employees (other than owner-employees).

Subparagraph (A) shall not apply to contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to reclude the discrimination prohibited by subsection (a)(4), may not be used to provide benefits for designated employees in the event of early termination of the plan.

(3) The plan benefits each employee having a period of employment of 3 years or more. For purposes of the preceding sentence, the term "employee" does not include any employee whose customary employment is for not more than 20 hours in any one week or is for not more than 5 months in any calendar year.

(4) Under the plan—

(A) contributions or benefits are not provided for any owner-employee unless such owner-employee has consented to being included under the plan; and

(B) no benefits may be paid to any owner-employee, except in the case of his becoming disabled (within the meaning of section 72(m)(7)), prior to his attaining the age of 59½ years.

(5) The plan does not permit—

(A) contributions to be made by the employer on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 for the taxable year;

(B) in the case of a plan which provides contributions or benefits only for owner-employees, contributions to be made on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 for the taxable year; and

(C) if a distribution under the plan is made to any employee and if any portion of such distribution is an amount described in section 72(m)(5)(A)(i), contributions to be made on behalf of such employee for the 5 taxable years succeeding the taxable year in which such distribution is made.

Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3).

(6) Except as provided in this paragraph, the plan meets the requirements of subsection (a)(4) without taking into account for any purpose contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, as amended, or any other Federal or State law. If—

(A) of the contributions deductible under section 404, not more than one-third is deductible by reason of contributions by the employer on behalf of owner-employees, and

(B) taxes paid by the owner-employees under chapter 2 (relating to tax on self-employment income), and the taxes which would be payable under such chapter 2 by the owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees,

then taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of subsection (a)(4), be taken into account as contributions by the employer for such employee under the plan.

(7) Under the plan, if an owner-employee dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with subsection (a)(9)(B) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse, his entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall not apply if distribution of the interest of an owner-employee has commenced and such distribution is for a term certain over a period permitted under subsection (a)(9)(B)(ii).

(8) Under the plan—

(A) any contribution which is an excess contribution, together with the income attributable to such excess contribution, is (unless subsection (e)(2)(E) applies) to be repaid to the owner-employee on whose behalf such excess contribution is made;

(B) if for any taxable year the plan does not, by reason of subsection (e)(2)(A), meet (for purposes of section 404) the requirements of this subsection with respect to an owner-employee, the income for the taxable year attributable to the interest of such owner-employee under the plan is to be paid to such owner-employee; and

(C) the entire interest of an owner-employee is to be repaid to him when required by the provisions of subsection (e)(2)(E).

(9)(A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(10) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (9)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(11) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

(e) Excess contributions on behalf of owner-employees.

(1) Excess contribution defined.

For purposes of this section, the term "excess contribution" means, except as provided in paragraph (3)—

(A) if, in the taxable year, contributions are made under the plan only on behalf of owner-employees, the amount of any contribution made on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 for the taxable year; or

(B) if, in the taxable year, contributions are made under the plan on behalf of employees other than owner-employees—

(i) the amount of any contribution made by the employer on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 for the taxable year;

(ii) the amount of any contribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by employees other than owner-employees;

(iii) the amount of any contribution made by any owner-employee (as an employee) which exceeds the lesser of $2,500 or 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established; and

(iv) in the case of any individual on whose behalf contributions are made under more than one plan as an owner-employee, the amount of any contribution made by such owner-employee (as an employee) under all such plans which exceeds $2,500; and

(C) the amount of any contribution made on behalf of an owner-employee in any taxable year for which, under paragraph (2) (A) or (E), the plan does not (for purposes of section 404) meet the requirements of subsection (d) with respect to such owner-employee.

For purposes of this subsection, the amount of any contribution which is allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

(2) Effect of excess contribution.

(A) In general.

If an excess contribution (other than an excess contribution to which subparagraph (E) applies) is made on behalf of an owner-employee in any taxable year, the plan with respect to which such excess contribution is made shall, except as provided in subparagraphs (C) and (D), be considered, for purposes of section 404, as not meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year and for all succeeding taxable years.

(B) Inclusion of amounts in gross income of owner-employees.

For any taxable year for which any plan does not meet the requirements of subsection (d) with respect to an owner-employee by reason of subparagraph (A), the gross income of such owner-employee shall, for purposes of this chapter, include the amount of net income for such taxable year attributable to the interest of such owner-employee under such plan.

(C) Repayment within prescribed period.

Subparagraph (A) shall not apply to an excess contribution with respect to any taxable year, if, on or before the close of the 6-month period beginning on the day on which the Secretary or his delegate sends notice (by certified or registered mail) to the person to whom such excess contribution was paid of the amount of such excess contribution, the amount of such excess contribution, and the net income attributable thereto, is repaid to the owner-employee on whose behalf such excess contribution was made. If the excess contribution is an excess contribution as defined in paragraph (1)(A) or (B)(i), or is an excess contribution as defined in paragraph (1)(C) with respect to which a deduction has been claimed under section 404, the notice required by the preceding sentence shall not be mailed prior to the time that the amount of the tax under this chapter of such owner-employee for the taxable year in which such excess contribution was made has been finally determined.

(D) Repayment after prescribed period.

If an excess contribution, together with the net income attributable thereto, is not repaid within the 6-month period referred to in subparagraph (C), subparagraph (A) shall not apply to an excess contribution with respect to any taxable year beginning with the taxable year in which the person to whom such excess contribution was paid repays the amount of such excess contribution to the owner-employee on whose behalf such excess contribution was made, and pays to such owner-employee the amount of net income attributable to the interest of such owner-employee which, under subparagraph (B), has been included in the gross income of such owner-employee for any prior taxable year.

(E) Special rule if excess contribution was willfully made.

If an excess contribution made on behalf of an owner-employee is determined to have been willfully made, then—

(i) subparagraphs (A), (B), (C), and (D) shall not apply with respect to such excess contribution;

(ii) there shall be distributed to the owner-employee on whose behalf such excess contribution was willfully made his entire interest in all plans with respect to which he is an owner-employee; and

(iii) no plan shall, for purposes of section 404, be considered as meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year in which it is determined that such excess contribution was willfully made and for the 5 taxable years following such taxable year.

(F) Statute of limitations.

In any case in which subparagraph (A) applies, the period for assessing any deficiency arising by reason of—

(i) the disallowance of any deduction under section 404 on account of a plan not meeting the requirements of subsection (d) with respect to the owner-employee on whose behalf an excess contribution was made, or

(ii) the inclusion, under subparagraph (B), in gross income of such owner-employee of income attributable to the interest of such owner-employee under a plan,

for the taxable year in which such excess contribution was made or for any succeeding taxable year shall not expire prior to one year after the close of the 6-month period referred to in subparagraph (C).

(3) Contributions for premiums on annuity, etc., contracts.

A contribution by the employer on behalf of an owner-employee shall not be considered to be an excess contribution within the meaning of paragraph (1), if—

(A) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

(B) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

(C) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible under such section if such section had been in effect) for the first 3 taxable years (i) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan and (ii) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in subparagraph (A) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for such taxable year exceeds $2,500. Any contribution which is not considered to be an excess contribution by reason of the application of this paragraph shall, for purposes of subparagraphs (B) (ii), (iii), and (iv) of paragraph (1), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying such subparagraphs to other contribu-

tions made by such owner-employee as an employee.

(f) Certain custodial accounts.

(1) Treatment as qualified trust.

For purposes of this title, a custodial account shall be treated as a qualified trust under this section, if—

(A) such custodial account would, except for the fact that it is not a trust, constitute a qualified trust under this section;

(B) the custodian is a bank (as defined in subsection (d)(1));

(C) the investment of the funds in such account (including all earnings) is to be made—

(i) solely in regulated investment company stock with respect to which an employee is the beneficial owner, or

(ii) solely in annuity, endowment, or life insurance contracts issued by an insurance company;

(D) the shareholder of record of any such stock described in subparagraph (C)(i) is the custodian or its nominee; and

(E) the contracts described in subparagraph (C)(ii) are held by the custodian until distributed under the plan.

For purposes of this title, in the case of a custodial account treated as a qualified trust under this section by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(2) Definition.

For purposes of paragraph (1), the term "regulated investment company" means a domestic corporation which—

(A) is a regulated investment company within the meaning of section 851(a), and

(B) issues only redeemable stock.

(g) Annuity defined.

For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401 (a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents.

Under regulations prescribed by the Secretary or his delegate, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits, and

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer.

(i) Certain union-negotiated pension plans.

In the case of a trust forming part of a pension plan which has been determined by the Secretary or his delegate to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary or his delegate that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary or his delegate determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

(j) Cross reference.

For exemption from tax of a trust qualified under this section, see section 501 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 134; Oct. 10, 1962, Pub. L. 87-792, § 2, 76 Stat. 809; Oct. 23, 1962, Pub. L. 87-863, § 2(a), 76 Stat. 1141; Feb. 26, 1964, Pub. L. 88-272, title II, § 219(a), 78 Stat. 57; July 30, 1965, Pub. L. 89-97, title I, § 106(d)(4), 79 Stat. 337; Nov. 13, 1966, Pub. L. 89-809, title II, §§ 204(b)(1), (c), 205(a), 80 Stat. 1577, 1578; Jan. 12, 1971, Pub. L. 91-691, § 1(a), 84 Stat. 2074.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, and the date of enactment of this subsection, referred to in subsecs. (a)(9) and (d)(1), respectively, mean the date of enactment of Pub. L. 87-792, which was approved on Oct. 10, 1962.

Title II of the Social Security Act, as amended, referred to in subsec. (d)(6), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1971—Subsec. (i). Pub. L. 91-691 eliminated "multiemployer" which preceded "pension plans" in subsection catchline, and substituted "one or more employers" for

"two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)" in par. (1).

1966—Subsec. (a)(10)(A)(ii). Pub. L. 89-809, § 204(b)(1)(A), struck out "(determined without regard to section 404(a)(10))" following "deducted under section 404".

Subsec. (c)(2)(A). Pub. L. 89-809, § 204(c), struck out "to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))" following "The term 'earned income' means the net earnings from self-employment (as defined in section 1402(a))", added clause (i) and redesignated former clauses (i)—(ii) as (ii)—(iv) respectively, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in the material following clause (iv).

Subsec. (c)(2)(B). Pub. L. 89-809, § 204(c), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(i).

Subsec. (c)(2)(C). Pub. L. 89-809, § 205(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (e)(1)(A), (B)(i), (3). Pub. L. 89-809, § 204(b)(1)(B)—(E), struck out "(determined without regard to section 404(a)(10))" wherever appearing.

1965—Subsec. (d)(4)(B). Pub. L. 89-97 substituted "section 72(m)(7)" for "section 213(g)(3)".

1964—Subsec. (i). Pub. L. 88-272 added subsec (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 88-272 redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5). Pub. L. 87-792, § 2(1), inserted provisions defining total compensation for purposes of par. (5) and par. (10) of this subsection.

Subsec. (a) (7)—(10). Pub. L. 87-792, § 2(2), added pars. (7)—(10).

Subsec. (c). Pub. L. 87-792, § 2(3), added subsec. (c) and redesignated former subsec. (c) as (h).

Subsecs. (d)—(g). Pub. L. 87-792, § 2(3), added subsecs. (d)—(g).

Subsec. (h). Pub. L. 87-863 added subsec. (h), and redesignated former subsec. (h) as (i).

Pub. L. 87-792, § 2(3), redesignated former subsec. (c) as (h).

Subsec. (i). Pub. L. 87-863 redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(b) of Pub. L. 91-691 provided that: "The amendments made by subsection (a) [amending subsec. (i) of this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 204(d) of Pub. L. 89-809, as amended by Pub. L. 90-607, Oct. 21, 1968, 82 Stat. 1189, provided that: "The amendments made by subsections (a) and (b) [repealing section 404(a)(10) and amending this section and section 404(e) of this title] shall apply with respect to taxable years beginning after December 31, 1967. The amendment made by subsection (c) [to subsec. (c)(2)(A), (B) of this section] shall apply with respect to taxable years beginning after December 31, 1967, and in the case of a taxpayer who applies the averaging provisions of section 401(e)(3) of the Internal Revenue Code of 1954 [subsec. (e)(3) of this section] for a taxable year beginning after December 31, 1967, the computation of the amount deductible under section 404 of such Code [section 404 of this title] for any prior taxable year which began before January 1, 1968, shall be made, for purposes of such averaging provisions, as if the amendment made by subsection (c) were applicable to such prior taxable year."

Section 205(b) of Pub. L. 89-809 provided that: "The amendment made by subsection (a) [adding subsec. (c)(2)(C) of this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of this section by Pub. L. 89-97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89-97, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 219(b) of Pub. L. 88-272 provided that: "The amendments made by subsection (a) [to this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954."

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87-863 provided that: "The amendments made by subsections (a) and (b) [to this section and section 404 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 23, 1962]."

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

SHORT TITLE

Section 1 of Pub. L. 87-792 provided: "That this Act [enacting sections 405 and 6047 of this title, and amending this section and sections 37, 62, 72, 101, 104, 105, 172, 402—404, 503, 805, 1361, 2039, 2517, 3306, 3401 and 7207 of this title] may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'."

CROSS REFERENCES

Constructive ownership of stock not applicable to employees' trust, see section 318 (a) (2) (B) of this title.

Denial of exemption to trusts engaged in prohibited transactions, see section 503(a)(1)(C) of this title.

Partner or proprietor of unincorporated business enterprise not considered employee under this section, see section 1361 (d) of this title.

Payments under section not wages for purposes of—

Collection of income tax at source on wages, see section 3401(a)(12)(A) of this title.

Federal Insurance Contributions Act, see section 3121 (a) (5) (A) of this title.

Federal Unemployment Tax Act, see section 3306 (b) (5) of this title.

Returns by exempt organizations, see section 6033 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 62, 72, 81, 101, 104, 105, 172, 318, 402, 403, 404, 405, 406, 407, 501, 503, 511, 513, 514, 542, 805, 871, 1348, 1379, 1491, 1563, 2039, 2517, 3121, 3306, 3401, 4912, 4941, 6033, 6043, 6047, 6324 of this title; title 15 sections 77c, 78*l*, 80a-3; title 42 section 409.

§ 402. Taxability of beneficiary of employees' trust.

(a) Taxability of beneficiary of exempt trust.

(1) General rule.

Except as provided in paragraphs (2) and (4), the amount actually distributed or made available to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities). The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

(2) Capital gains treatment for certain distributions.

In the case of an employees' trust described in section 401 (a), which is exempt from tax under section 501 (a), if the total distributions payable with respect to any employee are paid to the distributee within 1 taxable year of the distributee on account of the employee's death or other separation from the service, or on account of the death of the employee after his separation from the service, the amount of such distribution, to the extent exceeding the amounts contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. Where such total distributions include securities of the employer corporation, there shall be excluded from such excess the net unrealized appreciation attributable to that part of the total distributions which consists of the securities of the employer corporation so distributed. The amount of such net unrealized appreciation and the resulting adjustments to basis of the securities of the employer corporation so distributed shall be determined in accordance with regulations prescribed by the Secretary or his delegate. This paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

(3) Definitions.

For purposes of this subsection—

(A) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(B) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

(C) The term "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service, or on account of his death after separation from the service.

(4) Distributions by United States to nonresident aliens.

The amount includible under paragraph (1) or (2) of this subsection in the gross income of a nonresident alien individual with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic salary paid by the United States to such employee for such services, reduced by the amount of such basic salary which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic salary paid by the United States to such employee for such services.

In the case of distributions under the Civil Service Retirement Act (5 U.S.C. 2251), the term "basic salary" shall have the meaning provided in section 1(d) of such Act.

(5) Limitation on capital gains treatment.

The first sentence of paragraph (2) shall apply to a distribution paid after December 31, 1969, only to the extent that it does not exceed the sum of—

(A) the benefits accrued by the employee on behalf of whom it is paid during plan years beginning before January 1, 1970, and

(B) the portion of the benefits accrued by such employee during plan years beginning after December 31, 1969, which the distributee establishes does not consist of the employee's allocable share of employer contributions to the trust by which such distribution is paid.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

(b) Taxability of beneficiary of nonexempt trust.

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under section 501 (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section. The amount actually distributed or made available to any distributee by any such trust shall be taxable to him in the year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities). A beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(c) Taxability of beneficiary of certain foreign situs trusts.

For purposes of subsections (a) and (b), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501 (a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501 (a).

(d) Certain employees' annuities.

Notwithstanding subsection (b) or any other provision of this subtitle, a contribution to a trust by an employer shall not be included in the gross income of the employee in the year in which the contribution is made if—

(1) such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(2) such contribution is made to the trustee pursuant to a written agreement entered into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

(3) under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments.

The employee shall include in his gross income the amounts received under such contracts for the year received as provided in section 72 (relating to annuities). This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under section 165 (a) of the Internal Revenue Code of 1939. For purposes of this subsection, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term "annuity contracts purchased by the trustee" shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term "employee" shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942.

(e) Certain plan terminations.

For purposes of subsection (a) (2), distributions made after December 31, 1953, and before January 1, 1955, as a result of the complete termination of a stock bonus, pension, or profit-sharing plan of an employer which is a corporation, if the termination of the plan is incident to the complete liquidation occurring before the date of enactment of this title, of the corporation, whether or not such liquidation is incident to a reorganization as defined in section 368 (a), shall be considered to be distributions on account of separation from service. (Aug. 16, 1954, ch. 736, 68A Stat. 135; Apr. 22, 1960, Pub. L. 86–437, §§ 1, 2(a), 74 Stat. 79; Oct. 10, 1962, Pub. L. 87–792, § 4(c), 76 Stat. 825; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 221(c)(1), 232(e) (1)—(3), 78 Stat. 75, 111; Dec. 30, 1969, Pub. L. 91–172, title III, § 321(b)(1), title V, § 515(a)(1), 83 Stat. 590, 643.)

REFERENCES IN TEXT

The Civil Service Retirement Act, referred to in subsec. (a)(4), was classified to chapter 30 of Title 5, Executive Departments and Government Officers and Employees, and is now covered by section 8301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1969—Subsec. (a)(5). Pub. L. 91–172, § 515(a)(1), added subsec. (a)(5).

Subsec. (b). Pub. L. 91–172, § 321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust in the "gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section" for prior provision for inclusion in the "gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made", and provided that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, § 232(e)(1), deleted "except that section 72(e)(3) shall not apply" following "(relating to annuities)."

Subsec. (a)(3)(B). Pub. L. 88–272, § 221(c)(1), substituted "subsections (e) and (f) of section 425" for "section 421(d) (2) and (3)."

Subsec. (b). Pub. L. 88–272, § 232(e)(2), deleted "except that section 72(e)(3) shall not apply" following "(relating to annuities)."

Subsec. (d). Pub. L. 88–272, § 232(e)(3), deleted "except that section 72(e)(3) shall not apply" following "(relating to annuities)."

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, § 2(a), substituted "paragraphs (2) and (4)" for "paragraph (2)."

Subsec. (a)(4). Pub L. 86–437, § 1, added subsec. (a)(4).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 515(d) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969."

Amendment of subsec. (b) of this section by section 321 (b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as a note under section 83 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (a)(3)(B) of section by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment of subsecs. (a)(1), (b) and (d) of this section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–437 provided that: "The amendments made by this Act [to subsec. (a) of this section and section 871(d) of this title] shall apply only with respect to taxable years beginning after December 31, 1959."

CROSS REFERENCES

Limitation on retirement income inapplicable to any amount excluded under this section, see section 37 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 72, 101, 401, 405, 406, 407, 871, 911, 1348, 1379, 1441, 2039 of this title.

§ 403. Taxation of employee annuities.

(a) Taxability of beneficiary under a qualified annuity plan.

(1) General rule.

Except as provided in paragraph (2), if an annuity contract is purchased by an employer for

an employee under a plan which meets the requirements of section 404 (a) (2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) Capital gains treatment for certain distributions.

(A) General rule.

If—

(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(iii) the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee,

then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

(B) Definition.

For purposes of subparagraph (A), the term "total amounts" means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service.

(C) Limitation on capital gains treatment.

Subparagraph (A) shall apply to a payment paid after December 31, 1969, only to the extent it does not exceed the sum of—

(i) the benefits accrued by the employee on behalf of whom it is paid during plan years beginning before January 1, 1970, and

(ii) the portion of the benefits accrued by such employee during plan years beginning after December 31, 1969, which the payee establishes does not consist of the employee's allocable share of employer contributions under the plan under which the annuity contract is purchased.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(3) Self-employed individuals.

For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school.

(1) General rule.

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a), or

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational institution (as defined in section 151(e)(4)), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) such annuity contract is not subject to subsection (a), and

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) Exclusion allowance.

For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(A) the amount determined by multiplying (i) 20 percent of his includible compensation, by (ii) the number of years of service, over

(B) the aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year.

(3) Includible compensation.

For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to sections 105(d) and 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

(4) Years of service.

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him. and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary or his delegate) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract. If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) Forfeitable rights which become nonforfeitable. For purposes of this subsection and section 72 (f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations.

Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities). (Aug. 16, 1954, ch. 736, 68A Stat. 137; Sept. 2, 1958, Pub. L. 85–866, title I, § 23(a)–(c), 72 Stat. 1620—1622; Oct. 4, 1961, Pub. L. 87–370, § 3(a), 75 Stat. 801; Oct. 10, 1962, Pub. L. 87–792, § 4(d), 76 Stat. 825; Feb. 26, 1964, Pub. L. 88–272, title II, § 232(e)(4)—(6), 78 Stat. 111; Dec. 30, 1969, Pub. L. 91–172, title III, § 321(b)(2), title V, § 515(a)(2), 83 Stat. 591, 644.)

AMENDMENTS

1969—Subsec. (a)(2). Pub. L. 91–172, § 515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, § 321(b)(2), consolidated former provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and former subsec. (d) of this section providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, § 321(b)(2), struck out former subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights, which are now covered by subsec. (c) of this section.

1964—Subsec. (a)(1). Pub. L. 88–272, § 232(e)(4), deleted "except that section 72(e)(3) shall not apply" following "(relating to annuities)."

Subsec. (b)(1). Pub. L. 88–272, § 232(e)(5), deleted "except that section 72(e)(3) shall not apply" following "(relating to annuities)."

Subsec. (c). Pub. L. 88–272, § 232(e)(6), deleted "except that section 72(e)(3) shall not apply" following "(relating to annuities)."

1962—Subsec. (a)(2)(A). Pub. L. 87–792, § 4(d)(1), (2), substituted "described in paragraph (1)" for "which meets the requirements of section 401(a) (3), (4), (5), and (6)" in cl. (i), and inserted sentence at the end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, § 4(d)(3), added subsec. (a)(3).

1961—Subsec. (b). Pub. L. 87–370, § 3(a)(3), inserted "or public school" at the end of the catchline.

Subsec. (b)(1)(A). Pub. L. 87–370, § 3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, § (3)(a)(2), substituted "the employer described in paragraph (1)(A)" for "the employer described in section 501(c)(3) and exempt from tax under section 501(a)."

1958—Subsec. (a)(1). Pub. L. 85–866, § 23(b), substituted "which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section)," for "with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),".

Subsec. (b). Pub. L. 85–866, § 23(a), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–866, § 23(a), redesignated former subsec. (b) as (c).

Subsec. (d). Pub. L. 85–866, § 23(c), added subsec. (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(2) by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

Amendment of subsecs. (c) and (d) of this section by section 321(b)(2) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as a note under section 83 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8

of Pub. L. 87–792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–370 provided that: "The amendments made by subsection (a) [to subsec. (b) of this section] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATES OF 1958 AMENDMENT

Section 23 (g) of Pub. L. 85–866 provided that: "The amendments made by subsections (a), (b), (c), and (d) [to subsecs. (a) (1), (b), (c) and (d) of this section, and to section 101 (b) (2) (B) of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [to section 2039 (c) of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [to section 2517 (a), (b) of this title] shall apply with respect to calendar years after 1957."

CROSS REFERENCES

Limitation on retirement income inapplicable to any amount excluded under this section, see section 37 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 62, 72, 101, 104, 404, 406, 407, 805, 871, 911, 1348, 1379, 1441, 2039, 2517, 3121, 3306, 3401, 6047 of this title; title 15 section 77c; title 42 section 409.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.

(a) General rule.

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) Pension trusts.

In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501 (a), in an amount determined as follows:

(A) an amount not in excess of 5 percent of the compensation otherwise paid or accrued during the taxable year to all the employees under the trust, but such amount may be reduced for future years if found by the Secretary or his delegate upon periodical examinations at not less than 5-year intervals to be more than the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan, plus

(B) any excess over the amount allowable under subparagraph (A) necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

(C) in lieu of the amounts allowable under subparagraphs (A) and (B) above, an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan, as determined under regulations prescribed by the Secretary or his delegate, except that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased.

(D) Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year in accordance with the foregoing limitations.

(2) Employees' annuities.

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a) (3), (4), (5), (6), (7), and (8), and, if applicable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraph (1)), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts.

(A) Limits on deductible contributions.

In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501 (a), in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan. If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is

paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust", as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1). If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(B) Profit-sharing plan of affiliated group.

In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States.

If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501 (a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans.

If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee.

(6) Taxpayers on accrual basis.

For purposes of paragraphs (1), (2), and (3), a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limit of deduction.

If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with 2 or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans. In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 30 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust, or a trust and an annuity plan.

(8) Self-employed individuals.

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term "employee" includes an individual who is an employee within the meaning of

section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term "earned income" has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Plans benefiting self-employed individuals.

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1)—

(A) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees (other than employees within the meaning of section 401(c)(1)), as if such employees were the only employees for whom contributions and benefits are provided under the plan;

(B) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees within the meaning of section 401(c)(1)—

(i) as if such employees were the only employees for whom contributions and benefits are provided under the plan, and

(ii) without regard to paragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7); and

(C) the amounts deductible under paragraphs (1), (2), (3), and (7), with respect to contributions on behalf of any employee within the meaning of section 401(c)(1), shall not exceed the applicable limitation provided in subsection (e).

(b) Method of contributions, etc., having the effect of a plan.

If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, subsection (a) shall apply as if there were such a plan.

(c) Certain negotiated plans.

If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, and pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). This subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501 (a).

(d) Carryover of unused deductions.

The amount of any unused deductions or contributions in excess of the deductible amounts for taxable years to which this part does not apply which under section 23 (p) of the Internal Revenue Code of 1939 would be allowable as deductions in later years had such section 23 (p) remained in effect, shall be allowable as deductions in taxable years to which this part applies as if such section 23 (p) were continued in effect for such years. However, the deduction under the preceding sentence shall not exceed an amount which, when added to the deduction allowable under subsection (a) for contributions made in taxable years to which this part applies, is not greater than the amount which would be deductible under subsection (a) if the contributions which give rise to the deduction under the preceding sentence were made in a taxable year to which this part applies.

(e) Special limitations for self-employed individuals.

(1) In general.

In the case of a plan included in subsection (a) (1), (2), or (3), which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), the amounts deductible under subsection (a) in any taxable year with respect to contributions on behalf of any employee within the meaning of section 401(c)(1) shall, subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent of the earned income derived by such employee from the trade or business with respect to which the plan is established, whichever is the lesser.

(2) Contributions made under more than one plan.

(A) Overall limitation.

In any taxable year in which amounts are deductible with respect to contributions under two or more plans on behalf of an individual who is an employee within the meaning of section 401(c)(1) with respect to such plans, the aggregate amount deductible for such taxable

year under all such plans with respect to contributions on behalf of such employee shall not exceed $2,500, or 10 percent of the earned income derived by such employee from the trades or businesses with respect to which the plans are established, whichever is the lesser.

(B) Allocation of amounts deductible.

In any case in which the amounts deductible under subsection (a) (with the application of the limitations of this subsection) with respect to contributions made on behalf of an employee within the meaning of section 401 (c)(1) under two or more plans are, by reason of subparagraph (A), less than the amounts deductible under such subsection determined without regard to such subparagraph, the amount deductible under subsection (a) with respect to such contributions under each such plan shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

(3) Contributions allocable to insurance protection.

For purposes of this subsection, contributions which are allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

(f) Certain loan repayments considered as contributions.

For purposes of this section, any amount paid, directly or indirectly, by an owner-employee (within the meaning of section 401(c)(3)) in repayment of any loan which under section 72(m)(4)(B) was treated as an amount received under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as a part of a plan described in section 403(a) shall be treated as a contribution to which this section applies on behalf of such owner-employee to such trust or to or under such plan. (Aug. 16, 1954, ch. 736, 68A Stat. 138; Sept. 2, 1958, Pub. L. 85-866, title I, § 24, 72 Stat. 1623; Oct. 10, 1962, Pub. L. 87-792, § 3, 76 Stat. 819; Oct. 23, 1962, Pub. L. 87-863, § 2(b), 76 Stat. 1141; Nov. 13, 1966, Pub. L. 89-809, title II, § 204 (a), (b)(2), (3), 80 Stat. 1577; Dec. 30, 1969, Pub. L. 91-172, title III, § 321(b)(3), 83 Stat. 591.)

AMENDMENTS

1969—Subsec. (a)(5). Pub. L. 91-172 substituted "If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee" for "In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid".

1966—Subsec. (a). Pub. L. 89-809, § 204(a), repealed par. (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals.

Subsec. (e). Pub. L. 89-809, § 204(b)(2), (3), struck out references to par. (10) of subsec. (a) wherever appearing.

1962—Subsec. (a)(2). Pub. L. 87-863 inserted ", or retirement annuities and medical benefits as described in section 401(h)," following "purchase of retirement annuities", and ", or such retirement annuities and medical benefits" following "such retirement annuities." Pub. L. 87-792, § 3(a)(1), substituted "(5), (6), (7), and (8), and, if applicable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraph (1))," for "(5), and (6),".

Subsec. (a) (8)—(10). Pub. L. 87-792, § 3(a)(2), added pars. (8)—(10).

Subsecs. (e), (f). Pub. L. 87-792, § 3(b), added subsecs. (e) and (f).

1958—Subsec. (a). Pub. L. 85-866 substituted "income); but, if" for "income) but if" preceding par. (1).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91-172, set out as a note under section 83 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsecs. (a) and (e) of this section by section 204(a), (b) of Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1967, see section 204(d) of Pub. L. 89-809, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of section by Pub. L. 87-863 applicable to taxable years beginning after Oct. 23, 1962, see section 2(c) of Pub. L. 87-863, set out as a note under section 401 of this title.

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Non-trade or non-business expenses deductible, see section 212 of this title.

Ordinary necessary business expenses deductible, see section 162 of this title.

Time for filing return, see sections 6072, 6081 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 72, 81, 104, 172, 381, 401, 403, 405, 406, 407, 542, 556, 1348, 1379, 4941 of this title; title 15 sections 78*l*, 80a-3.

§ 405. Qualified bond purchase plans.

(a) Requirements for qualification.

A plan of an employer for the purchase for and distribution to his employees or their beneficiaries of United States bonds described in subsection (b) shall constitute a qualified bond purchase plan under this section if—

(1) the plan meets the requirements of section 401(a) (3), (4), (5), (6), (7), and (8) and, if applicable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraphs (1), (5)(B), and (8)); and

(2) contributions under the plan are used solely to purchase for employees or their beneficiaries United States bonds described in subsection (b).

(b) Bonds to which applicable.

(1) Characteristics of bonds.

This section shall apply only to a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

(A) provides for payment of interest, or investment yield, only upon redemption;

(B) may be purchased only in the name of an individual;

(C) ceases to bear interest, or provide investment yield, not later than 5 years after the death of the individual in whose name it is purchased;

(D) may be redeemed before the death of the individual in whose name it is purchased only if such individual—

(i) has attained the age of 59½ years, or

(ii) has become disabled (within the mean- of section 72(m)(7)); and

(E) is nontransferable.

(2) Must be purchased in name of employee.

This section shall apply to a bond described in paragraph (1) only if it is purchased in the name of the employee.

(c) Deduction for contributions to bond purchase plans.

Contributions paid by an employer to or under a qualified bond purchase plan shall be allowed as a deduction in an amount determined under section 404 in the same manner and to the same extent as if such contributions were made to a trust described in section 401(a) which is exempt from tax under section 501(a).

(d) Taxability of beneficiary of qualified bond purchase plan.

(1) Gross income not to include bonds at time of distribution.

For purposes of this chapter, in the case of a distributee of a bond described in subsection (b) under a qualified bond purchase plan, or from a trust described in section 401(a) which is exempt from tax under section 501(a), gross income does not include any amount attributable to the receipt of such bond. Upon redemption of such bond, the proceeds shall be subject to taxation under this chapter, but the provisions of section 72 (relating to annuities, etc.) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply.

(2) Basis.

The basis of any bond received by a distributee under a qualified bond purchase plan—

(A) if such bond is distributed to an employee, or with respect to an employee, who at the time of purchase of the bond, was an employee other than an employee within the meaning of section 401(c)(1), shall be the amount of the contributions by the employee which were used to purchase the bond, and

(B) if such bond is distributed to an employee, or with respect to an employee, who, at the time of purchase of the bond, was an employee within the meaning of section 401(c)(1), shall be the amount of the contributions used to purchase the bond which were made on behalf of such employee and were not allowed as a deduction under subsection (c).

The basis of any bond described in subsection (b) received by a distributee from a trust described in section 401(a) which is exempt from tax under section 501(a) shall be determined under regulations prescribed by the Secretary or his delegate.

(e) Capital gains treatment and limitation of tax not to apply to bonds distributed by trusts.

Section 72(n) and section 402(a)(2) shall not apply to any bond described in subsection (b) distributed to any distributee and, for purposes of applying such sections, any such bond distributed to any distributee and any such bond to the credit of any employee shall not be taken into account.

(f) Employee defined.

For purposes of this section, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(g) Proof of purchase.

At the time of purchase of any bond to which this section applies, proof of such purchase shall be furnished in such form as will enable the purchaser, and the employee in whose name such bond is purchased, to comply with the provisions of this section.

(h) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section. (Added Pub. L. 87–792, § 5(a), Oct. 10, 1962, 76 Stat. 826, and amended Pub. L. 89–97, title I, § 106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91–172, title V, § 515(c)(1), Dec. 30, 1969, 83 Stat. 645.)

REFERENCES IN TEXT

The Second Liberty Bond Act, as amended, referred to in subsec. (b)(1), is classified to sections 745, 752—754b, 757, 757b—758, 760, 764—766, 769, 771, 773, 774 and 801 of Title 31, Money and Finance.

AMENDMENTS

1969—Subsec. (e). Pub. L. 91–172 substituted "Capital gains treatment and limitation of tax" for "Capital gains treatment" in subsec. catchline, substituted "Section 72(n) and section 402(a)(2)" for "Section 402(a)(2)" and "sections" for "section."

1965—Subsec. (b)(1)(D)(ii). Pub. L. 89–97 substituted "section 72(m)(7)" for "section 213(g)(3)".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of this section by Pub. L. 89–97 applicable to taxable years beignning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 62, 172, 406, 407, 1379, 3121, 3306, 3401, 3402, 6047 of this title; title 42 section 409.

§ 406. Certain employees of foreign subsidiaries.

(a) Treatment as employees of domestic corporation.

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic corporation, an individual who is a citizen of the United States and who is an employee of a foreign subsidi-

ary (as defined in section 3121(*l*)(8)) of such domestic corporation shall be treated as an employee of such domestic corporation, if—

(1) such domestic corporation has entered into an agreement under section 3121(*l*) which applies to the foreign subsidiary of which such individual is an employee;

(2) the plan of such domestic corporation expressly provides for contributions or benefits for individuals who are citizens of the United States and who are employees of its foreign subsidiaries to which an agreement entered into by such domestic corporation under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign subsidiary.

(b) Special rules for application of section 401(a).

(1) Nondiscrimination requirements.

For purposes of applying paragraphs (3)(B) and (4) of section 401(a) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign subsidiary of such domestic corporation, he shall be treated as having such capacity with respect to such domestic corporation; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic corporation and by determining such individual's status with regard to such domestic corporation.

(2) Determination of compensation.

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign subsidiary which would constitute his total compensation if his services had been performed for such domestic corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary or his delegate; and

(B) such individual shall be treated as having paid the amount paid by such domestic corporation which is equivalent to the tax imposed by section 3101.

(c) Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.

For purposes of applying section 72(n), section 402(a)(2), and section 403(a)(2) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a), such individual shall not be considered as separated from the service of such domestic corporation solely by reason of the fact that—

(1) the agreement entered into by such domestic corporation under section 3121(*l*) which covers the employment of such individual is terminated under the provisions of such section,

(2) such individual becomes an employee of a foreign subsidiary with respect to which such agreement does not apply,

(3) such individual ceases to be an employee of the foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation, or

(4) the provision of the plan described in subsection (a)(2) is terminated.

(d) Deductibility of contributions.

For purposes of applying sections 404 and 405(c) with respect to contributions made to or under a pension, profit-sharing, stock bonus, annuity, or bond purchase plan by a domestic corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 (or section 405(c)) by the domestic corporation if he were an employee of the domestic corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic corporation ends.

(e) Treatment as employee under related provisions.

An individual who is treated as an employee of a domestic corporation under subsection (a) shall also be treated as an employee of such domestic corporation, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(d) (relating to employees' annuities).

(2) Section 72(f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).

(5) Section 2517 (relating to certain annuities under qualified plans).

(Added Pub. L. 88–272, title II, § 220(a), Feb. 26, 1964, 78 Stat. 58, and amended Pub. L. 91–172, title V, § 515(c)(2), Dec. 30, 1969, 83 Stat. 645.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–172 substituted "provisions and limitation of tax" for "provisions" in subsec. catchline, substituted "section 72(n), section 402(a)(2)," for "section 402(a)(2)."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section 220(d) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) [adding this section], (b) [adding section 407 of this title], and (c)(1) [to the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [to section 3121(a)(5) of this title] and (3) [to section 409(e) of Title 42, Public Health and Welfare] shall apply to remuneration paid after December 31, 1962."

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States.

(a) Treatment as employees of domestic parent corporation.

(1) In general.

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic parent corporation, an individual who is a citizen of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions.

For purposes of this section—

(A) Domestic subsidiary.

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence) was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation.

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a).

(1) Nondiscrimination requirements.

For purposes of applying paragraphs (3)(B) and (4) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary, he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation.

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary or his delegate.

(c) Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.

For purposes of applying section 72(n), section 402(a)(2), and section 403(a)(2) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), such individual shall not be considered as separated from the service of such domestic parent corporation solely by reason of the fact that—

(1) the corporation of which such individual is an employee ceases, for any taxable year, to be a domestic subsidiary within the meaning of subsection (a)(2)(A),

(2) such individual ceases to be an employee of a domestic subsidiary of such domestic parent corporation, if he becomes an employee of another

corporation controlled by such domestic parent corporation, or

(3) the provision of the plan described in subsection (a)(1)(A) is terminated.

(d) Deductibility of contributions.

For purposes of applying sections 404 and 405(c) with respect to contributions made to or under a pension, profit-sharing, stock bonus, annuity, or bond purchase plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 (or section 405(c)) by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions.

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), for purposes of applying the following provisions of this title:

(1) Section 72(d) (relating to employees' annuities).

(2) Section 72(f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).

(5) Section 2517 (relating to certain annuities under qualified plans).

(Added Pub. L. 88–272, title II, § 220(b), Feb. 26, 1964, 78 Stat. 60, and amended Pub. L. 91–172, title V, § 515(c)(3), Dec. 30, 1969, 83 Stat. 646.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–172 substituted "provisions and limitation of tax" for "provisions" in subsec. catchline, substituted "section 72(n), section 402(a)(2)," for "section 402(a)(2)."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88–272, set out as a note under section 406 of this title.

PART II.—CERTAIN STOCK OPTIONS

Sec.
421. General rules.
422. Qualified stock options.
423. Employee stock purchase plans.
424. Restricted stock options.
425. Definitions and special rules.

AMENDMENTS

1964—Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 63, substituted "Part II—Certain Stock Options" for "Part II—Miscellaneous Provisions", in the heading to Part II, and "General rules" for "Employee stock options" in item 421, and added items 422–425.

§ 421 General rules.

(a) Effect of qualifying transfer.

If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a), 423(a), or 424(a) are met—

(1) except as provided in section 422(c)(1), no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(b) Effect of disqualifying disposition.

If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a), 423(a), or 424(a) except that there is a failure to meet any of the holding period requirements of section 422(a)(1), 423(a)(1), or 424(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred.

(c) Exercise by estate.

(1) In general.

If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that—

(A) the holding period and employment requirements of sections 422(a), 423(a), and 424(a) shall not apply, and

(B) any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of sections 423(c) and 424(c)(1).

(2) Deduction for estate tax.

If an amount is required to be included under section 422(c)(1), 423(c), or 424(c)(1) in gross

income of the estate of the deceased employee or of a person described in paragraph (1), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the option. For this purpose, the deduction shall be determined under section 691(c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under section 422(c)(1), 423(c), or 424(c)(1) were an amount included in gross income under section 691 in respect of such item of gross income.

(3) Basis of shares acquired.

In the case of a share of stock acquired by the exercise of an option to which paragraph (1) applies—

(A) the basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of (i) the amount which would have been includible in gross income under section 422(c)(1), 423(c), or 424(c)(1) if the employee had exercised the option on the date of his death and had held the share acquired pursuant to such exercise at the time of his death, over (ii) the amount which is includible in gross income under such section; and

(B) the last sentence of sections 422(c)(1), 423(c), and 424(c)(1) shall apply only to the extent that the amount includible in gross income under such sections exceeds so much of the basis of the option as is attributable to such share.

(Aug. 16, 1954, ch. 736, 68A Stat. 142; Feb. 11, 1958, Pub. L. 85–320, § 1, 72 Stat. 4; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 25, 26(a), 72 Stat. 1623, 1624; Feb. 26, 1964, Pub. L. 88–272, title II, § 221(a), 78 Stat. 63.)

AMENDMENTS

1964—Pub. L. 88–272 amended section generally, and among other changes, inserted provisions relating to the effect of a qualifying transfer, and to the basis of shares acquired when an option is exercised by an estate, and omitted provisions relating to treatment of restricted stock options, a special rule where option price was between 85 percent and 95 percent of value of stock, acquisition of new stock, definitions, modification, extension, or renewal of option, and corporate reorganizations, liquidations, etc. See sections 421—425 of this title.

1958—Subsec. (a). Pub. L. 85–866, § 25, added sentence authorizing substitution of "grantor corporation" or "corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable" for the term "employer corporation".

Subsec. (d)(6)(C). Pub. L. 85–320 added subsec. (d)(6)(C).

Subsec. (d)(1)(A)(ii). Pub. L. 85–866, § 26(a)(1), substituted "in the case of a variable price option" for "in case the purchase price of the stock under the option is fixed or determinable under a formula in which the only variable is the value of the stock at any time during a period of 6 months which includes the time the option is exercised" and inserted "fair" preceding "market value".

Subsec. (d)(7). Pub. L. 85–866, § 26(a)(2), added subsec. (d)(7).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 221(e) of Pub. L. 88–272 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [adding sections 422–425, and 6039, amending this section and sections 402, 691, 6652, 6678, and the analysis preceding of sections 401 and 6031, and renumbering former section 3039 as 3040 of this title] shall apply to taxable years ending after December 31, 1963.

"(2) The amendments made by paragraphs (1) and (3) of subsection (b) [adding section 3039, renumbering former section 3039 as 3040, and amending section 6678 of this title] and paragraph (2) of section 6652(a) of the Internal Revenue Code of 1954 (as amended by paragraph (2) of subsection (b)), shall apply to stock transferred pursuant to options exercised on or after January 1, 1964.

"(3) In the case of an option granted after December 31, 1963, and before January 1, 1965—

"(A) paragraphs (1) and (2) of section 422(b) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall not apply, and

"(B) paragraph (1) of section 425(h) of such Code (as added by subsection (a)) shall not apply to any change in the terms of such option made before January 1, 1965, to permit such option to qualify under paragraphs (3), (4), and (5) of such section 422(b)."

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment of subsec. (a) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 26 (b) of Pub. L. 85–866 provided that: "The amendments made by subsection (a) [amending subsec. (d)(1)(A)(ii) and adding subsec. (d)(7) of this section] shall apply with respect to taxable years ending after September 30, 1958."

Section 3 of Pub. L. 85–320 provided that: "The amendments made by this Act [adding subpar. (C) to subsec. (d)(6) of this section and repealing subsec. (d) of section 1014 of this title] shall apply with respect to taxable years ending after December 31, 1956, but only in the case of employees dying after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81, 422, 423, 424, 691 of this title.

§ 422. Qualified stock options.

(a) In general.

Subject to the provisions of subsection (c)(1), section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of a qualified stock option if—

(1) no disposition of such share is made by such individual within the 3-year period beginning on the day after the day of the transfer of such share, and

(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

(b) Qualified stock option.

For purposes of this part, the term "qualified stock option" means an option granted to an individual after December 31, 1963 (other than a restricted stock option granted pursuant to a contract described in section 424(c)(3)(A)), for any reason connected with his employment by a corporation, if

granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options, and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted;

(4) except as provided in subsection (c)(1), the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(2)) any qualified stock option (or restricted stock option) which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations;

(6) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(7) such individual, immediately after such option is granted, does not own stock possessing more than 5 percent of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation; except that if the equity capital of such corporation or corporations (determined at the time the option is granted) is less than $2,000,000, then, for purposes of applying the limitation of this paragraph, there shall be added to such 5 percent the percentage (not higher than 5 percent) which bears the same ratio to 5 percent as the difference between such equity capital and $2,000,000 bears to $1,000,000.

(c) Special rules.

(1) Exercise of option when price is less than value of stock.

If a share of stock is transferred pursuant to the exercise by an individual of an option which fails to qualify as a qualified stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met, but there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income for the taxable year in which such option is exercised, an amount equal to the lesser of—

(A) 150 percent of the difference between the option price and the fair market value of the share at the time the option was granted, or

(B) the difference between the option price and the fair market value of the share at the time of such exercise.

The basis of the share acquired shall be increased by an amount equal to the amount included in his gross income under this paragraph in the taxable year in which the exercise occurred.

(2) Certain options treated as outstanding.

For purposes of subsection (b)(5)—

(A) any restricted stock option which is not terminated before January 1, 1965, and

(B) any qualified stock option granted after December 31, 1963,

shall be treated as outstanding until such option is exercised in full or expires by reason of the lapse of time. For purposes of the preceding sentence, a restricted stock option granted before January 1, 1964, shall not be treated as outstanding for any period before the first day on which (under the terms of such option) it may be exercised.

(3) Options granted to certain shareholders.

For purposes of subsection (b)(7)—

(A) the term "equity capital" means—

(i) in the case of one corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders), and

(ii) in the case of a group of corporations consisting of a parent and its subsidiary corporations, the sum of the equity capital of each of such corporations adjusted, under regulations prescribed by the Secretary or his delegate, to eliminate the effect of intercorporate ownership and transactions among such corporations;

(B) the rules of section 425(d) shall apply in determining the stock ownership of the individual; and

(C) stock which the individual may purchase under outstanding options shall be treated as stock owned by such individual.

If an individual is granted an option which permits him to purchase stock in excess of the limitation of subsection (b)(7) (determined by applying the rules of this paragraph), such option shall be treated as meeting the requirement of subsection (b)(7) to the extent that such individual could, if the option were fully exercised at the time of grant, purchase stock under such option without exceeding such limitation. The portion of such option which is treated as meeting the requirement of subsection (b)(7) shall be deemed to be that portion of the option which is first exercised.

(4) Certain disqualifying dispositions where amount realized is less than value at exercise.

If—

(A) an individual who has acquired a share of stock by the exercise of a qualified stock option makes a disposition of such share within the 3-year period described in subsection (a)(1), and

(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(5) Certain transfers by insolvent individuals.

If an insolvent individual holds a share of stock acquired pursuant to his exercise of a qualified stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary, in any proceeding under the Bankruptcy Act or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a "disposition of such share" for purposes of subsection (a)(1).

(6) Application of subsection (b)(5) where options are for stock of same class in same corporation.

The requirement of subsection (b)(5) shall be considered to have been met in the case of any option (referred to in this paragraph as "new option") granted to an individual if—

(A) the new option and all outstanding options referred to in subsection (b)(5) are to purchase stock of the same class in the same corporation, and

(B) the new option by its terms is not exercisable while there is outstanding (within the meaning of paragraph (2)) any qualified stock option (or restricted stock option) which was granted, before the granting of the new option, to such individual to purchase stock in such corporation at a price (determined as of the date of grant of the new option) higher than the option price of the new option.

(Added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 64.)

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case pars. (1) and (2) of subsec. (b) shall not apply, see section 221(e) of Pub. L. 88–272 set out as a note under section 421 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 421, 425 of this title.

§ 423. Employee stock purchase plans.

(a) General rule.

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963 (other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B), under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 6 months after the transfer of such share to him; and

(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, he is an employee of the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

(b) Employee stock purchase plan.

For purposes of this part, the term "employee stock purchase plan" means a plan which meets the following requirements:

(1) the plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 425(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded—

(A) employees who have been employed less than 2 years,

(B) employees whose customary employment is 20 hours or less per week,

(C) employees whose customary employment is for not more than 5 months in any calendar year, and

(D) officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees;

(5) under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, and the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan;

(6) under the terms of the plan, the option price is not less than the lesser of—

(A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) an amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised;

(7) under the terms of the plan, such option cannot be exercised after the expiration of—

(A) 5 years from the date such option is granted if, under the terms of such plan, the option price is to be not les than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A)

(8) under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph—

(A) the right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) the right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(C) a right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

(c) Special rule where option price is between 85 percent and 100 percent of value of stock.

If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) the excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) the excess of the fair market value of the share at the time the option was granted over the option price.

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income. (Added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 67.)

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 421, 424, 425, 6039 of this title.

§ 424. Restricted stock options.

(a) In general.

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise after 1949 of a restricted stock option, if—

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, and

(2) at the time he exercises such option—

(A) he is an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies, or

(B) he ceased to be an employee of such corporations within the 3-month period preceding the time of exercise.

(b) Restricted stock option.

For purposes of this part, the term "restricted stock option" means an option granted after February 26, 1945, and before January 1, 1964 (or, if it meets the requirements of subsection (c)(3), an option granted after December 31, 1963), to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) at the time such option is granted—

(A) the option price is at least 85 percent of the fair market value at such time of the stock subject to the option, or

(B) in the case of a variable price option, the option price (computed as if the option had been exercised when granted) is at least 85 percent of the fair market value of the stock at the time such option is granted;

(2) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him;

(3) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. This paragraph shall not apply if at the time such

option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option, and such option either by its terms is not exercisable after the expiration of 5 years from the date such option is granted or is exercised within one year after August 16, 1954. For purposes of this paragraph, the provisions of section 425(d) shall apply in determining the stock ownership of an individual; and

(4) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted, if such option has been granted on or after June 22, 1954.

(c) Special rules.

(1) Options under which option price is between 85 percent and 95 percent of value of stock.

If no disposition of a share of stock acquired by an individual on his exercise after 1949 of a restricted stock option is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, at the time the restricted stock option was granted, the option price (computed under subsection (b)(1)) was less than 95 percent of the fair market value at such time of such share, then, in the event of any disposition of such share by him but, or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies—

(A) in the case of a share of stock acquired under an option qualifying under subsection (b)(1)(A), an amount equal to the amount (if any) by which the option price is exceeded by the lesser of—

(i) the fair market value of the share at the time of such disposition or death, or

(ii) the fair market value of the share at the time the option was granted; or

(B) in the case of stock acquired under an option qualifying under subsection (b)(1)(B), an amount equal to the lesser of—

(i) the excess of the fair market value of the share at the time of such disposition or death over the price paid under the option, or

(ii) the excess of the fair market value of the share at the time the option was granted over the option price (computed as if the option had been exercised at such time).

In the case of a disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income.

(2) Variable price option.

For purposes of subsection (b)(1), the term "variable price option" means an option under which the purchase price of the stock is fixed or determinable under a formula in which the only variable is the fair market value of the stock at any time during a period of 6 months which includes the time the option is exercised; except that in the case of options granted after September 30, 1958, such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

(3) Certain options granted after December 31, 1963.

For purposes of subsection (b), an option granted after December 31, 1963, meets the requirements of this paragraph if granted pursuant to—

(A) a binding written contract entered into before January 1, 1964, or

(B) a written plan adopted and approved before January 1, 1964, which (as of January 1, 1964, and as of the date of the granting of the option)—

(i) met the requirements of paragraphs (4) and (5) of section 423(b), or

(ii) was being administered in a way which did not discriminate in favor of officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees.

(Added Pub. L. 88-272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 69.)

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 22 (e) of Pub. L. 88-272, set out as a note under section 421 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 421, 422, 423, 425, 6039 of this title.

§ 425. Definitions and special rules.

(a) Corporate reorganizations, liquidations, etc.

For purposes of this part, the term "issuing or assuming a stock option in a transaction to which section 425(a) applies" means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) the excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) the new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

(b) Acquisition of new stock.

For purposes of this part, if stock is received by an individual in a distribution to which section

305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(c) Disposition.

(1) In general.

Except as provided in paragraph (2), for purposes of this part, the term "disposition" includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) a transfer from a decedent to an estate or a transfer by request or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

(2) Joint tenancy.

The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenacy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(d) Attribution of stock ownership.

For purposes of this part, in applying the percentage limitations of sections 422(b)(7), 423(b)(3), and 424(b)(3)—

(1) the individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(e) Parent corporation.

For purposes of this part, the term "parent corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) Subsidiary corporation.

For purposes of this part, the term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) Special rule for applying subsections (e) and (f).

In applying subsections (e) and (f) for purposes of section 422(a)(2), 423(a)(2), and 424(a)(2), there shall be substituted for the term "employer corporation" wherever it appears in subsection (e) and (f) the term "grantor corporation" or the term "corporation issuing or assuming a stock option in a transaction to which section 425(a) applies" as the case may be.

(h) Modification, extension, or renewal of option.

(1) In general.

For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

(2) Special rules for sections 423 and 424 options.

(A) In the case of the transfer of stock pursuant to the exercise of an option to which section 423 or 424 applies and which has been so modified, extended, or renewed, then, except as provided in subparagraph (B), the fair market value of such stock at the time of the granting of such option shall be considered as whichever of the following is the highest:

(i) the fair market value of such stock on the date of the original granting of the option,

(ii) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(iii) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal.

(B) Subparagraph (A) shall not apply with respect to a modification, extension, or renewal of a restricted stock option before January 1, 1964 (or after December 31, 1963, if made pursuant to a binding written contract entered into before January 1, 1964), if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months before the date of the modification, extension, or renewal, divided by 12, is an amount less than 80 percent of the fair market value of such stock on the date of the original granting of the option or the date of the making of any intervening modification, extension, or renewal, whichever is the highest.

(3) Definition of modification.

The term "modification" means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) attributable to the issuance or assumption of an option under subsection (a);

(B) to permit the option to qualify under sections 422(b)(6), 423(b)(9), and 424(b)(2); or

(C) in the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.

(i) Stockholder approval.

For purposes of this part, if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(j) Cross references.

For provisions requiring the reporting of certain acts with respect to a qualified stock option, options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

(Added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 71.)

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case par. (1) of subsec. (h) shall not apply to any change in the terms of such option made before Jan. 1, 1965, to permit such option to qualify under pars. (3), (4), and (5) of section 422(b), see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 421, 422, 423, 424 of this title.

Subchapter E.—Accounting Periods and Methods of Accounting

Part

I. Accounting periods.
II. Methods of accounting.
III. Adjustments.

PART I.—ACCOUNTING PERIODS

Sec.
441. Period for computation of taxable income.
442. Change of annual accounting period.
443. Returns for a period of less than 12 months.

§ 441. Period for computation of taxable income.

(a) Computation of taxable income.

Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable year.

For purposes of this subtitle, the term "taxable year" means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies; or

(3) the period for which the return is made, if a return is made for a period of less than 12 months.

(c) Annual accounting period.

For purposes of this subtitle, the term "annual accounting period" means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar year.

For purposes of this subtitle, the term "calendar year" means a period of 12 months ending on December 31.

(e) Fiscal year.

For purposes of this subtitle, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of year consisting of 52–53 weeks.

(1) General rule.

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) Special rules for 52–53-week year.

(A) Effective dates.

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 21) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

(B) Change in accounting period.

In the case of a change from or to a taxable year described in paragraph (1)—

(i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443 (b) (relating to alternative tax computation) shall not apply;

(ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying such income by 365 and dividing the result by the number of days in the short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) Regulations.

The Secretary or his delegate shall prescribe such regulations as he deems necessary for the application of this subsection.

(g) No books kept; no accounting period.

Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

(Aug. 16, 1954, ch. 736, 68A Stat. 148; Feb. 26, 1964, Pub. L. 88–272, title II, § 235(c)(3), 78 Stat. 127.)

AMENDMENTS

1964—Subsec. (f)(2)(A). Pub. L. 88–272 inserted ", including," preceding "or ending with reference to."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272 set out as a note under section 1551 of this title.

CROSS REFERENCES

Definitions—

Fiscal year, see section 7701 (a) (24) of this title.

Taxable year, see section 7701 (a) (23) of this title.

General requirement of return, statement, or list, see section 6011 of this title.

General rule for methods of accounting, see section 446 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 442 of this title.

§ 442. Change of annual accounting period.

If a taxpayer changes his annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary or his delegate. For purposes of this subtitle, if a taxpayer to whom section 441 (g) applies adopts an annual accounting period (as defined in section 441 (c)) other than a calendar year, the taxpayer shall be treated as having changed his annual accounting period. (Aug. 16, 1954, ch. 736, 68A Stat. 149.)

§ 443. Returns for a period of less than 12 months.

(a) Returns for short period.

A return for a period of less than 12 months (referred to in this section as "short period") shall be made under any of the following circumstances:

(1) Change of annual accounting period.

When the taxpayer, with the approval of the Secretary or his delegate, changes his annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) Taxpayer not in existence for entire taxable year.

When the taxpayer is in existence during only part of what would otherwise be his taxable year.

(3) Termination of taxable year for jeopardy.

When the Secretary or his delegate terminates the taxpayer's taxable year under section 6851 (relating to tax in jeopardy).

(b) Computation of tax on change of annual accounting period.

(1) General rule.

If a return is made under paragraph (1) of subsection (a), the taxable income for the short period shall be placed on an annual basis by multiplying such income by 12 and dividing the result by the number of months in the short period. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(2) Exception.

(A) Computation based on 12-month period.

If the taxpayer applies for the benefits of this paragraph and establishes the amount of his taxable income for the 12-month period described in subparagraph (B), computed as if that period were a taxable year and under the law applicable to that year, then the tax for the short period, computed under paragraph (1), shall be reduced to the greater of the following:

(i) an amount which bears the same ratio to the tax computed on the taxable income for the 12-month period as the taxable income computed on the basis of the short period bears to the taxable income for the 12-month period; or

(ii) the tax computed on the taxable income for the short period without placing the taxable income on an annual basis.

The taxpayer (other than a taxpayer to whom subparagraph (B) (ii) applies) shall compute the tax and file his return without the application of this paragraph.

(B) 12-month period.

The 12-month period referred to in subparagraph (A) shall be—

(i) the period of 12 months beginning on the first day of the short period, or

(ii) the period of 12 months ending at the close of the last day of the short period, if at the end of the 12 months referred to in clause (i) the taxpayer is not in existence or (if a corporation) has theretofore disposed of substantially all of its assets.

(C) Application for benefits.

Application for the benefits of this paragraph shall be made in such manner and at such time as the regulations prescribed under subparagraph (D) may require; except that the time so prescribed shall not be later than the time (including extensions) for filing the return for the first taxable year which ends on or after the day which is 12 months after the first day of the short period. Such application, in case the return was filed without regard to this paragraph, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this paragraph.

(D) Regulations.

The Secretary or his delegate shall prescribe such regulations as he deems necessary for the application of this paragraph.

(c) Adjustment in deduction for personal exemption.

In the case of a taxpayer other than a corporation, if a return is made for a short period by reason of subsection (a) (1) and if the tax is not computed under subsection (b) (2), then the exemptions allowed as a deduction under section 151 (and any deduction in lieu thereof) shall be reduced to amounts which bear the same ratio to the full exemptions as the number of months in the short period bears to 12.

(d) Adjustment in exclusion for computing minimum tax for tax preferences.

If a return is made for a short period by reason of subsection (a), then the $30,000 amount specified in section 56 (relating to minimum tax for tax preferences), modified as provided by section 58, shall be reduced to the amount which bears the same ratio to such specified amount as the number of days in the short period bears to 365.

(e) Cross references.

For inapplicability of subsection (b) in computing—
(1) Accumulated earnings tax, see section 536.
(2) Personal holding company tax, see section 546.
(3) Undistributed foreign personal holding company income, see section 557.
(4) The taxable income of a regulated investment company, see section 852(b)(2)(E).
(5) The taxable income of a real estate investment trust, see section 857(b)(2)(D).

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Sept. 14, 1960, Pub. L. 86–779, § 10(i), 74 Stat. 1009; Dec. 30, 1969, Pub. L. 91–172, title III, § 301(b)(6), 83 Stat. 585.)

AMENDMENTS

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (d) as (e).

1960—Subsec. (d)(5). Pub. L. 86–779 added par. (5).

EFFECTIVE DATE OF 1969 AMENDMENT

Subsec. (d) of this section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

CROSS REFERENCES

Joint return not allowed if taxable year of either spouse is fractional part of year, see section 6013 (a) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 441, 536, 546, 557, 818, 852, 857, 6013 of this title.

PART II.—METHODS OF ACCOUNTING

Subpart
A. Methods of accounting in general.
B. Taxable year for which items of gross income included.
C. Taxable year for which deductions taken.
D. Inventories.

SUBPART A.—METHODS OF ACCOUNTING IN GENERAL

Sec.
446. General rule for methods of accounting.

§ 446. General rule for methods of accounting.

(a) General rule.

Taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.

(b) Exceptions.

If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary or his delegate, does clearly reflect income.

(c) Permissible methods.

Subject to the provisions of subsections (a) and (b), a taxpayer may compute taxable income under any of the following methods of accounting—

(1) the cash receipts and disbursements method;

(2) an accrual method;

(3) any other method permitted by this chapter; or

(4) any combination of the foregoing methods permitted under regulations prescribed by the Secretary or his delegate.

(d) Taxpayer engaged in more than one business.

A taxpayer engaged in more than one trade or business may, in computing taxable income, use a different method of accounting for each trade or business.

(e) Requirement respecting change of accounting method.

Except as otherwise expressly provided in this chapter, a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 151.)

CROSS REFERENCES

Period for computation of taxable income, see section 441 of this title.

SUBPART B.—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCOME INCLUDED

Sec.
451. General rule for taxable year of inclusion.
453. Installment method.
454. Obligations issued at discount.
455. Prepaid subscription income.
456. Prepaid dues income of certain membership organizations.

AMENDMENTS

1961—Pub. L. 87–109, § 1(b), July 26, 1961, 75 Stat. 224, added item 456.

1958—Pub. L. 85–866, title I, § 28(b), Sept. 2, 1958, 72 Stat. 1626, added item 455.

1955—Act June 15, 1955, ch. 143, § 2(2), 69 Stat. 135, struck out item 452.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective with respect to taxable years beginning after Dec. 31, 1957, see note set out under section 455 of this title.

§ 451. General rule for taxable year of inclusion.

(a) General rule.

The amount of any item of gross income shall be included in the gross income for the taxable year in

which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

(b) Special rule in case of death.

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued only by reason of the death of the taxpayer shall not be included in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Special rule for employee tips.

For purposes of subsection (a), tips included in a written statement furnished an employer by an employee pursuant to section 6053(a) shall be deemed to be received at the time the written statement including such tips is furnished to the employer.

(d) Special rule for crop insurance proceeds.

In the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such proceeds in income for the taxable year following the taxable year of destruction or damage, if he establishes that, under his practice, income from such crops would have been reported in a following taxable year. An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary or his delegate prescribes. (Aug. 16, 1954, ch. 736, 68A Stat. 152; July 30, 1965, Pub. L. 89–97, title III, § 313(b), 79 Stat. 382; Dec. 30, 1969, Pub. L. 91–172, title II, § 215(a), 83 Stat. 573.)

AMENDMENTS

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d).
1965—Subsec. (c). Pub. L. 89–97 added subsec. (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 215(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [adding subsec. (d) of this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1965 AMENDMENT

Subsec. (c) of this section applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

CROSS REFERENCES

General rule for taxable year of deduction or credit, see section 461 of this title.

Items specifically included in gross income, see section 71 et seq. of this title.

Obligations issued at discount, see section 454 of this title.

Time for filing returns, see sections 6072, 6081 of this title.

Year in which partnership income is includible, see section 706 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 455, 456 of this title.

§ 452. Repealed. June 15, 1955, ch. 143, § 1 (a), 69 Stat. 134.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 152, related to prepaid income.

EFFECTIVE DATE OF REPEAL

Repeal of this section effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see effective date note under section 381 of this title.

SAVINGS PROVISIONS

See note under section 381 of this title.

§ 453. Installment method.

(a) Dealers in personal property.

(1) In general.

Under regulations prescribed by the Secretary or his delegate, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.

(2) Total contract price.

For purposes of paragraph (1), the total contract price of all sales of personal property on the installment plan includes the amount of carrying charges or interest which is determined with respect to such sales and is added on the books of account of the seller to the established cash selling price of such property. This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan or with respect to sales or other dispositions of property the income from which is, under subsection (b), returned on the basis and in the manner prescribed in paragraph (1).

(b) Sales of realty and casual sales of personalty.

(1) General rule.

Income from—

(A) a sale or other disposition of real property, or

(B) a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding $1,000,

may (under regulations prescribed by the Secretary or his delegate) be returned on the basis and in the manner prescribed in subsection (a).

(2) Limitation.

Paragraph (1) shall apply—

(A) In the case of a sale or other disposition during a taxable year beginning after December 31, 1953 (whether or not such taxable year ends after the date of enactment of this title), only if in the taxable year of the sale or other disposition—

(i) there are no payments, or

(ii) the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

(B) In the case of a sale or other disposition during a taxable year beginning before January 1, 1954, only if the income was (by reason of section 44 (b) of the Internal Revenue Code of 1939) returnable on the basis and in the manner prescribed in section 44 (a) of such code.

(3) Purchaser evidences of indebtedness payable on demand or readily tradable.

In applying this subsection, a bond or other evidence of indebtedness which is payable on de-

mand, or which is issued by a corporation or a government or political subdivision thereof (A) with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or (B) in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market, shall not be treated as an evidence of indebtedness of the purchaser.

(c) Change from accrual to installment basis.

(1) General rule.

If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his taxable income on the installment basis, then in computing his taxable income for such year (referred to in this subsection as "year of change") or for any subsequent year—

(A) installment payments actually received during any such year on account of sales or other dispositions of property made in any taxable year before the year of change shall not be excluded; but

(B) the tax imposed by this chapter for any taxable year (referred to in this subsection as "adjustment year") beginning after December 31, 1953, shall be reduced by the adjustment computed under paragraph (2).

(2) Adjustment in tax for amounts previously taxed.

In determining the adjustment referred to in paragraph (1) (B), first determine, for each taxable year before the year of change, the amount which equals the lesser of—

(A) the portion of the tax for such prior taxable year which is attributable to the gross profit which was included in gross income for such prior taxable year, and which by reason of paragraph (1) (A) is includible in gross income for the taxable year, or

(B) the portion of the tax for the adjustment year which is attributable to the gross profit described in subparagraph (A).

The adjustment referred to in paragraph (1) (B) for the adjustment year is the sum of the amounts determined under the preceding sentence.

(3) Rule for applying paragraph (2).

For purposes of paragraph (2), the portion of the tax for a prior taxable year, or for the adjustment year, which is attributable to the gross profit described in such paragraph is that amount which bears the same ratio to the tax imposed by this chapter (or by the corresponding provisions of prior revenue laws); other than by section 56, for such taxable year (computed without regard to paragraph (2)) as the gross profit described in such paragraph bears to the gross income for such taxable year. For purposes of the preceding sentence, the provisions of chapter 1 (other than of subchapter D, relating to excess profits tax, and of subchapter E, relating to self-employment income) of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(4) Revocation of election.

An election under paragraph (1) to report taxable income on the installment basis may be revoked by filing a notice of revocation, in such manner as the Secretary or his delegate prescribes by regulations, at any time before the expiration of 3 years following the date of the filing of the tax return for the year of change. If such notice of revocation is timely filed—

(A) the provisions of paragraph (1) and subsection (a) shall not apply to the year of change or for any subsequent year;

(B) the statutory period for the assessment of any deficiency for any taxable year ending before the filing of such notice, which is attributable to the revocation of the election to use the installment basis, shall not expire before the expiration of 2 years from the date of the filing of such notice, and such deficiency may be assessed before the expiration of such 2-year period notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment; and

(C) if refund or credit of any overpayment, resulting from the revocation of the election to use the installment basis, for any taxable year ending before the date of the filing of the notice of revocation is prevented on the date of such filing, or within one year from such date, by the operation of any law or rule of law (other than section 7121 or 7122), refund or credit of such overpayment may nevertheless be made or allowed if claim therefor is filed within one year from such date. No interest shall be allowed on the refund or credit of such overpayment for any period prior to the date of the filing of the notice of revocation.

(5) Election after revocation.

If the taxpayer revokes under paragraph (4) an election under paragraph (1) to report taxable income on the installment basis, no election under paragraph (1) may be made, except with the consent of the Secretary or his delegate, for any subsequent taxable year before the fifth taxable year following the year of change with respect to which such revocation is made.

(d) Gain or loss on disposition of installment obligations.

(1) General rule.

If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(A) the amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

(B) the fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(2) Basis of obligation.

The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(3) Special rule for transmission at death.

Except as provided in section 691 (relating to recipients of income in respect of decedents), this subsection shall not apply to the transmission of installment obligations at death.

(4) Effect of distribution in certain liquidations.

(A) Liquidations to which section 332 applies.

If—

(i) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

(ii) the basis of such obligations in the hands of the distributee is determined under section 334(b)(1),

then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation.

(B) Liquidations to which section 337 applies.

If—

(i) an installment obligation is distributed by a corporation in the course of a liquidation, and

(ii) under section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution,

then no gain or loss shall be recognized to such corporation by reason of such distribution. The preceding sentence shall not apply to the extent that under paragraph (1) gain to the distributing corporation would be considered as a gain to which section 341(f) or section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a) applies.

(5) Life insurance companies.

In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section 801 (a)) to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under paragraph (1). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this paragraph and paragraph (1), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this paragraph and paragraph (1), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(e) Carrying charges not included in total contract price.

If the carrying charges or interest with respect to sales of personal property, the income from which is returned under subsection (a)(1), is not included in the total contract price, payments received with respect to such sales shall be treated as applying first against such carrying charges or interest. This subsection shall not apply with respect to sales or other dispositions of property the income from which is, under subsection (b), returned on the basis and in the manner prescribed in subsection (a)(1). (Aug. 16, 1954, ch. 736, 68A Stat. 154; Sept. 2, 1958, Pub. L. 85-866, title I, § 27(a), 72 Stat. 1624; Oct. 16, 1962, Pub. L. 87-834, § 13(f)(5), 76 Stat. 1035; Feb. 26, 1964, Pub. L. 88-272, title II, §§ 222(a), 231(b)(5), 78 Stat. 75, 105; Aug. 22, 1964, Pub. L. 88-484, § 1(b)(2), 78 Stat. 597; Aug. 31, 1964, Pub. L. 88-539, § 3(a), (b), 78 Stat. 746; Sept. 12, 1966, Pub. L. 89-570, § 1(b)(5), 80 Stat. 762; Nov. 13, 1966, Pub. L. 89-809, title II, § 202(c), 80 Stat. 1576; Dec. 30, 1969, Pub. L. 91-172, title II, § 211(b)(5), title III, § 301(b)(7), title IV, § 412(a), title IX, § 916(a), 83 Stat. 570, 585, 608, 723.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172, § 412(a), added par. (3).

Subsec. (c). Pub. L. 91-172, § 916(a), added pars. (4) and (5).

Subsec. (c)(3). Pub. L. 91-172, § 301(b)(7), inserted ", other than by section 56," after "prior revenue laws)".

Subsec. (d)(4)(B). Pub. L. 91-172, § 211(b)(5), substituted "1250(a), 1251(c), or 1252(a)", for "or 1250(a)".

1966—Subsec. (d)(4)(A). Pub. L. 89-809 substituted "distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies" for "distributed by a corporation in the course of a liquidation" in clause (i) and "the basis of such obligation in the hands of the distributee is determined under section 334(b)(1)" for "under section 332 (relating to complete liquidations of subsidiaries) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation" in clause (ii), and, in the material following clause (ii), struck out provision requiring special treatment if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(2).

Subsec. (d)(4)(A), (B). Pub. L. 89-570 included reference to section 617(d)(1).

1964—Subsec. (a). Pub. L. 88-539, § 3(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(4). Pub. L. 88-484 inserted references to section 341(f) in clauses (A) and (B).

Pub. L. 88-272, § 231(b)(5), inserted references to section 1250(a) in pars. (A) and (B).

Subsec. (e). Pub. L. 88-539, § 3(b), substituted provisions relating to carrying charges or interest with respect to sales of personal property for provisions which included revolving credit type loans within the definition of "installment plan."

Pub. L. 88-272, § 222(a), added subsec. (e).

1962—Subsec. (d)(4)(A). Pub. L. 87-834, § 13(f)(5)(A), inserted sentence making subpar. (A) inapplicable, if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(2), to the extent that under par. (1) gain to the distributing corporation would be considered as gain to which section 1245(a) applies.

Subsec. (d)(4)(B). Pub. L. 87-834, § 13(f)(5)(B), inserted sentence making subpar. (B) inapplicable to the extent that under par. (1) gain to the distributing corporation would be considered as gain to which section 1245(a) applies.

1958—Subsec. (d)(5). Pub. L. 85-866 added subsec. (d)(5).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 412(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [adding subsec. (b)(3)] shall apply to sales or other dispositions occurring after May 27, 1969, which are not made pursuant to a binding written contract entered into on or before such date."

Amendment of subsec. (c)(3) of this section by section 301(b)(7) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91-172, set out as a note under section 56 of this title.

Section 916(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [adding pars. (4) and (5) to subsec. (c) of this section] shall apply to an election made for any year of change (as defined in section 453(c)(1) of the Internal Revenue Code of 1954 [subsec. (c)(1) of this section]) ending on or after the date of the enactment of this Act [Dec. 30, 1969], and shall also apply to any such year of change which ended before such date if the 3-year statutory period for assessment of any deficiency for such year has not expired on the date of the enactment of this Act [Dec. 30, 1969]."

Amendment of subsec. (d)(4)(B) by section 211(b)(5) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 1251 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of subsec. (d)(4)(A) of this section by section 202(c) of Pub. L. 89-809 applicable only with respect to distributions made after Nov. 13, 1966, see section 202(d) of Pub. L. 89-809, set out as a note under section 334 of this title.

Amendment of section by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 3(c) of Pub. L. 88-539 provided that: "The amendment made by subsection (a) [to subsec (a) of this section] shall apply in respect to sales made in taxable years beginning on or after January 1, 1960. The amendment made by subsection (b) [to subsec. (e) of this section] shall apply in respect of sales made during taxable years beginning after December 31, 1963."

Amendment of section by Pub. L. 88-484 applicable with respect to transactions after Aug. 22, 1964, in taxable years ending after such date, see section 2 of Pub. L. 88-484, set out as a note under section 341 of this title.

Amendment of subsec. (d)(4) by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as a note under section 1250 of this title.

Section 222(b) of Pub. L. 88-272 provided that: "The amendment made by subsection (a) [to this section] shall apply in respect of sales made during taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (d)(4) of this section by Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as a note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 27 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [adding subsec. (d)(5) of this section] shall apply to taxable years ending after December 31, 1957, but only as to transfers or other dispositions of installment obligations occurring after such date."

CROSS REFERENCES

Adjustments required by changes in method of accounting not to apply to changes under this section, see section 481 (d) of this title.

Inclusion in gross income, installment obligations acquired from decedent, see section 691 (a) (4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 311, 336, 381, 392, 481, 691, 1201 of this title.

§ 454. Obligations issued at discount.

(a) Non-interest-bearing obligations issued at a discount.

If, in the case of a taxpayer owning any non-interest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals or owning an obligation described in paragraph (2) of subsection (c), the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his taxable income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless on application by the taxpayer the Secretary or his delegate permits him, subject to such conditions as the Secretary or his delegate deems necessary, to change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition (or, in the case of an obligation described in paragraph (2) of subsection (c), the date of acquisition of the series E bond involved) and the first day of such taxable year shall also be treated as income received in such taxable year.

(b) Short-term obligations issued on discount basis.

In the case of any obligation—

(1) of the United States; or

(2) of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia,

which is issued on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

(c) Matured United States savings bonds.

In the case of a taxpayer who—

(1) holds a series E United States savings bond at the date of maturity, and

(2) pursuant to regulations prescribed under the Second Liberty Bond Act (A) retains his investment in such series E bond in an obligation of the United States, other than a current income obligation, or (B) exchanges such series E bond for another nontransferable obligation of the United States in an exchange upon which gain or loss is not recognized because of section 1037 (or so much of section 1031 as relates to section 1037),

the increase in redemption value (to the extent not previously includible in gross income) in excess of the amount paid for such series E bond shall be includible in gross income in the taxable year in which the obligation is finally redeemed or in the taxable year of final maturity, whichever is earlier. This subsection shall not apply to a corporation, and shall not apply in the case of any taxable year for which the taxpayer's taxable income is computed under an accrual method of accounting or for which an election made by the taxpayer under subsection (a) applies. (Aug. 16, 1954, ch. 736, 68A Stat. 156; Sept. 22, 1959, Pub. L. 86-346, title I, § 102, 73 Stat. 621.)

REFERENCES IN TEXT

The Second Liberty Bond Act, referred to in subsec. (c)(2), is classified to sections 745, 752—754b, 757, 757b—758, 760, 764—766, 769, 771, 773, 774, and 780 of Title 31, Money and Finance.

AMENDMENTS

1959—Subsec. (c). Pub. L. 86-346 designated existing provisions as par. (2)(A), inserted "of the United States" following "an obligation" and deleted "the maturity value of" preceding "such series E bond" and "which matures not more than 10 years from the date of maturity of such series E bond" following "income obligation" in such par. (2)(A), and added par. (2)(B).

FREEDOM SHARES AS UNITED STATES SERIES E BONDS

For purposes of maturity of United States Savings Bonds, freedom shares issued not later than one year after Dec. 1, 1969 to be treated as United States series E bonds, see section 3 of Pub. L. 91-130, set out as a note under section 757c of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1037 of this title.

§ 455. Prepaid subscription income.

(a) Year in which included.

Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d) (2) exists.

(b) Where taxpayer's liability ceases.

In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d) (2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer dies or ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such death, or such cessation of existence, occurs.

(c) Prepaid subscription income to which this section applies.

(1) Election of benefits.

This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary or his delegate may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election.

An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary or his delegate, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) When election may be made.

(A) With consent.

A taxpayer may, with the consent of the Secretary or his delegate, make an election under this section at any time.

(B) Without consent.

A taxpayer may, without the consent of the Secretary or his delegate, make an election under this section for his first taxable year (i) which begins after December 31, 1957, and (ii) in which he receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies.

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary or his delegate to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Definitions.

For purposes of this section—

(1) Prepaid subscription income.

The term "prepaid subscription income" means any amount (includible in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) Liability.

The term "liability" means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) Receipt of prepaid subscription income.

Prepaid subscription income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(e) Deferral of income under established accounting procedures.

Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would apply if an election were made) may continue to report his income for taxable years to which this title applies in accordance with such method or practice. (Added Pub. L. 85-866, title I, § 28 (a), Sept. 2, 1958, 72 Stat. 1625.)

EFFECTIVE DATE

Section 28 (c) of Pub. L. 85-866 provided that: "The amendments made by subsections (a) and (b) [adding this section and conforming analysis to the addition] shall apply with respect to taxable years beginning after December 31, 1957."

§ 456. Prepaid dues income of certain membership organizations.

(a) Year in which included.

Prepaid dues income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (e)(2) exists.

(b) Where taxpayer's liability ceases.

In the case of any prepaid dues income to which this section applies—

(1) If the liability described in subsection (e)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such cessation of existence occurs.

(c) Prepaid dues income to which this section applies.

(1) Election of benefits.

This section shall apply to prepaid dues income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary or his delegate may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election.

An election made under this section shall apply to all prepaid dues income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary or his delegate, include in gross income for the taxable year of receipt the entire amount of any prepaid dues income if the liability from which it arose is to end within 12 months after the date of receipt. Except as provided in subsection (d), and election made under this section shall not apply to any prepaid dues income received before the first taxable year for which the election is made.

(3) When election may be made.

(A) With consent.

A taxpayer may, with the consent of the Secretary or his delegate, make an election under this section at any time.

(B) Without consent.

A taxpayer may, without the consent of the Secretary or his delegate, make an election under this section for its first taxable year (i) which begins after December 31, 1960, and (ii) in which it receives prepaid dues income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies.

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary or his delegate to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Transitional rule.

(1) Amount includible in gross income for election years.

If a taxpayer makes an election under this section with respect to prepaid dues income, such taxpayer shall include in gross income, for each taxable year to which such election applies, not only that portion of prepaid dues income received in such year otherwise includible in gross income for such year under this section, but shall also include in gross income for such year an additional amount equal to the amount of prepaid dues income received in the 3 taxable years preceding the first taxable year to which such election applies which would have been included in gross income in the taxable year had the election been effective 3 years earlier.

(2) Deductions of amounts included in income more than once.

A taxpayer who makes an election with respect to prepaid dues income, and who includes in gross income for any taxable year to which the election applies an additional amount computed under paragraph (1), shall be permitted to deduct, for such taxable year and for each of the 4 succeeding taxable years, an amount equal to one-fifth of such additional amount, but only to the extent that such additional amount was also included in the taxpayer's gross income during any of the 3 taxable years preceding the first taxable year to which such election applies.

(e) Definitions.

For purposes of this section—

(1) Prepaid dues income.

The term "prepaid dues income" means any amount (includible in gross income) which is received by a membership organization in connection with, and is directly attributable to, a liability to render services or make available membership privileges over a period of time which extends beyond the close of the taxable year in which such amount is received.

(2) Liability.

The term "liability" means a liability to render services or make available membership privileges over a period of time which does not exceed 36 months, which liability shall be deemed to exist ratably over the period of time that such services are required to be rendered, or that such membership privileges are required to be made available.

(3) Membership organization.

The term "membership organization" means a corporation, association, federation, or other organization—

(A) organized without capital stock of any kind, and

(B) no part of the net earnings of which is distributable to any member.

(4) Receipt of prepaid dues income.

Prepaid dues income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(Added Pub. L. 87-109, § 1(a), July 26, 1961, 75 Stat. 222.)

EFFECTIVE DATE

Section 2 of Pub. L. 87-109 provided that: "The amendments made by this Act [adding this section] shall apply with respect to taxable years beginning after December 31, 1960."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 277 of this title.

SUBPART C.—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

Sec.
461. General rule for taxable year of deduction.

AMENDMENTS

1955—Act June 15, 1955, ch. 143, § 2(3), 69 Stat. 135, struck out item 462.

§ 461. General rule for taxable year of deduction.

(a) General rule.

The amount of any deduction or credit allowed by this subtitle shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

(b) Special rule in case of death.

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued as a deduction or credit only by reason of the death of the taxpayer shall not be allowed in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Accrual of real property taxes.

(1) In general.

If the taxable income is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

(2) Special rules.

Paragraph (1) shall not apply to any real property tax, to the extent that such tax was allowable as a deduction under the Internal Revenue Code of 1939 for a taxable year which began before January 1, 1954. In the case of any real property tax which would, but for this subsection, be allowable as a deduction for the first taxable year of the taxpayer which begins after December 31, 1953, then, to the extent that such tax is related to any period before the first day of such first taxable year, the tax shall be allowable as a deduction for such first taxable year.

(3) When election may be made.

(A) Without consent.

A taxpayer may, without the consent of the Secretary or his delegate, make an election under this subsection for his first taxable year which begins after December 31, 1953, and ends after the date of enactment of this title in which the taxpayer incurs real property taxes. Such an election shall be made not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(B) With consent.

A taxpayer may, with the consent of the Secretary or his delegate, make an election under this subsection at any time.

(d) Limitation on acceleration of accrual of taxes.

(1) General rule.

In the case of a taxpayer whose taxable income is computed under an accrual method of accounting, to the extent that the time for accruing taxes is earlier than it would be but for any action of any taxing jurisdiction taken after December 31, 1960, then, under regulations prescribed by the Secretary or his delegate, such taxes shall be treated as accruing at the time they would have accrued but for such action by such taxing jurisdiction.

(2) Limitation.

Under regulations prescribed by the Secretary or his delegate, paragraph (1) shall be inapplicable to any item of tax to the extent that its application would (but for this paragraph) prevent all persons (including successors in interest) from ever taking such item into account.

(e) Dividends or interest paid on certain deposits or withdrawable accounts.

Except as provided in regulations prescribed by the Secretary or his delegate, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts (if such amounts paid or credited are withdrawable on demand subject only to customary notice to withdraw) by a mutual savings bank not having capital stock represented by

shares, a domestic building and loan association, or a cooperative bank shall not be allowed as a deduction for the taxable year to the extent such amounts are paid or credited for periods representing more than 12 months. Any such amount not allowed as a deduction as the result of the application of the preceding sentence shall be allowed as a deduction for such other taxable year as the Secretary or his delegate determines to be consistent with the preceding sentence.

(f) Contested liabilities.

If—

(1) the taxpayer contests an asserted liability,

(2) the taxpayer transfers money or other property to provide for the satisfaction of the asserted liability,

(3) the contest with respect to the asserted liability exists after the time of the transfer, and

(4) but for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year),

then the deduction shall be allowed for the taxable year of the transfer. This subsection shall not apply in respect of the deduction for income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 157; Sept. 14, 1960, Pub. L. 86–781, § 6(a), 74 Stat. 1020; Oct. 24, 1962, Pub. L. 87–876, § 3(a), 76 Stat. 1199; Feb. 26, 1964, Pub. L. 88–272, title II, § 223(a)(1), 78 Stat. 76.)

AMENDMENTS

1964—Subsec. (f). Pub. L. 88–272 added subsec. (f).
1962—Subsec. (e). Pub. L. 87–876 added subsec. (e).
1960—Subsec. (d). Pub. L. 86–781 added subsec. (d).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 223(b) of Pub. L. 88–272 provided that:

"Except as provided in subsections (c) and (d) [set out as notes under this section]—

"(1) the amendment made by subsection (a)(1) [to this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, and

"(2) the amendment made by subsection (a)(2) [to section 43, Internal Revenue Code of 1939] shall apply to taxable years to which the Internal Revenue Code of 1939 applies."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(b) of Pub. L. 87–876 provided that: "The amendment made by subsection (a) [adding subsec. (e) of this section] shall apply only with respect to taxable years ending after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 6(b) of Pub. L. 86–781 provided that: "The amendment made by subsection (a) [adding subsec. (d) of this section] shall apply to taxable years ending after December 31, 1960."

ELECTION AS TO TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Section 223(c) of Pub. L. 88–272 provided that:

"(1) The amendments made by subsection (a) [to this section, and section 43, Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if the taxpayer elects, in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, to have this paragraph apply. Such an election—

"(A) must be made within one year after the date of the enactment of this Act [Feb. 26, 1964],

"(B) may not be revoked after the expiration of such one-year period, and

"(C) shall apply to all transfers described in the first sentence of this paragraph (other than transfers described in paragraph (2)).

In the case of any transfer to which this paragraph applies, the deduction shall be allowed only for the taxable year in which the contest with respect to such transfer is settled.

"(2) Paragraph (1) shall not apply to any transfer if the assessment of any deficiency which would result from the application of the election in respect of such transfer is, on the date of the election under paragraph (1), prevented by the operation of any law or rule of law.

"(3) If the taxpayer makes an election under paragraph (1), and if, on the date of such election, the assessment of any deficiency which results from the application of the election in respect of any transfer is not prevented by the operation of any law or rule of law, the period within which assessment of such deficiency may be made shall not expire earlier than 2 years after the date of the enactment of this Act [Feb. 26, 1964]."

CERTAIN OTHER TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Section 223(d) of Pub. L. 88–272 provided that:

"The amendments made by subsection (a) [to this section, and section 43, Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if—

"(1) no deduction has been allowed in respect of such transfer for any taxable year before the taxable year in which the contest with respect to such transfer is settled, and

"(2) refund or credit of any overpayment which would result from the application of such amendments to such transfer is prevented by the operation of any law or rule of law.

In the case of any transfer to which this subsection applies, the deduction shall be allowed for the taxable year in which the contest with respect to such transfer is settled."

CROSS REFERENCES

Additional itemized deductions for individuals, see section 211 et seq. of this title.

Itemized deductions for individuals and corporations, see section 161 et seq. of this title.

Items not paid within 2½ months after close of taxable year as not deductible, see section 267 (a) (2) of this title.

Special deductions for corporations, see section 241 et seq. of this title.

Time for filing returns, see sections 6072, 6081 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 164 of this title.

§ 462. Repealed. June 15, 1955, ch. 143, § 1 (b), 69 Stat. 134.

Section, act Aug. 16, 1954, ch. 736 68A Stat. 158, related to reserves for estimated expenses.

EFFECTIVE DATE OF REPEAL

Repeal of this section effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see effective date note under section 381 of this title.

SAVINGS PROVISIONS

See note under section 381 of this title.

SUBPART D.—INVENTORIES

Sec.
471. General rule for inventories.
472. Last-in, first-out inventories.

§ 471. General rule for inventories.

Whenever in the opinion of the Secretary or his delegate the use of inventories is necessary in order

clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary or his delegate may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (Aug. 16, 1954, ch. 736, 68A Stat. 159.)

CROSS REFERENCES

Basis of property included in inventory, see section 1013 of this title.

LIFO inventory, taxability of corporation on distribution, see section 311 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 311, 472 of this title.

§ 472. Last-in, first-out inventories.

(a) Authorization.

A taxpayer may use the method provided in subsection (b) (whether or not such method has been prescribed under section 471) in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary or his delegate may prescribe. The change to, and the use of, such method shall be in accordance with such regulations as the Secretary or his delegate may prescribe as necessary in order that the use of such method may clearly reflect income.

(b) Method applicable.

In inventorying goods specified in the application described in subsection (a), the taxpayer shall:

(1) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof; and second, those acquired in the taxable year;

(2) Inventory them at cost; and

(3) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(c) Condition.

Subsection (a) shall apply only if the taxpayer establishes to the satisfaction of the Secretary or his delegate that the taxpayer has used no procedure other than that specified in paragraphs (1) and (3) of subsection (b) in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in subsection (b) is to be used, for the purpose of a report or statement covering such taxable year—

(1) to shareholders, partners, or other proprietors, or to beneficiaries, or

(2) for credit purposes.

(d) Preceding closing inventory.

In determining income for the taxable year preceding the taxable year for which the method described in subsection (b) is first used, the closing inventory of such preceding year of the goods specified in the application referred to in subsection (a) shall be at cost.

(e) Subsequent inventories.

If a taxpayer, having complied with subsection (a), uses the method described in subsection (b) for any taxable year, then such method shall be used in all subsequent taxable years unless—

(1) with the approval of the Secretary or his delegate a change to a different method is authorized; or,

(2) the Secretary or his delegate determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in paragraph (1) of subsection (b) in inventorying the goods specified in the application to ascertain the income, profit, or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year (A) to shareholders, partners, or other proprietors, or beneficiaries, or (B) for credit purposes; and requires a change to a method different from that prescribed in subsection (b) beginning with such subsequent taxable year or any taxable year thereafter.

If paragraph (1) or (2) of this subsection applies, the change to, and the use of, the different method shall be in accordance with such regulations as the Secretary or his delegate may prescribe as necessary in order that the use of such method may clearly reflect income.

(f) Cross reference.

For provisions relating to involuntary liquidation and replacement of LIFO inventories, see section 1321.

(Aug. 16, 1954, ch. 736, 68A Stat. 159.)

CROSS REFERENCES

LIFO inventory, taxability of corporations on distribution, see section 311 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 311 of this title.

PART III.—ADJUSTMENTS

Sec.
481. Adjustments required by changes in method of accounting.
482. Allocation of income and deductions among taxpayers.
483. Interest on certain deferred payments.

AMENDMENTS

1964—Pub. L. 88-272, title II, § 224(b), Feb. 26, 1964, 78 Stat. 79, added item 483.

§ 481. Adjustments required by changes in method of accounting.

(a) General rule.

In computing the taxpayer's taxable income for any taxable year (referred to in this section as the "year of the change")—

(1) if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then

(2) there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer.

(b) Limitation on tax where adjustments are substantial.

(1) Three year allocation.

If—

(A) the method of accounting from which the change is made was used by the taxpayer in computing his taxable income for the 2 taxable years preceding the year of the change, and

(B) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2), other than the amount of such adjustments to which paragraph (4) or (5) applies, exceeds $3,000,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the aggregate increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if one-third of such increase in taxable income were included in taxable income for the year of the change and one-third of such increase were included for each of the 2 preceding taxable years.

(2) Allocation under new method of accounting.

If—

(A) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a) (2), other than the amount of such adjustments to which paragraph (4) or (5) applies, exceeds $3,000, and

(B) the taxpayer establishes his taxable income (under the new method of accounting) for one or more taxable years consecutively preceding the taxable year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the net increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if the adjustments required by subsection (a) (2), other than the amount of such adjustments to which paragraph (4) or (5) applies, were allocated to the taxable year or years specified in subparagraph (B) to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (a) (2), other than the amount of such adjustments to which paragraph (4) or (5) applies, was allocated to the taxable year of the change.

(3) Special rules for computations under paragraphs (1) and (2).

For purposes of this subsection—

(A) There shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (1) or (2) but which is affected by a net operating loss (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to taxable years with respect to which adjustments under paragraph (1) or (2) are allocated.

(B) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined (within the meaning of section 1314 (a)) for such year.

(C) In applying section 7807 (b) (1), the provisions of chapter 1 (other than subchapter E, relating to self-employment income) and chapter 2 of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(4) Special rule for pre-1954 adjustments generally.

Except as provided in paragraphs (5) and (6)—

(A) Amount of adjustments to which paragraph applies.

The net amount of the adjustments required by subsection (a), to the extent that such amount does not exceed the net amount of adjustments which would have been required if the change in method of accounting had been made in the first taxable year beginning after December 31, 1953, and ending after August 16, 1954, shall be taken into account by the taxpayer in computing taxable income in the manner provided in subparagraph (B), but only if such net amount of such adjustment would increase the taxable income of such taxpayer by more than $3,000.

(B) Years in which amounts are to be taken into account.

One-tenth of the net amount of the adjustments described in subparagraph (A) shall (except as provided in subparagraph (C)) be taken into account in each of the 10 taxable years beginning with the year of the change. The amount to be taken into account for each taxable year in the 10-year period shall be taken into account whether or not for such year the assessment of tax is prevented by operation of any law or rule of law. If the year of the change was a taxable year ending before January 1, 1958, and if the taxpayer so elects (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe), the 10-year period shall begin with the first taxable year which begins after December 31, 1957. If the taxpayer elects under the preceding sentence to begin the 10-year period with the first taxable year which begins after December 31, 1957, the 10-year period shall be reduced by the number of years, beginning with the year of the change, in respect of which assessment of tax is prevented by operation of any law or rule of law on the date of the enactment of the Technical Amendments Act of 1958.

(C) Limitation on years in which adjustments can be taken into account.

The net amount of any adjustments described in subparagraph (A), to the extent not

taken into account in prior taxable years under subparagraph (B)—

(i) in the case of a taxpayer who is an individual, shall be taken into account in the taxable year in which he dies or ceases to engage in a trade or business,

(ii) in the case of a taxpayer who is a partner, his distributive share of such net amount shall be taken into account in the taxable year in which the partnership terminates, or in which the entire interest of such partner is transferred or liquidated, or

(iii) in the case of a taxpayer who is a corporation, shall be taken into account in the taxable year in which such corporation ceases to engage in a trade or business unless such net amount of such adjustment is required to be taken into account by the acquiring corporation under section 381 (c) (21).

(D) Termination of application of paragraph.

The provisions of this paragraph shall not apply with respect to changes in methods of accounting made in taxable years beginning after December 31, 1963.

(5) Special rule for pre-1954 adjustments in case of certain decedents.

A change from the cash receipts and disbursements method to the accrual method in any case involving the use of inventories, made on or after August 16, 1954, and before January 1, 1958, for a taxable year to which this section applies, by the executor or administrator of a decedent's estate in the first return filed by such executor or administrator on behalf of the decedent, shall be given effect in determining taxable income (other than for the purpose of computing a net operating loss carryback to any prior taxable year of the decedent), and, if the net amount of any adjustments required by subsection (a) in respect of taxable years to which this section does not apply would increase the taxable income of the decedent by more than $3,000, then the tax attributable to such net adjustments shall not exceed an amount equal to the tax that would have been payable on the cash receipts and disbursements method for the years for which the executor or administrator filed returns on behalf of the decedent, computed for each such year as though a ratable portion of the taxable income for such year had been received in each of 10 taxable years beginning and ending on the same dates as the taxable year for which the tax is being computed.

(6) Application of paragraph (4).

Paragraph (4) shall not apply with respect to any taxpayer, if the taxpayer elects to take the net amount of the adjustments described in paragraph (4) (A) into account in the manner provided by paragraph (1) or (2). An election to take the net amount of such adjustments into account in the manner provided by paragraph (1) or (2) may be made only if the taxpayer consents in writing to the assessment, within such period as may be agreed on with the Secretary or his delegate, of any deficiency for the year of the change, to the extent attributable to taking the net amount of the adjustments described in paragraph (4) (A) into account in the manner provided by paragraph (1) or (2), even though at the time of filing such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law. An election under this paragraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(c) Adjustments under regulations.

In the case of any change described in subsection (a), the taxpayer may, in such manner and subject to such conditions as the Secretary or his delegate may by regulations prescribe, take the adjustments required by subsection (a) (2) into account in computing the tax imposed by this chapter for the taxable year or years permitted under such regulations.

(d) Exception for change to installment basis.

This section shall not apply to a change to which section 453 (relating to change to installment method) applies. (Aug. 16, 1954, ch. 736, 68A Stat. 160; Sept. 2, 1958, Pub. L. 85–866, title I, § 29 (a), (b), 72 Stat. 1626—1628; Dec. 30, 1969, Pub. L. 91–172, title V, § 512(f) (4), 83 Stat. 641.)

REFERENCES IN TEXT

The date of the enactment of the Technical Amendments Act of 1958, referred to in subsec. (b) (4) (B), means the date of enactment of Pub. L. 85–866, which was enacted on September 2, 1958.

AMENDMENTS

1969—Subsec. (b) (3) (A). Pub. L. 91–172 substituted "loss carryback or carryover" for "loss carryover."

1958—Subsec. (a) (2). Pub. L. 85–866, § 29(a) (1), added "unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer", following "does not apply".

Subsec. (b) (1). Pub. L. 85–866, § 29(b) (1)–(3), inserted after "subsection (a) (2)" the words ", other than the amount of such adjustments to which paragraph (4) or (5) applies," and substituted "the aggregate increase in the taxes" for "the aggregate of the taxes" and "which would result if one-third of such increase in taxable income" for "which would result if one-third of such increase".

Subsec. (b) (2). Pub. L. 85–866, § 29(b) (1), (4), inserted after "subsection (a) (2)", wherever appearing "other than the amount of such adjustments to which paragraph (4) or (5) applies," and "(or under the corresponding provisions of prior revenue laws)" after "the net increase in the taxes under this Chapter".

Subsec. (b) (3) (A). Pub. L. 85–866, § 29(b) (5), substituted "paragraph (1) or (2)" for "paragraph (2)", wherever appearing.

Subsec. (b) (4)—(6). Pub. L. 85–866, § 29(a) (2), added subsec. (b) (4)—(6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 29 (d) of Pub. L. 85–866 provided that:

"(1) **In general.**—The amendments made by this section [amending subsec. (a) (2), (b) (1), (2), (3A), (4—6) of this section and adding section 381 (c) (21) of this title] shall apply with respect to any change in a method of accounting where the year of the change (within the meaning of section 481 of the Internal Revenue Code of 1954 [this section]) is a taxable year beginning after December 31, 1953, and ending after August 16, 1954.

"(2) **Exception for certain agreements.**—The amendments made by subsections (a), (b) (I), and (c) [amending subsec. (a) (2) and (b) (4—6) of this section and adding section 381 (c) (21) of this title] shall not apply if before the date of the enactment of this Act [Sept. 2, 1958]—

"(A) the taxpayer applied for a change in the method of accounting in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, and

"(B) the taxpayer and the Secretary of the Treasury or his delegate agreed to the terms and conditions for making the change."

ELECTION TO RETURN TO FORMER METHOD OF ACCOUNTING

Section 29 (e) of Pub L. 85-866 provided that:

"(1) **Election.**—Any taxpayer who for any taxable year beginning after December 31, 1953, and ending after August 16, 1954, and before the date of enactment of this Act [Sept. 2, 1958], computed his taxable income under a method of accounting different from the method under which his taxable income for the preceding taxable year was computed, may elect to recompute his taxable income, beginning with the taxable year for which taxable income was computed under such different method of accounting, under the method of accounting under which taxable income was computed for such preceding taxable year. An election under this paragraph shall be made within 6 months after the date of the enactment of this Act [Sept. 2, 1958], and shall be made in such manner as the Secretary of the Treasury or his delegate may provide. This paragraph shall not apply to any taxpayer—

"(A) to whom subsection (d) (2) [set out as note under this section] applies, or

"(B) who was required, before the date of the enactment of this Act [Sept. 2, 1958], by the Secretary of the Treasury or his delegate to change his method of accounting.

"(2) **Statute of limitations.**—If assessment of any deficiency for any taxable year resulting from an election under paragraph (1) is prevented on the date on which such election is made, or at any time within one year after such date, by the operation of any law or rule of law, such assessment may, nevertheless, be made if made within one year after such date. An election by a taxpayer under paragraph (1) shall be considered as a consent to the assessment pursuant to this paragraph of any such deficiency. If refund or credit of any overpayment of income tax resulting from an election under paragraph (1) is prevented on the date on which such election is made, or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year after such date."

TRANSITIONAL PROVISIONS FOR INCOME TAX TREATMENT OF DEALER RESERVE INCOME

Pub. L. 86-459, May 13, 1960, 74 Stat. 124, provided:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Dealer Reserve Income Adjustment Act of 1960.'

"SEC. 2. PERSONS TO WHOM THIS ACT APPLIES.

"This Act shall apply to any person who, for his most recent taxable year ending on or before June 22, 1959—

"(1) computed, or was required to compute, taxable income under an accrual method of accounting,

"(2) treated any dealer reserve income, which should have been taken into account (under the accrual method of accounting) for such taxable year, as accruable for a subsequent taxable year, and

"(3) before September 1, 1960, makes an election under section 3(a) or 4(a) of this Act.

"SEC. 3. ELECTION TO HAVE SECTION 481 APPLY.

"(a) **General rule.**—If—

"(1) for the year of the change (determined under subsection (b)), the treatment of dealer reserve income by any person to whom this Act applies is changed to a method proper under the accrual method of accounting (whether or not such person initiated the change),

"(2) such person makes an election under this subsection, and

"(3) such person does not make the election provided by section 4(a),

then, for purposes of section 481 of the Internal Revenue Code of 1954 [this section], the change described in paragraph (1) shall be treated as a change in method of accounting not initiated by the taxpayer.

"(b) **Year of change, etc.**—In applying section 481 of the Internal Revenue Code of 1954 [this section] for purposes of this section, the 'year of the change' in the case of any person is—

"(1) except as provided in paragraph (2), the first taxable year ending after June 22, 1959, or

"(2) the earliest taxable year (whether the Internal Revenue Code of 1954 or the Internal Revenue Code of 1939 applies to such year) for which—

"(A) on or before June 22, 1959—

"(i) the Secretary of the Treasury or his delegate issued a notice of deficiency, or a written notice of a proposed deficiency, with respect to dealer reserve income, or

"(ii) such person filed with the Secretary or his delegate a claim for refund or credit with respect to dealer reserve income, and

"(B) the assessment of any deficiency, or the refund or credit of any overpayment, whichever is applicable, was not, on June 21, 1959, prevented by the operation of any law or rule of law.

For purposes of this section, section 481 of such Code [this section] shall be treated as applying to any year of the change to which the Internal Revenue Code of 1939 applies.

"SEC. 4. ELECTION TO HAVE SECTION 481 NOT APPLY; PAYMENT IN INSTALLMENTS.

"(a) **General rule.**—If a person to whom this Act applies makes an election under this subsection, then for purposes of chapter 1 of the Internal Revenue Code of 1954 (and the corresponding provisions of prior law) a change in the treatment of dealer reserve income to a method proper under the accrual method of accounting shall be treated as not a change in method of accounting in respect of which section 481 of the Internal Revenue Code of 1954 [this section] applies. Any election under this subsection shall apply to all taxable years ending on or before June 22, 1959 (whether the provisions of the Internal Revenue Code of 1954 or the corresponding provisions of prior law apply), for which the assessment of any deficiency, or for which refund or credit of any overpayment, whichever is applicable, was not, on June 21, 1959, prevented by the operation of any law or rule of law.

"(b) **Election to pay tax in installments.**—

"(1) *Eligibility.*—If the net increase in tax (as defined in paragraph (2)) which results solely from the effect of the election provided by subsection (a) exceeds $2,500, then the taxpayer may elect (at the time the election is made under subsection (a)) to pay in two or more (but not to exceed 10) equal annual installments any portion of such net increase which (on the date of such election) is unpaid.

"(2) *Net increase in tax defined.*—For purposes of this section, the term 'net increase in tax' means the amount (if any) by which—

"(A) the sum of the increases in tax (including interest) for all taxable years to which the election applies and which is attributable to the election, exceeds

"(B) the sum of the decreases in tax (including interest) for all taxable years to which the election applies and which is attributable to the election.

For purposes of this paragraph, interest for the period before the date of the election shall be computed as provided in chapter 67 of the Internal Revenue Code of 1954 (or the corresponding provisions of prior revenue laws).

"(c) **Due date for installments.**—If an election is made under subsection (b), the first installment shall be paid on or before the date prescribed by section 6151(a) of the Internal Revenue Code of 1954 [section 6151(a) of this title] for payment of the tax for the taxable year in which the election was made, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this subsection for payment of the preceding installment.

"(d) **Effect of subsequent redetermination of tax.**—

"(1) *Redetermination.*—If—

"(A) the taxpayer makes an election under subsection (b), and

"(B) there is a redetermination of the taxpayer's tax for any taxable year to which the election provided by subsection (a) applies,

then the net increase in tax (as defined in subsection (b)(2)) shall be redetermined.

"(2) *Effect of increase.*—If the redetermination described in paragraph (1)(B) results in an increase in the net increase in tax (as defined in subsection (b)(2)), the resulting increase shall be prorated to all the installments. The part of such resulting increase so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of such resulting increase so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary of the Treasury or his delegate.

"(3) *Effect of decrease.*—

"For treatment of a decrease in the net increase in tax as the result of a redetermination described in paragraph (1)(B), see section 6403 of the Internal Revenue Code of 1954 [section 6403 of this title] (relating to overpayment of installment).

"(e) **Suspension of interest.**—

"(1) *In general.*—If an election under subsection (a) applies and there is a net increase in tax (as defined in subsection (b)(2)), no interest shall be imposed on any underpayment (and no interest shall be paid on any overpayment) attributable to such election for the period beginning on the date of such election and ending on the date prescribed by section 6151(a) of the Internal Revenue Code of 1954 [section 6151(a) of this title] for payment of the tax for the taxable year in which the election was made.

"(2) *No interest during installment period.*—If an election under subsection (b) applies, no interest shall be imposed for the period on or after the date fixed for payment of the first installment unless payment of unpaid installments is accelerated under subsection (f) or (g).

"(3) *Interest where payment is accelerated.*—If payment is accelerated under subsection (f) or (g), interest determined in accordance with the provisions of section 6601 of the Internal Revenue Code of 1954 [section 6601 of this title] on the entire unpaid tax shall be payable—

"(A) if payment is accelerated under subsection (f), from the date of notice and demand provided by such subsection to the date such tax is paid, or

"(B) if payment is accelerated under subsection (g), from the date fixed for paying the unpaid installment to the date such tax is paid.

"(f) **Termination of installment payment privilege.**—The extension of time provided by this section for payment of tax shall cease to apply, and any unpaid installments shall be paid upon notice and demand from the Secretary of the Treasury or his delegate, if—

"(1) in the case of a taxpayer who is an individual, he dies or ceases to engage in a trade or business,

"(2) in the case of a taxpayer who is a partner, the entire interest of such partner is transferred or liquidated or the partnership terminates, or

"(3) in the case of a taxpayer which is a corporation, the taxpayer ceases to engage in a trade or business, unless the unpaid portion of the tax payable in installments is required to be taken into account by the acquiring corporation under section 5(d).

"(g) **Failure to pay installment.**—If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for payment of such installment), the unpaid installments shall be paid upon notice and demand from the Secretary of the Treasury or his delegate.

"(h) **Suspension of running of periods of limitation.**—The running of the periods of limitation provided by section 6502 of the Internal Revenue Code of 1954 [section 6502 of this title] (or corresponding provision of prior law) for the collection of any amount of tax payable in installments under this section shall be suspended for the period of any extension of time for payment granted under this section.

"SEC. 5. DEFINITIONS; SPECIAL RULES.

"(a) **Dealer reserve income.**—For purposes of this Act, the term 'dealer reserve income' means—

"(1) that part of the consideration derived by any person from the sale or other disposition of customers' sales contracts, notes, and other evidences of indebtedness (or derived from customers' finance charges connected with such sales or other dispositions) which is—

"(A) attributable to the sale by such person to such customers, in the ordinary course of his trade or business, of real property or tangible personal property, and

"(B) held in a reserve account, by the financial institution to which such person disposed of such evidences of indebtedness, for the purpose of securing obligations of such person or of such customers, or both; and

"(2) that part of the consideration—

"(A) derived by any person from a sale described in paragraph (1)(A) in respect of which part or all of the purchase price of the property sold is provided by a financial institution to or for the customer to whom such property is sold, or

"(B) derived by such person from finance charges connected with the financing of such sale,

which is held in a reserve account by such financial institution for the purpose of securing obligations of such person or of such customer, or both.

"(b) **Financial institution.**—For purposes of this Act, the term 'financial institution' means any person regularly engaged in the business of acquiring evidences of indebtedness of the kind described in subsection (a)(1), or of financing sales of the kind described in subsection (a)(2), or both.

"(c) **Other terms; application of other laws.**—Except where otherwise distinctly expressed or manifestly intended, terms used in this Act shall have the same meaning as when used in the Internal Revenue Code of 1954 and all provisions of law shall apply with respect to this Act as if this Act were a part of such Code.

"(d) **Acquiring corporation.**—In the case of the acquisition of assets of a corporation by another corporation in a distribution or transfer described in section 381(a) of the Internal Revenue Code of 1954 [section 381(a) of this title], the acquiring corporation shall, for purposes of this Act, be treated as if it were the distributor or transferor corporation.

"(e) **Statutes of limitations.**—

"(1) *Extension of period for assessment and refund or credit.*—For purposes of applying sections 3 and 4 of this Act, if the assessment of any deficiency, or the refund or credit of any overpayment, for any taxable year was not prevented on June 21, 1959, by the operation of any law or rule of law, but would be so prevented prior to September 1, 1961, the period within which such assessment, or such refund or credit, may be made shall not expire prior to September 1, 1961. An election by a taxpayer under section 3 or 4 of this Act shall be considered as a consent to the application of the provisions of this subsection.

"(2) *Years closed by closing agreement or compromise.*—For purposes of this Act, if the assessment of any deficiency, or the refund or credit of any overpayment, for any taxable year is prevented on the date of an election under section 3 or 4 of this Act by the operation of the provisions of chapter 74 of the Internal Revenue Code of 1954 (relating to closing agreements and compromises) or by the corresponding provisions of the Internal Revenue Code of 1939, such assessment, or such refund or credit, shall be considered as having been prevented on June 21, 1959.

"(f) **Regulations.**—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this Act, including regulations relating to—

"(1) the application of the provisions of this Act in the case of partnerships, and

"(2) the manner in which the elections provided by this Act are to be made."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 381, 1251 of this title; title 42 section 401.

§ 482. Allocation of income and deductions among taxpayers.

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary or his delegate may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. (Aug. 16, 1954, ch. 736, 68A Stat. 162.)

§ 483. Interest on certain deferred payments.

(a) Amount constituting interest.

For purposes of this title, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applies which are due under such contract.

(b) Total unstated interest.

For purposes of this section, the term "total unstated interest" means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of—

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of paragraph (2), the present value of a payment shall be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the Secretary or his delegate. Such regulations shall provide for discounting on the basis of 6-month brackets and shall provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange is an amount equal to 100 percent of such payment.

(c) Payments to which section applies.

(1) In general.

Except as provided in subsection (f), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract—

(A) under which some or all of the payments are due more than one year after the date of such sale or exchange and

(B) under which, using a rate provided by regulations prescribed by the Secretary or his delegate for purposes of this subparagraph, there is total unstated interest.

Any rate prescribed for determining whether there is total unstated interest for purposes of subparagraph (B) shall be at least one percentage point lower than the rate prescribed for purposes of subsection (b)(2).

(2) Treatment of evidence of indebtedness.

For purposes of this section, an evidence of indebtedness of the purchaser given in consideration for the sale or exchange of property shall not be considered a payment, and any payment due under such evidence of indebtedness shall be treated as due under the contract for the sale or exchange.

(d) Payments that are indefinite as to time, liability, or amount.

In the case of a contract for the sale or exchange of property under which the liability for, or the amount or due date of, any portion of a payment cannot be determined at the time of the sale or exchange, this section shall be separately applied to such portion as if it (and any amount of interest attributable to such portion) were the only payments due under the contract; and such determinations of liability, amount, and due date shall be made at the time payment of such portion is made.

(e) Change in terms of contract.

If the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property is changed, the "total unstated interest" under the contract shall be recomputed and allocated (with adjustment for prior interest (including unstated interest) payments) under regulations prescribed by the Secretary or his delegate.

(f) Exceptions and limitations.

(1) Sales price of $3,000 or less.

This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

(2) Carrying charges.

In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

(3) Treatment of seller.

In the case of the seller, the tax treatment of any amounts received on account of the sale or exchange of property shall be made without regard to this section if no part of any gain on such sale or exchange would be considered as gain from the sale or exchange of a capital asset or property described in section 1231.

(4) Sales or exchanges of patents.

This section shall not apply to any payments made pursuant to a transfer described in section 1235(a) (relating to sale or exchange of patents).

(5) Annuities.

This section shall not apply to any amount the liability for which depends in whole or in part on the life expectancy of one or more individuals and which constitutes an amount received as an annuity to which section 72 applies.

(Added Pub. L. 88-272, title II, § 224(a), Feb. 26, 1964, 78 Stat. 77.)

EFFECTIVE DATE

Section applicable to payments made after Dec. 31, 1963, on account of sales or exchanges of property after June 30, 1963, other than a sale or exchange pursuant to written contract, including an irrevocable written option, entered into before July 1, 1963, see section 224(d) of Pub. L. 88-272, set out as a note under section 163 of this title.

Subchapter F.—Exempt Organizations

Part
I. General rule.
II. Private foundations.
III. Taxation of business income of certain exempt organizations.
IV. Farmers' cooperatives.
V. Shipowners' protection and indemnity associations.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(j)(58), Dec. 30, 1969, 83 Stat. 532, added Part II heading, and redesignated former Parts II, III and IV as Parts III, IV and V, respectively.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 532, 542, 552 of this title.

PART I.—GENERAL RULE

Sec.
501. Exemption from tax on corporations, certain trusts, etc.
502. Feeder organizations.
503. Requirements for exemption.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(j)(61), Dec. 30, 1969, 83 Stat. 532, struck out item 504.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation.

An organization described in subsection (c) or (d) or section 401 (a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities.

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II and III of this subchapter, but (notwithstanding parts II and III of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations.

The following organizations are referred to in subsection (a):

(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes.

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players) not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries

of members, and income in respect of investments.

(12) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14) (A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or

(iii) mutual savings banks not having capital stock represented by shares.

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822 (b) (other than paragraph (1) (D) thereof) and premiums (including deposits and assessments) does not exceed $150,000.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17) (A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(iii) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory

manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(C) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(d) Religious and apostolic organizations.

The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations.

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing, warehousing, billing and collection, food, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cross reference.

For nonexemption of Communist-controlled organizations, see section 11 (b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U. S. C. 790 (b)).

(Aug. 16, 1954, ch. 736, 68A Stat. 163; Mar. 13, 1956, ch. 83, § 5(2), 70 Stat. 49; Apr. 22, 1960, Pub. L. 86-428, § 1, 74 Stat. 54; July 14, 1960, Pub. L. 86-667, § 1, 74 Stat. 534; Oct. 16, 1962, Pub. L. 87-834, § 8(d), 76 Stat. 997; Feb. 2, 1966, Pub. L. 89-352, § 1, 80 Stat. 4; Nov. 8, 1966, Pub. L. 89-800, § 6(a), 80 Stat. 1515; June 28, 1968, Pub. L. 90-364, title I, § 109(a), 82 Stat. 269; Dec. 30, 1969, Pub. L. 91-172, title I, §§ 101(j)(3)-(6), 121(b)(5)(A), (6)(A), 83 Stat. 526,

527, 541; Dec. 31, 1970, Pub. L. 91-618, § 1, 84 Stat. 1855.)

AMENDMENTS

1970—Subsec. (c)(13). Pub. L. 91-618 substituted "corporation chartered solely for the purpose of disposal of bodies by burial or cremation which is not permitted" for "corporation chartered solely for burial purposes as a cemetery corporation and is not permitted."

1969—Subsec. (a). Pub. L. 91-172, § 101(j)(3), removed reference to section 504.

Subsec. (b). Pub. L. 91-172, § 101(j)(4), added reference to certain other activities in the heading and to part III in text, and struck out reference to tax on unrelated income.

Subsec. (c). Pub. L. 91-172, §§ 101(j)(5), 121(b)(6)(A), substituted "part IV" for "part III", following "Corporations organized by an association subject to" and added par. 18.

Subsec. (c)(9). Pub. L. 91-172, § 121(b)(5)(A), inserted reference to designated beneficiaries and struck out reference to 85 percent or more income of voluntary employees' beneficiary associations.

Subsec. (c)(10). Pub. L. 91-172, § 121(b)(5)(A), substituted provisions concerning domestic fraternal societies, orders, or associations, operating under the lodge system, for provisions covering voluntary employees' beneficiary associations which would pay benefits to designated beneficiaries of members.

Subsec. (e) Pub. L. 91-172, § 101(j)(6), substituted "section 170(b)(1)(A)(iii)" for "section 503(b)(5)" in last sentence.

1968—Subsec. (e). Pub. L. 90-364 added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 90-364 redesignated former subsec. (e) as (f).

1966—Subsec. (c)(6). Pub. L. 89-800 inserted reference to professional football leagues (whether or not administering a pension fund for football players).

Subsec. (c)(14). Pub. L. 89-352 denominated as subpar. (A) provisions covering credit unions which were formerly set out preceding subpar. (A), denominated as subpar. (B) and clauses (i), (ii), and (iii) thereunder provisions covering corporation or associations without capital stock organized before Sept. 1, 1957, which formerly were set out as provisions preceding subpar. (A) and as subpars. (A), (B), and (C) respectively, and added subpar. (C).

1962—Subsec. (c)(15). Pub. L. 87-834 substituted "$150,000" for "$75,000."

1960—Subsec. (c)(14). Pub. L. 86-428 substituted "September 1, 1957" for "September 1, 1951."

Subsec. (c)(17). Pub. L. 86-667 added subsec. (c)(17).

1956—Subsec. (c)(15). Act Mar. 13, 1956, substituted "the items described in section 822(b) (other than paragraph (1)(D) thereof)" for "interest, dividends, rents,".

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91-618 provided that: "The amendment made by the first section of this Act [to subsec. (c)(13) of this section] shall apply to taxable years ending after the date of enactment of this Act [Dec. 31, 1970]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(j)(3) of Pub. L. 91-172 to take effect on Jan. 1, 1970, except for the amendment of subsec. (a) of this section by section 101(j)(3) of Pub. L. 91-172, which shall apply to taxable years beginning after Dec. 31, 1969, see section 101(k)(1), (2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

Amendment of section by section 121(b)(5)(A), (6)(A) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 109(b) of Pub. L. 90-364 provided that: "The amendments made by subsection (a) [adding subsec. (e) of this section] shall apply to taxable years ending after the date of the enactment of this Act [June 28, 1968]."

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 6(c) of Pub. L. 89-800 provided that: "The amendment made by subsection (a) [amending subsec. (c)(6) of this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 8, 1966]."

Section 3 of Pub. 89-352 provided in part that: "The amendment made by the first section of this Act [amending subsec. (c)(14) of this section] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 2, 1966]."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (c)(15) of this section by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 821 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 2 of Pub. L. 86-428 provided that: "The amendment made by this Act [to subsec. (c)(14) of this section] shall apply only with respect to taxable years beginning after December 31, 1959."

Section 6 of Pub. L. 86-667 provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [to this section and sections 503, 511, 513 and 514 of this title] shall apply to taxable years beginning after December 31, 1959.

"(b) In the case of loans, the amendments made by section 2 of this Act [to section 503 of this title] shall apply only to loans made, renewed, or continued after December 31, 1959."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

EXCHANGES FOR SALE OF POULTRY

Pub. L. 89-44, title VIII, § 811, June 21, 1965, 79 Stat. 169, provided that:

"(a) Exemption from tax.—

"A corporation, association, or organization organized and operated exclusively for the purpose of providing an exchange for the sale of poultry for the poultry growers of a particular locality shall be treated for purposes of the Internal Revenue Code of 1954 as an organization described in section 501(c) (relating to list of exempt organizations) of such Code if—

"(1) such corporation, association, or organization has no capital stock and is not organized for profit,

"(2) no member of the governing body of such corporation, association, or organization receives any compensation from such corporation, association, or organization,

"(3) the net earnings of such corporation, association, or organization (except for reasonable additions to reserves for the operation of such exchange) are devoted exclusively to disseminating information as to the best methods of poultry culture and to other agriculture purposes, and

"(4) at all times on and after June 10, 1965, and before the close of its last taxable year beginning before January 1, 1966, all of the net assets of such corporation, association, or organization must, on liquidation for any reason, be transferred to an educational organization which is exempt from tax under section 501(a) of such Code or which is an agency or instrumentality of, or is owned or operated by, a State.

"(b) Application to subsection (a).—

"Subsection (a) shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, which begin before January 1, 1966."

CROSS REFERENCES

Business lease indebtedness, see section 514 of this title.

Constructive ownership of stock rule inapplicable to tax exempt employees' trust, see section 318 of this title.

Corporate deductions for dividends received inapplicable to dividends from corporation exempt from tax under this section, see section 246 of this title.

Deduction for contributions of employer to employees' trust or annuity plan and compensation under a deferred-payment plan, see section 404 of this title.

Denial of exemption, see section 504 of this title.

Disallowance of losses with respect to transactions between persons and certain tax exempt educational and charitable organizations, see section 267 of this title.

Exclusion of services performed in employ of organization exempt from tax under this section—

Employment under Federal Unemployment Tax Act, see section 3306 of this title.

Employment under title II of the Social Security Act, see section 410 of Title 42, The Public Health and Welfare.

Facilities and services excise tax exemption to certain organizations exempt from tax under this section, see section 4233 of this title.

Feeder organizations, see section 502 of this title.

Imposition of tax on unrelated business income of charitable, etc., organizations, see section 511 of this title.

Includible corporation relative to consolidated returns as excluding corporation exempt from tax under this section, see section 1504 of this title.

Lottery under wagering taxes as excluding drawings conducted by organization exempt from tax under this section, see section 4421 of this title.

Nonforfeitable rights relative to employees' death benefits, see section 101 of this title.

Partial exclusion of dividends received by individuals inapplicable to dividends from corporation exempt from tax under this section, see section 116 of this title.

Prohibition on interests in nonbanking organizations inapplicable to certain bank holding companies exempt under this section, see section 1843 (c) (7) of Title 12, Banks and Banking.

Requirements for exemption, see section 503 of this title.

Returns by exempt organizations, see section 6033 of this title.

Scholarships and fellowship grants to individuals who are not candidates for degrees as excludible from gross income where grantor is an organization described in this section, see section 117 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 72, 101, 103, 104, 116, 117, 170, 246, 274, 318, 401, 402, 403, 404, 405, 501, 502, 503, 507, 508, 509, 511, 512, 513, 514, 542, 642, 805, 871, 1054, 1563, 2039, 2517, 3121, 3303, 3306, 3401, 4221, 4251, 4253, 4294, 4421, 4914, 4920, 4940, 4941, 4942, 4945, 4947, 4948, 5214, 6033, 6043, 6047, 6104, 6420, 6421, 6424, 6427, 6501 of this title; title 5 sections 3102, 4111; title 12 section 1843; title 15 sections 77c, 1291; title 18 sections 1511, 1955; title 28 section 41; title 29 section 303; title 40 section 484; title 42 sections 409, 410, 1395x, 1760, 1784, 2000e; title 50 section 790.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46–301 of the District of Columbia Code.

§ 502. Feeder organizations.

(a) General rule.

An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

(b) Special rule.

For purposes of this section, the term "trade or business" shall not include—

(1) the deriving of rents which would be excluded under section 512(b)(3), if section 512 applied to the organization,

(2) any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or

(3) any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Dec. 30, 1969, Pub. L. 91–172, title I, § 121(b)(7), 83 Stat. 542.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated first sentence of existing provisions as subsec. (a), and substantial portion of second sentence as subsec. (b)(1), and, in subsec. (b)(1) as so redesignated, inserted reference to section 512 of this title, and added pars. (2) and (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 501 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46–301 of the District of Columbia Code.

§ 503. Requirements for exemption.

(a) Denial of exemption to organizations engaged in prohibited transactions.

(1) General rule.

(A) An organization described in section 501(c)(17) or (18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

(B) An organization described in section 401(a) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after March 1, 1954.

(C) An organization described in section 501(c)(18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Taxable years affected.

An organization described in section 501(c)(17) or (18) or section 401(a) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(b) Prohibited transactions.

For purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than

adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267 (c) (4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(c) Future status of organizations denied exemption.

Any organization described in section 501(c) (17) or (18) or section 401(a) which is denied exemption under section 501(a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary or his delegate, file claim for exemption, and if the Secretary or his delegate, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

(d) Special rule for loans.

For purposes of the application of subsection (b) (1), in the case of a loan by a trust described in section 401(a), the following rules shall apply with respect to a loan made before March 1, 1954, which would constitute a prohibited transaction if made on or after March 1, 1954:

(1) If any part of the loan is repayable prior to December 31, 1955, the renewal of such part of the loan for a period not extending beyond December 31, 1955, on the same terms, shall not be considered a prohibited transaction.

(2) If the loan is repayable on demand, the continuation of the loan without the receipt of adequate security and a reasonable rate of interest beyond December 31, 1955, shall be considered a prohibited transaction.

(e) Special rules.

For purposes of subsection (b) (1), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") shall not be treated as a loan made without the receipt of adequate security if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the trust, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subsection (b).

(f) Loans with respect to which employers are prohibited from pledging certain assets.

Subsection (b) (1) shall not apply to a loan made by a trust described in section 401 (a) to the employer (or to a renewal of such a loan or, if the loan is repayable upon demand, to a continuation of such a loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(1) the employer is prohibited (at the time of such making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for such a loan, a particular class or classes of his assets the value of which (at such time) represents more than one-half of the value of all his assets;

(2) the making or renewal, as the case may be, is approved in writing as an investment which is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other such trustee had previously refused to give such written approval; and

(3) immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

For purposes of paragraph (2), the term "trustee" means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of such independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subsection (e).

(g) Trusts benefiting certain owner-employees.

(1) Prohibited transactions.

In the case of a trust described in section 401(a) which is part of a plan providing contribu-

tions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) who control (within the meaning of section 401(d)(9)(B)) the trade or business with respect to which the plan is established, the term "prohibited transaction" also means any transaction in which such trust, directly or indirectly—

(A) lends any part of the corpus or income of the trust to;

(B) pays any compensation for personal services rendered to the trust to;

(C) makes any part of its services available on a preferential basis to; or

(D) acquires for the trust any property from, or sells any property to;

any person described in subsection (b) or to any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(2) Special rule for loans.

For purposes of the application of paragraph (1)(A), the following rules shall apply with respect to a loan made before the date of the enactment of this subsection which would be a prohibited transaction if made in a taxable year beginning after December 31, 1962:

(A) If any part of the loan is repayable prior to December 31, 1965, the renewal of such part of the loan for a period not extending beyond December 31, 1965, on the same terms, shall not be considered a prohibited transaction.

(B) If the loan is repayable on demand, the continuation of the loan beyond December 31, 1965, shall be considered a prohibited transaction.

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Sept. 2, 1958, Pub. L. 85-866, title I, § 30(a), (b), 72 Stat. 1629; July 14, 1960, Pub. L. 86-667, § 2, 74 Stat. 535; Oct. 10, 1962, Pub. L. 87-792, § 6, 76 Stat. 827; Dec. 30, 1969, Pub. L. 91-172, title I, §§ 101(j) (7)-(14), 121(b)(6)(B), 83 Stat. 527, 542.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (j)(2), means the date of enactment of Pub. L. 87-792, which was approved on Oct. 10, 1962.

AMENDMENTS

1969—Subsec. (a)(1)(A). Pub. L. 91-172, §§ 101(j)(7), 121(b)(6)(B)(ii), redesignated former subsec. (a)(1)(B) as subsec. (a)(1)(A), and, in subsec. (a)(1)(A) as so redesignated, inserted reference to section 501(c)(18). Former subsec. (a)(1)(A), referring to organizations described in section 501(c)(3) and to prohibited transactions engaged in after July 1, 1950, was stricken.

Subsec. (a)(1)(B). Pub. L. 91-172, § 101(j)(7), redesignated former subsec. (a)(1)(C) as subsec. (a)(1)(B). Former subsec. (a)(1)(B), referring to organizations described in section 501(c)(17) was amended by addition of a reference to section 501(c)(18), and redesignated as subsec. (a)(1)(A).

Subsec. (a)(1)(C). Pub. L. 91-172, §§ 101(j)(7), 121(b)(6)(B)(i), added subsec. (a)(1)(C). Former subsec. (a)(1)(C), dealing with organizations described in section 401(a) and with prohibited transactions engaged in after Mar. 1, 1954, was redesignated as subsec. (a)(1)(B).

Subsec. (a)(2). Pub. L. 91-172, §§ 101(j)(8), 121(b)(6)(B)(ii), removed reference to organizations described in section 501(c)(3), and added references to organizations described in section 501(c)(18).

Subsec. (b). Pub. L. 91-172, § 101(j)(14), redesignated former subsec. (c) as subsec. (b). Former subsec. (b), setting out the organizations to which section applied, was stricken.

Subsec. (c). Pub. L. 91-172, §§ 101(j)(9), (14), 121(b)(6)(B)(ii), redesignated former subsec. (d) as subsec. (c) and, in subsec. (c) as so redesignated, removed reference to organizations described in section 501(c)(3) and added reference to organizations described in section 501(c)(17). Former subsec. (c) was redesignated subsec. (b).

Subsec. (d). Pub. L. 91-172, § 101(j)(10), (14), redesignated former subsec. (g) as subsec. (d), and, in subsec. (d) as so redesignated, substituted "subsection (b)(1)" for "subsection (c)(1)." Former subsec. (d) was redesignated subsec. (c).

Subsec. (e). Pub. L. 91-172, § 101(j)(11), (14), redesignated former subsec. (h) as subsec. (e), and, in subsec. (e) as so redesignated, modified section heading to read: "Special rules"; substituted "subsection (b)(1)" for "subsection (c)(1)" in material preceding par. (1) and in par. (3), and in material preceding par. (1) struck out "acquired by a trust described in section 401(a) or section 501(c)(17)". Former subsec. (e), covering the disallowance of certain charitable deductions was stricken.

Subsec. (f). Pub. L. 91-172, § 101(j)(12), (14), redesignated former subsec. (i) as subsec. (f), and, in subsec. (f) as so redesignated, substituted "Subsection (b)(1)" for "Subsection (c)(1)", and "subsection (e)" for "subsection (h)". Former subsec. (f) defining "gift or bequest" was stricken.

Subsec. (g). Pub. L. 91-172, § 101(j)(13), (14), redesignated former subsec. (j) as subsec. (g), and, in subsec. (g) as so redesignated, substituted "subsection (b)" for "subsection (c)" in par. (1). Former subsec. (g) was redesignated subsec. (d).

Subsecs. (h)-(j). Pub. L. 91-172, § 101(j)(14), redesignated former subsecs. (h), (i) and (j) as subsecs. (e), (f) and (g). Former subsecs. (e) and (f) were stricken and former subsec. (g) was redesignated subsec. (d).

1962—Subsec. (j). Pub. L. 87-792 added subsec. (j).

1960—Subsec. (a)(1). Pub. L. 86-667, § 2(a)(1), denied the exemption to an organization described in section 501(c)(17) if it has engaged in a prohibited transaction after Dec. 31, 1959.

Subsec. (a)(2). Pub. L. 86-667, § 2(a)(2), included organizations described in section 501(c)(17).

Subsec. (b). Pub. L. 86-667, § 2(b), included organizations described in section 501(c)(17).

Subsec. (d). Pub. L. 86-667, § 2(c), included organizations described in section 501(c)(17).

Subsec. (h). Pub. L. 86-667, § 2(d), included trusts described in section 501(c)(17).

1958—Subsec. (h). Pub. L. 85-866, § 30(a), added subsec. (h).

Subsec. (i). Pub. L. 85-866, § 30(b), added subsec. (i).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(j)(7)-(14) of Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

Amendment of section by section 121(b)(6)(B) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-667 applicable to taxable years beginning after Dec. 31, 1959, and in the case of loans, the amendments to this section made by Pub. L. 86-667 are applicable only to loans made, renewed, or continued after Dec. 31, 1959, see section 6 of

Pub. L. 86-667, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 30 (c) of Pub. L. 85-866 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendment made by subsection (a) [adding subsec. (h) of this section] shall apply with respect to taxable years ending after March 15, 1956. The amendment made by subsection (b) [adding subsec. (i) of this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to periods after such date.

"(2) Exceptions.—Nothing in subsection (a) [adding subsec. (h) of this section] shall be construed to make any transaction a prohibited transaction which, under announcements of the Internal Revenue Service made with respect to section 503 (c) (1) of the Internal Revenue Code of 1954 before the date of the enactment of this Act [Sept. 2, 1958], would not constitute a prohibited transaction. In the case of any bond, debenture, note, or certificate or other evidence of indebtedness acquired before the date of the enactment of this Act [Sept. 2, 1958], by a trust described in section 401 (a) of such Code which is held on such date, paragraphs (2) and (3) of section 503 (h) of such Code shall be treated as satisfied if such requirements would have been satisfied if such obligation had been acquired on such date of enactment [Sept. 2, 1958]."

CROSS REFERENCES

Denial of exemption, see section 504 of this title.

Gifts and inheritances excluded from gross income, see section 102 of this title.

Limitation on charitable deduction, see section 681 of this title.

Personal holding company definition, organization described in this section as individual for purposes of, see section 542 of this title.

Rules and regulations, see section 7805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 2039, 2517, 4253 of this title.

§ 504. Repealed. Pub. L. 91-172, title I, § 101(j)(15), Dec. 30, 1969, 83 Stat. 527.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 168, provided for the denial of exemption in specified cases.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable for taxable years beginning after Dec. 31, 1969, see section 101(h)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

PART II.—PRIVATE FOUNDATIONS

Sec.
507. Termination of private foundation status.
508. Special rules with respect to section 501(c)(3) organizations.
509. Private foundation defined.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, added the Part heading and analysis for Part II.

§ 507. Termination of private foundation status.

(a) General rule.

Except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if—

(1) such organization notifies the Secretary or his delegate (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) of its intent to accomplish such termination, or

(2) (A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(B) the Secretary or his delegate notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c),

and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

(b) Special rules.

(1) Transfer to, or operation as, public charity.

The status as a private foundation of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, shall be terminated if—

(A) such organization distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution, or

(B) (i) such organization meets the requirements of paragraph (1), (2), or (3) of section 509(a) by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969,

(ii) such organization notifies the Secretary or his delegate (in such manner as the Secretary or his delegate may by regulations prescribe) before the commencement of such 12-month or 60-month period (or before the 90th day after the day on which regulations first prescribed under this subsection become final) that it is terminating its private foundation status, and

(iii) such organization establishes to the satisfaction of the Secretary or his delegate (in such manner as the Secretary or his delegate may by regulations prescribe) immediately after the expiration of such 12-month or 60-month period that such organization has complied with clause (i).

If an organization gives notice under subparagraph (B)(ii) of the commencement of a 60-month period and such organization fails to meet the requirements of paragraph (1), (2), or (3) of section 509(a) for the entire 60-month period, this part and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements.

(2) Transferee foundations.

For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

(c) Imposition of tax.

There is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of—

(1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or

(2) the value of the net assets of such foundation.

(d) Aggregate tax benefit.

(1) In general.

For purposes of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of—

(A) the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and

(B) the aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)), and

(C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(2) Substantial contributor.

(A) Definition.

For purposes of paragraph (1), the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

(B) Special rules.

For purposes of subparagraph (A)—

(i) each contribution or bequest shall be valued at fair market value on the date it was received,

(ii) in the case of a foundation which is in existence on October 9, 1969, all contributions and bequests received on or before such date shall be treated (except for purposes of clause (i)) as if received on such date,

(iii) an individual shall be treated as making all contributions and bequests made by his spouse, and

(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

(3) Regulations.

For purposes of this section, the determination as to whether and to what extent there would have been any increase in tax shall be made in accordance with regulations prescribed by the Secretary or his delegate.

(e) Value of assets.

For purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation.

(f) Liability in case of transfers of assets from private foundation.

For purposes of determining liability for the tax imposed by subsection (c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation.

(g) Abatement of taxes.

The Secretary or his delegate may abate the unpaid portion of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—

(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) following the notification prescribed in section 6104(c) to the appropriate State officer, such State officer within one year notifies the Secretary or his delegate, in such manner as the Secretary or his delegate may by regulations prescribe, that corrective action has been initiated pursuant to State law to insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3) as may be ordered or approved by a court of competent jurisdiction, and upon completion of the corrective action, the Secretary or his delegate receives certification from the appropriate State officer that such action has resulted in such preservation of assets.

(Added Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492.)

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 509, 4946, 4947, 4948, 6056, 6104, 6214, 6501, 6503 of this title.

§ 508. Special rules with respect to section 501(c)(3) organizations.

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status.

Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501 (c)(3)—

(1) unless it has given notice to the Secretary or his delegate, in such manner as the Secretary or his delegate may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary or his delegate by regulations for giving notice under this subsection.

For purposes of paragraph (2), the time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final.

(b) Presumption that organizations are private foundations.

Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary or his delegate, at such time and in such manner as the Secretary or his delegate may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation. The time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final.

(c) Exceptions.

(1) Mandatory exceptions.

Subsections (a) and (b) shall not apply to—

(A) churches, their integrated auxiliaries, and conventions or associations of churches, or

(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000.

(2) Exceptions by regulations.

The Secretary or his delegate may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both—

(A) educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on; and

(B) any other class of organizations with respect to which the Secretary or his delegate determines that full compliance with the provisions of subsections (a) and (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) Disallowance of certain charitable, etc., deductions.

(1) Gift or bequest to organizations subject to section 507(c) tax.

No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106 (a)(2), or 2522, if such gift or bequest is made—

(A) by any person after notification is made under section 507(a), or

(B) by a substantial contributor (as defined in section 507(d)(2)) in his taxable year which includes the first day on which action is taken by such organization which culminates in the imposition of tax under section 507(c) and any subsequent taxable year.

(2) Gift or bequest to taxable private foundation, section 4947 trust, etc.

No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545 (b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

(A) to a private foundation or a trust described in section 4947 in a taxable year for which it fails to meet the requirements of subsection (e) (determined without regard to subsection (e)(2)(B) and (C)), or

(B) to any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of subsection (a).

(3) Exception.

Paragraph (1) shall not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated by the Secretary or his delegate under section 507(g).

(e) Governing instruments.

(1) General rule.

A private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are—

(A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

(B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

(2) Special rules for existing private foundations.

In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply—

(A) to any taxable year beginning before January 1, 1972,

(B) to any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instru-

ment in order to meet the requirements of paragraph (1), and

(C) to any period after the termination of any judicial proceeding described in subparagraph (B) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(Added Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 494.)

EFFECTIVE DATE

Section effective Jan. 1, 1970, except that subsecs. (a), (b) and (c) of this section effective Oct. 9, 1969, see section 101(k)(1), (3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Limits on inclusion of provisions inconsistent with subsec. (e) of this section in governing instruments, see section 101(*l*)(6) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 663, 2055, 2522, 4947, 4948, 6104 of this title.

§ 509. Private foundation defined.

(a) General rule.

For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from gross investment income (as defined in subsection (e));

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

(b) Continuation of private foundation status.

For purposes of this title, if an organization is a private foundation (within the meaning of subsection (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

(c) Status of organization after termination of private foundation status.

For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b)(2)) be treated as an organization created on the day after the date of such termination.

(d) Definition of support.

For purposes of this part and chapter 42, the term "support" includes (but is not limited to)—

(1) gifts, grants, contributions, or membership fees,

(2) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of section 513),

(3) net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,

(4) gross investment income (as defined in subsection (e)),

(5) tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and

(6) the value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) to an organization without charge.

Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of exemption from any Federal, State, or local tax or any similar benefit.

(e) Definition of gross investment income.

For purposes of subsection (d), the term "gross investment income" means the gross amount of income from interest, dividends, rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

(Added Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 496.)

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Applicability of subsec. (a) of this section to testamentary trusts, see section 101(*l*)(7) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 507, 508, 542, 4942, 4945, 4947, 6043, 6056, 6104 of this title.

PART III.—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

Sec.
511. Imposition of tax on unrelated business income of charitable organizations, etc.
512. Unrelated business taxable income.
513. Unrelated trade or business.
514. Unrelated debt-financed income.
515. Taxes of foreign countries and possessions of the United States.

AMENDMENTS

1969—Pub. L. 91–172, title I, §§ 101(a), 121(d)(3)(C), Dec. 30, 1969, 83 Stat. 492, 548, substituted "Part III" for "Part II" as the Part designation and substituted "Unrelated debt-financed income" for "Business leases" in item 514.

CROSS REFERENCES

Organization considered as exempt from income taxes for purpose of any law referring thereto, notwithstanding its taxability under this part, see section 501 of this title.

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations.

(a) Charitable, etc., organizations taxable at corporation rates.

(1) Imposition of tax.

There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a normal tax and a surtax computed as provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) Organizations subject to tax.

(A) Organizations described in sections 401(a) and 501(c).

The taxes imposed by paragraph (1) shall apply in the case of any organization (other than a trust described in subsection (b) or an organization described in section 501(c)(1)) which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a).

(B) State colleges and universities.

The taxes imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such taxes shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) Tax on charitable, etc., trusts.

(1) Imposition of tax.

There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1(d). In making such computation for purposes of this section, the term "taxable income" as used in section 1 shall be read as "unrelated business taxable income" as defined in section 512.

(2) Charitable, etc., trusts subject to tax.

The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

(c) Special rule for section 501(c)(2) corporations.

If a corporation described in section 501(c)(2)—

(1) pays any amount of its net income for a taxable year to an organization exempt from taxation under section 501(a) (or which would pay such an amount but for the fact that the expenses of collecting its income exceed its income), and

(2) such corporation and such organization file a consolidated return for the taxable year,

such corporation shall be treated, for purposes of the tax imposed by subsection (a), as being organized and operated for the same purposes as such organization, in addition to the purposes described in section 501(c)(2).

(d) Tax preferences.

The tax imposed by section 56 shall apply to an organization subject to tax under this section with respect to items of tax preference which enter into the computation of unrelated business taxable income. (Aug. 16, 1954, ch. 736, 68A Stat. 169; July 14, 1960, Pub. L. 86–667, § 3, 74 Stat. 535; Feb. 2, 1966, Pub. L. 89–352, § 2, 80 Stat. 4; Dec. 30, 1969, Pub. L. 91–172, title I, § 121(a)(1)–(3), title III, § 301(b)(8), title VIII, § 803(d)(2), 83 Stat. 536, 585, 684.)

AMENDMENTS

1969—Subsec. (a)(2)(A). Pub. L. 91–172, § 121(a)(1), removed reference, in subpar. catchline, to pars. (2), (3), (5), (6), (14)(B), (C), and (17) of section 501(c) of this title, and, in text, struck out the exemptions to churches, conventions, or associations of churches, from the imposition of tax on their unrelated business income, made corporations organized under section 501(c)(1) of this title (i.e. organized under Acts of Congress), exempt from such tax, but made all such exemptions subservient to the exceptions in part II and section 501(a) of this title.

Subsec. (b)(1). Pub. L. 91–172, § 803(d)(2), substituted section 1(d) for section 1 in the reference to the section under which the computation of the tax dealing with the imposition of tax on the unrelated business taxable income of trusts, is computed.

Subsec. (b)(2). Pub. L. 91–172, § 121(a)(2), pluralized the word "trust" in par. catchline, and, in text, made the imposition of tax on the unrelated business income of exempt trusts subject to the provisions of part II, and, for the purposes of determining trusts exempt from taxation, substituted reference to section 501(a) for reference to "section 501(c)(3) or (17) or section 401(a)".

Subsec. (c). Pub. L. 91–172, § 121(a)(3), added subsec. (c). Former subsec. (c), covering the effective date, was stricken.

Subsec. (d). Pub. L. 91–172, § 301(b)(8), added subsec. (d).

1966—Subsec. (a)(2)(A). Pub. L. 89–352 inserted "(14)(B) or (C)," after "(6)," in the heading and in the text.

1960—Subsec. (a)(2). Pub. L. 86–667, § 3(a), included organizations described in section 501(c)(17) within subpar. (A).

Subsec. (b). Pub. L. 86–667, § 3(b), inserted a reference to section 501(c)(17).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 121(g) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section, and sections 48, 501, 502, 503, 512, 513, 514, 681, 801, 810, 1443, 1504 and 7605 of this title] (other than by subsections (b)(3) and (e) [enacting sections 277 and 6050 of this title]) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b)(3) [enacting section 277 of this title] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (e) [enacting section 6050 of this title] shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organizaion (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d)(1) [amending section 514 of this title], as acquisition indebtedness for purposes of section 514(c)(1) [section 514(c)(1) of this title] of the Internal Revenue Code of 1954 [this title] during a period of 10 years following the date of the transaction."

Amendment of subsec. (b)(1) of this section by section 803(d)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

Subsec. (d) of this section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–352 provided in part that: "The amendment made by section 2 [amending subsec. (a)(2)(A) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Feb. 2, 1966]."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

CROSS REFERENCES

Alternative capital gains tax, see section 1201 of this title.

Taxes of foreign countries and possessions of United States as credit against tax under this section, see section 515 of this title.

Unrelated trade or business, see section 513 of this title.

Withholding of tax on foreign tax-exempt organizations, see section 1443 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 48, 512, 513, 514, 515, 1201, 1443, 1562, 1563, 4940, 6050 of this title.

§ 512. Unrelated business taxable income.

(a) Definition.

For purposes of this title—

(1) General rule.

Except as otherwise provided in this subsection, the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

(2) Special rule for foreign organizations.

In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be—

(A) its unrelated business taxable income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, plus

(B) its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(3) Special rules applicable to organizations described in section 501(c)(7) or (9)

(A) General rule

In the case of an organization described in section 501(c)(7) or (9), the term "unrelated business taxable income" means the gross income (excluding any exempt function income), less the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications provided in paragraphs (6), (10), (11), and (12) of subsection (b).

(B) Exempt function income.

For purposes of subparagraph (A), the term "exempt function income" means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (1)), which is set aside—

(i) for a purpose specified in section 170(c)(4), or

(ii) in the case of an organization described in section 501(c)(9), to provide for the payment of life, sick, accident, or other benefits,

including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii). If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described in clause (i) or (ii), such amount shall be included, under subparagraph (A), in unrelated business taxable income for the taxable year.

(C) Applicability to certain corporations described in section 501(c)(2).

In the case of a corporation described in section 501(c)(2), the income of which is payable to an organization described in section 501(c)(7) or (9), subparagraph (A) shall apply as if such corporation were the organization to which

the income is payable. For purposes of the preceding sentence, such corporation shall be treated as having exempt function income for a taxable year only if it files a consolidated return with such organization for such year.

(D) Nonrecognition of gain.

If property used directly in the performance of the exempt function of an organization described in section 501(c) (7) or (9) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 shall apply.

(b) Modifications.

The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511 (a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 5 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511 (b), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or

business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170 (b) (1) (A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of $1,000. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed, with respect to each parish, individual church, district, or other local unit, a specific deduction equal to the lower of—

(A) $1,000, or

(B) the gross income derived from any unrelated trade or business regularly carried on by such local unit.

(13) In the case of a trust—

(A) created by virtue of the provisions of the will of an individual who died after August 16, 1954, and before January 1, 1957,

(B) which, by virtue of the provisions of such will, is a limited partner in a partnership created under the laws of a State (i) providing for the creation of limited partnerships, and (ii) under which a limited partner has no right to take part in the control of the business without becoming liable as a general partner,

(C) which, at no time before or during a taxable year of the partnership ending within or with the taxable year of the trust, was (or was liable as) a general partner in such partnership, and

(D) which is required to distribute all of its income (within the meaning of section 643 (b)) currently exclusively for religious, charitable, scientific, literary, or educational purposes, and which is required to distribute all of the corpus exclusively for such purposes,

there shall be excluded its share (determined under subsection (c) without regard to this paragraph and paragraph (11)) of gross income of the partnership as such limited partner and of the partnership deductions directly connected with such income, but, if such share of gross income exceeds such share of deductions, only to the extent that the partnership makes distributions during its taxable year which are attributable to such gross income. For purposes of the preceding sentence (i) any distribution made after the close of a partnership taxable year and on or before the 15th day of the fourth calendar month after the close of such taxable year shall be treated as made on the last day of such taxable year, and (ii) distributions shall be treated as attributable first to gross income other than gross income described in the preceding sentence, and shall be properly adjusted (under regulations prescribed by the Secretary or his delegate) to the extent necessary to reflect capital contributions to the partnership made by the trust, income of the partnership exempt from tax under this title, and other items.

(14) In the case of an organization which is described in section 501(c)(5), there shall be excluded all income used to establish, maintain, or operate a retirement home, hospital, or other similar facility for the exclusive use and benefit of the aged and infirm members of such an organization, which is derived from agricultural pursuits conducted on a ground contiguous to the retirement home, hospital, or similar facility and further provided that such income does not provide more than 75 percent of the cost of maintaining and operating the retirement home, hospital, or similar facility; and there shall be excluded all deductions directly connected with such income.

(15) Notwithstanding paragraphs (1), (2), or (3), amounts of interest, annuities, royalties, and rents derived from any organization (in this paragraph called the "controlled organization") of which the organization deriving such amounts (in this paragraph called the "controlling organization") has control (as defined in section 368(c)) shall be included as an item of gross income (whether or not the activity from which such amounts are derived represents a trade or business or is regularly carried on) in an amount which bears the same ratio as—

(A) (i) in the case of a controlled organization which is not exempt from taxation under section 501(a), the excess of the amount of taxable income of the controlled organization over the amount of such organization's taxable income which if derived directly by the controlling organization would not be unrelated business taxable income, or

(ii) in the case of a controlled organization which is exempt from taxation under section 501(a), the amount of unrelated business taxable income of the controlled organization, bears to

(B) the taxable income of the controlled organization (determined in the case of a controlled organization to which subparagraph (A) (ii) applies as if it were not an organization exempt from taxation under section 501(a)), but not less than the amount determined in clause (i) or (ii), as the case may be, of subparagraph (A),

both amounts computed without regard to amounts paid directly or indirectly to the controlling organization. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(16) Except as provided in paragraph (4), in the case of a church, or convention or association of churches, for taxable years beginning before January 1, 1976, there shall be excluded all gross income derived from a trade or business and all deductions directly connected with the carrying on of such trade or business if such trade or business was carried on by such organization or its predecessor before May 27, 1969.

(17) Except as provided in paragraph (4), in the case of a trade or business—

(A) which consists of providing services under license issued by a Federal regulatory agency,

(B) which is carried on by a religious order or by an educational institution (as defined in section 151(e)(4)) maintained by such religious order, and which was so carried on before May 27, 1959, and

(C) less than 10 percent of the net income of which for each taxable year is used for activities which are not related to the purpose constituting the basis for the religious order's exemption,

there shall be excluded all gross income derived from such trade or business and all deductions directly connected with the carrying on of such trade or business, so long as it is established to the satisfaction of the Secretary or his delegate that the rates or other charges for such services are competitive with rates or other charges charged for similar services by persons not exempt from taxation.

(c) Special rules applicable to partnerships.

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization. (Aug. 16, 1954, ch. 736, 68A Stat. 170; Apr. 7, 1958, Pub. L. 85-367, § 1(a), 72 Stat. 80; July 17, 1964, Pub. L. 88-380, § 1, 78 Stat. 333; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(g), 80 Stat. 1559; Dec. 30, 1969, Pub. L. 91-172, title I, § 121(b)(1), (2), 83 Stat. 537, 538.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 121(b)(1), designated existing provisions as pars. (1) and (2)(B), and added pars. (2)(A) and (3).

Subsec. (b). Pub. L. 91-172, § 121(b)(2)(D), substituted "Modifications" for "Exceptions, additions, and limitations", in subsec. catchline, and, in material preceding par. (1) substituted "The modifications referred to in subsection (a)" for "The exceptions, additions, and limitations applicable in determining unrelated business taxable income".

Subsec. (b)(3)(A). Pub. L. 91-172, § 121(b)(2)(A), added reference to exceptions set out in subsec. (b)(3)(B) in material preceding cl. (i), substituted "property described in section 1245(a)(3)(C)" for "personal property leased with the real property" in the parenthetical material of cl. (i), and added cl. (ii).

Subsec. (b)(3)(B). Pub. L. 91-172, § 121(b)(2)(A), added subsec. (b)(3)(B).

Subsec. (b)(3)(C). Pub. L. 91-172, § 121(b)(2)(A), substituted "rents excluded under subparagraph (A)" for "such rents".

Subsec. (b)(4). Pub. L. 91-172, § 121(b)(2)(A), inserted reference to pars. (1), (3) and (5) of this subsec., and substituted "debt financed property" for "a business lease".

Subsec. (b)(12). Pub. L. 91-172, § 121(b)(2)(B), made the allowance of the specific $1,000 deduction inapplicable for the purposes of computing the net operating loss under section 172 of this title and par. (6) of this subsec., and provided for the allowance of specific deductions equal to the lower of $1,000 or the gross income derived from any unrelated trade or business carried on by a parish, individual church, district, or other local unit.

Subsecs. (b)(15)-(17). Pub. L. 91-172, § 121(b)(2)(C). added subsecs. (b)(15)-(17).

1966—Subsec. (a). Pub. L. 89-809 substituted ", the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States" for ", the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following, relating to tax based on income from sources within or without the United States".

1964—Subsec. (b). Pub. L. 88-380 added par. (14).

1958—Subsec. (b)(13). Pub. L. 85-367 added subsec. (b)(13).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 121(b)(1), (2) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88-380 provided that: "The amendment made by the first section of this Act [adding par. (14) to subsec. (b) of this section] shall apply with respect to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1 (b) of Pub. L. 85-367 provided that: "The amendment made by subsection (a) [adding subsec. (b)(13) of this section] shall apply to taxable years of trusts beginning after December 31, 1955".

CROSS REFERENCES

Limitation on charitable deduction, see section 681 of this title.

Nonresident aliens and foreign corporations, income taxes of, see section 871 et seq. of this title.

Withholding of tax on foreign tax-exempt organizations, see section 1443 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 511, 513, 514, 681, 1443, 4943 of this title.

§ 513. Unrelated trade or business.

(a) General rule.

The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511 (a) (2) (B), to the exercise

or performance of any purpose or function described in section 501 (c) (3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501 (c) (3) or in the case of a college or university described in section 511 (a) (2) (B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts.

The term "unrelated trade or business" means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401 (a), or section 501(c)(17), which is exempt from tax under section 501 (a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Advertising, etc., activities.

For purposes of this section, the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit. (Aug. 16, 1954, ch. 736, 68A Stat. 172; July 14, 1960, Pub. L. 86-667, § 4, 74 Stat. 536; Dec. 30, 1969, Pub. L. 91-172, title I, § 121(b)(4), (c), 83 Stat. 541, 542.)

AMENDMENTS

1969—Subsec. (a)(2). Pub. L. 91-172, § 121(b)(4), added reference to local associations of employees described in section 501(c)(4) of this title and organized before May 27, 1969.

Subsec. (c). Pub. L. 91-172, § 121(c), substituted "Advertising, etc., activities" for "Special rule for certain publishing businesses", in subsec. catchline, and, in text, substituted provisions extending the definition of trade or business to include any activity carried on for the production of income from the sale of goods or the performance of services, for provisions referring to publishing businesses carried on by an organization during a taxable year beginning before Jan. 1, 1953.

1960—Subsec. (b)(2). Pub. L. 86-667 included trusts described in section 501(c)(17).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 121(c) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86-667, set out as a note under section 501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 509, 512, 514, 4942 of this title.

§ 514. Unrelated debt-financed income.

(a) Unrelated debt-financed income and deductions.

In computing under section 512 the unrelated business taxable income for any taxable year—

(1) Percentage of income taken into account.

There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations prescribed by the Secretary or his delegate) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) Percentage of deductions taken into account.

There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) Deductions allowable.

The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

(b) Definition of debt-financed property.

(1) In general.

For purposes of this section, the term "debt-financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A) (i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

(B) except in the case of income excluded under section 512(b)(5), any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business;

(C) any property to the extent that the income from such property is excluded by reason of the provisions of paragraph (7), (8), or (9) of section 512(b) in computing the gross income of any unrelated trade or business; or

(D) any property to the extent that it is used in any trade or business described in paragraph (1), (2), or (3) of section 513(a).

For purposes of subparagraph (A), substantially all the use of a property shall be considered to be substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 if such property is real property subject to a lease to a medical clinic entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

(2) Special rule for related uses.

For purposes of applying paragraphs (1) (A), (C), and (D), the use of any property by an exempt organization which is related to an organization shall be treated as use by such organization.

(3) Special rules when land is acquired for exempt use within 10 years.

(A) Neighborhood land.

If an organization acquires real property for the principal purpose of using the land (commencing within 10 years of the time of acquisition) in the manner described in paragraph (1)(A) and at the time of acquisition the property is in the neighborhood of other property owned by the organization which is used in such manner, the real property acquired for such future use shall not be treated as debt-financed property so long as the organization does not abandon its intent to so use the land within the 10-year period. The preceding sentence shall not apply for any period after the expiration of the 10-year period, and shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Secretary or his delegate that it is reasonably certain that the land will be used in the described manner before the expiration of the 10-year period.

(B) Other cases.

If the first sentence of subparagraph (A) is inapplicable only because—

(i) the acquired land is not in the neighborhood referred to in subparagraph (A), or

(ii) the organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Secretary or his delegate that it is reasonably certain that the land will be used in the manner described in paragraph (1)(A) before the expiration of the 10-year period,

but the land is converted to such use by the organization within the 10-year period, the real property (subject to the provisions of subparagraph (D)) shall not be treated as debt-financed property for any period before such conversion. For purposes of this subparagraph, land shall not be treated as used in the manner described in paragraph (1)(A) by reason of the use made of any structure which was on the land when acquired by the organization.

(C) Limitations.

Subparagraphs (A) and (B)—

(i) shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only if (and so long as) the intended future use of the land in the manner described in paragraph (1)(A) requires that the structure be demolished or removed in order to use the land in such manner;

(ii) shall not apply to structures erected on the land after the acquisition of the land; and

(iii) shall not apply to property subject to a lease which is a business lease as (defined in subsection (f)).

(D) Refund of taxes when subparagraph (B) applies.

If an organization for any taxable year has not used land in the manner to satisfy the actual use condition of subparagraph (B) before the time prescribed by law (including extensions thereof) for filing the return for such taxable year, the tax for such year shall be computed without regard to the application of subparagraph (B), but if and when such use condition is satisfied, the provisions of subparagraph (B) shall then be applied to such taxable year. If the actual use condition of subparagraph (B) is satisfied for any taxable year after such time for filing the return, and if credit or refund of any overpayment for the taxable year resulting from the satisfaction of such use condition is prevented at the close of the taxable year in which the use condition is satisfied, by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises), credit or refund of such overpayment may nevertheless be allowed or made if claim therefor is filed before the expiration of 1 year after the close of the taxable year in

which the use condition is satisfied. Interest on any overpayment for a taxable year resulting from the application of subparagraph (B) after the actual use condition is satisfied shall be allowed and paid at the rate of 4 percent per annum in lieu of 6 percent per annum.

(E) Special rule for churches.

In applying this paragraph to a church or convention or association of churches, in lieu of the 10-year period referred to in subparagraphs (A) and (B) a 15-year period shall be applied, and subparagraphs (A) and (B)(ii) shall apply whether or not the acquired land meets the neighborhood test.

(c) Acquisition indebtedness.

(1) General rule.

For purposes of this section, the term "acquisition indebtedness" means, with respect to any debt-financed property, the unpaid amount of—

(A) the indebtedness incurred by the organization in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement,

except that in the case of any taxable year beginning before January 1, 1972, any indebtedness incurred before June 28, 1966, shall not be taken into account. In the case of an organization (other than a church or convention or association of churches) such indebtedness incurred before June 28, 1966, shall be taken into account if such indebtedness constitutes business lease indebtedness (as defined in subsection (g)).

(2) Property acquired subject to mortgage, etc.

For purposes of this subsection—

(A) General rule.

Where property (no matter how acquired) is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the organization incurred in acquiring such property even though the organization did not assume or agree to pay such indebtedness.

(B) Exceptions.

Where property subject to a mortgage is acquired by an organization by bequest or devise, the indebtedness secured by the mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of the acquisition. If an organization acquires property by gift subject to a mortgage which was placed on the property more than 5 years before the gift, which property was held by the donor more than 5 years before the gift, the indebtedness secured by such mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of such gift. This subparagraph shall not apply if the organization, in order to acquire the equity in the property by bequest, devise, or gift, assumes and agrees to pay the indebtedness secured by the mortgage, or if the organization makes any payment for the equity in the property owned by the decedent or the donor.

(3) Extension of obligations.

For purposes of this section, an extension, renewal, or refinancing of an obligation evidencing a pre-existing indebtedness shall not be treated as the creation of a new indebtedness.

(4) Indebtedness incurred in performing exempt purpose.

For purposes of this section, the term "acquisition indebtedness" does not include indebtedness the incurrence of which is inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption, such as the indebtedness incurred by a credit union described in section 501(c)(14) in accepting deposits from its members.

(5) Annuities.

For purposes of this section, the term "acquisition indebtedness" does not include an obligation to pay an annuity which—

(A) is the sole consideration (other than a mortgage to which paragraph (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange,

(B) is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and

(C) is payable under a contract which—

(i) does not guarantee a minimum amount of payments or specify a maximum amount of payments, and

(ii) does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(6) Certain federal financing.

For purposes of this section, the term "acquisition indebtedness" does not include an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons.

(7) Average acquisition indebtedness.

For purposes of this section, the term "average acquisition indebtedness" for any taxable year with respect to a debt-financed property means the average amount, determined under regulations prescribed by the Secretary or his delegate, of the acquisition indebtedness during the period the property is held by the organization during the taxable year, except that for the purpose of computing the percentage of any gain or loss to be

taken into account on a sale or other disposition of debt-financed property, such term means the highest amount of the acquisition indebtedness with respect to such property during the 12-month period ending with the date of the sale or other disposition.

(d) Basis of debt-financed property acquired in corporate liquidation.

For purposes of this subtitle, if the property was acquired in a complete or partial liquidation of a corporation in exchange for its stock, the basis of the property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain to the organization which was included, on account of such distribution, in unrelated business taxable income under subsection (a).

(e) Allocation rules.

Where debt-financed property is held for purposes described in subsection (b)(1) (A), (B), (C), or (D) as well as for other purposes, proper allocation shall be made with respect to basis, indebtedness, and income and deductions. The allocations required by this section shall be made in accordance with regulations prescribed by the Secretary or his delegate to the extent proper to carry out the purposes of this section.

(f) Definition of business lease.

(1) General rule.

For purposes of this section, the term "business lease" means a lease for a term of more than 5 years of real property by an organization (or by a partnership of which it is a member), if at the close of the lessor's taxable year there is a business lease indebtedness (as defined in subsection (g)) with respect to such property.

(2) Special rules for applying paragraph (1).

For purposes of paragraph (1)—

(A) In computing the term of a lease which contains an option for renewal or extension, the term of such lease shall be considered as including any period for which such option may be exercised; and the term of any lease made pursuant to an exercise of such option shall include the period during which the prior lease was in effect. If real property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition.

(B) If the property has been occupied by the same lessee for a total period of more than 5 years commencing not earlier than the date of acquisition of the property by the organization or trust (whether such occupancy is under one or more leases, renewals, extensions, or continuations thereof), the occupancy of such lessee shall be considered to be under a lease for a term of more than 5 years within the meaning of paragraph (1). However, subsection (a) shall apply in the case of a tenancy described in this subparagraph (and not within subparagraph (A)) only with respect to the sixth and succeeding years of occupancy by the same lessee. For purposes of this subparagraph, the term "same lessee" shall include any lessee of the property whose relationship with a lessee of the same property is such that losses in respect of sales or exchanges of property between the 2 lessees would be disallowed under section 267 (a).

(3) Exceptions.

(A) No lease shall be considered a business lease if—

(i) such lease is entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, or

(ii) the lease is of premises in a building primarily designed for occupancy, and occupied, by the organization.

(B) If a lease for more than 5 years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than 5 years to any other tenant of the organization, leases of the real property for more than 5 years shall be considered as business leases during the taxable year only if—

(i) the rents derived from the real property during the taxable year under leases for more than 5 years (not including, as a lease for more than 5 years, an occupancy which is considered as such a lease by reason of paragraph (2) (B)) represent 50 percent or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under leases for more than 5 years (not including, as a lease for more than 5 years, an occupancy which is considered as such a lease by reason of paragraph (2) (B)) represents, at any time during the taxable year, 50 percent or more of the total area of the real property rented at such time; or

(ii) the rent derived from the real property during the taxable year from any tenant under a lease for more than 5 years (including as a lease for more than 5 years an occupancy which is considered as such a lease by reason of paragraph (2) (B)), or from a group of tenants (under such leases) who are either members of an affiliated group (as defined in section 1504) or partners, represents more than 10 percent of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than 10 percent of the total area of the real property rented at such time.

In the application of clause (i), if during the last half of the term of a lease a new lease is made to take effect after the expiration of such lease, the unexpired portion of such lease on the

date the second lease is made shall not be treated as a part of the term of the second lease.

(g) Business lease indebtedness.

(1) General rule.

The term "business lease indebtedness" means, with respect to any real property leased for a term of more than 5 years, the unpaid amount of—

(A) the indebtedness incurred by the lessor in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) Property acquired subject to mortgage, etc.

Where real property is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered (whether the acquisition was by gift, devise, or purchase) as an indebtedness of the lessor incurred in acquiring such property even though the lessor did not assume or agree to pay such indebtedness, except that where real property was acquired by gift, bequest, or devise before July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor incurred in acquiring such property.

(3) Certain property acquired by gift, etc.

Where real property was acquired by gift, bequest, or devise before July 1, 1950, subject to a lease requiring improvements in such property on the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as an indebtedness for purposes of this subsection.

(4) Certain corporations described in section 501 (c) (2).

In the case of a corporation described in section 501 (c) (2), all of the stock of which was acquired before July 1, 1950, by an organization described in paragraph (3), (5), or (6) of section 501 (c) (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation before July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into before such date, shall not be considered as an indebtedness with respect to such corporation or such organization for purposes of this subsection.

(5) Certain trusts described in section 401 (a).

In the case of a trust described in section 401 (a), or in the case of a corporation described in section 501 (c) (2) all of the stock of which was acquired prior to March 1, 1954, by a trust described in section 401 (a), any indebtedness incurred by such trust or such corporation before March 1, 1954, in connection with real property which is leased before March 1, 1954, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness with respect to such trust or such corporation for purposes of this subsection.

(6) Business lease on portion of property.

In determining the amount of the business lease indebtedness where only a portion of the real property is subject to a business lease, proper allocation to the premises covered by such lease shall be made of the indebtedness incurred by the lessor with respect to the real property.

(7) Special rule applicable to trusts described in section 401 (a).

In the application of paragraph (1), if a trust described in section 401 (a) forming part of a stock bonus, pension, or profit-sharing plan of an employer lends any money to another trust described in section 401 (a) forming part of a stock bonus, pension, or profit-sharing plan of the same employer, such loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(A) incurs any indebtedness in order to make such loan;

(B) incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan; or

(C) incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

(8) Trusts described in section 501(c)(17).

(A) In the case of a trust described in section 501(c)(17), or in the case of a corporation described in section 501(c)(2), all of the stock of which was acquired before January 1, 1960, by a trust described in section 501(c)(17), any indebtedness incurred by such trust or such corporation before January 1, 1960, in connection with real property which is leased before January 1, 1960, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness with respect to such trust or such corporation for purposes of this subsection.

(B) In the application of paragraph (1), if a trust described in section 501(c)(17) forming part of a supplemental unemployment compensation benefit plan lends any money to another trust described in section 501(c)(17) forming part of the same plan, such loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(i) incurs any indebtedness in order to make such loan,

(ii) incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan, or

(iii) incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

(h) Personal property leased with real property.

For purposes of this section, the term "real property" and the term "premises" include personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate. (Aug. 16. 1954, ch. 736, 68A Stat. 172; July 14, 1960, Pub. L. 86-667, § 5, 74 Stat. 436; Dec. 30, 1969, Pub. L. 91-172, title I, § 121(d)(1), (3)(A), (B), 83 Stat. 543, 548.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 121(d)(1), substituted "Unrelated debt-financed income" for "Business leases" in catchline and substituted in the text material covering unrelated debt-financed income and deductions for material covering business lease rents and deductions.

Subsecs. (b)-(e). Pub. L. 91-172, § 121(d)(1), (3)(A), added subsecs. (b), (c), (d) and (e). Former subsecs. (b), (c) and (d) were redesignated as subsecs. (f), (g) and (h), respectively.

Subsec. (f). Pub. L. 91-172, § 121(d)(3(A), (B), redesignated subsec. (b) as subsec. (f), and, in par. (1) of subsec. (f) as so redesignated, substituted reference to subsec. (g) for reference to subsec. (c).

Subsecs. (g), (h). Pub. L. 91-172, § 121(d)(3)(A), redesignated subsecs. (c) and (d) as subsecs. (g) and (h), respectively.

1960—Subsec. (c)(8). Pub. L. 86-667 added subsec. (c)(8).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 121(d)(1) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, and to the manner of treatment to be accorded indebtednesses secured by certain mortgages on properties bargain-purchased before Oct. 9, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86-667, set out as a note under section 501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 512, 4942 of this title.

§ 515. Taxes of foreign countries and possessions of the United States.

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 511 to the extent provided in section 901; and in the case of the tax imposed by section 511, the term "taxable income" as used in section 901 shall be read as "unrelated business taxable income". (Aug. 16, 1954, ch. 736, 68A Stat. 176.)

PART IV.—FARMERS' COOPERATIVES

Sec.
521. Exemption of farmers' cooperatives from tax.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, substituted "Part IV" for "Part III" as the Part designation.

1962—Pub. L. 87-834, § 17(b)(5), Oct. 16, 1962, 76 Stat. 1051, struck out item 522.

§ 521. Exemption of farmers' cooperatives from tax.

(a) Exemption from tax.

A farmers' cooperative organization described in subsection (b)(1) shall be exempt from taxation under this subtitle except as otherwise provided in part I of subchapter T (sec. 1381 and following). Notwithstanding part I of subchapter T (sec. 1381 and following), such an organization shall be considered an organization exempt from income taxes for purposes of any law which refers to organizations exempt from income taxes.

(b) Applicable rules.

(1) Exempt farmers' cooperatives.

The farmers' cooperatives exempt from taxation to the extent provided in subsection (a) are farmers', fruit growers', or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

(2) Organizations having capital stock.

Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association.

(3) Organizations maintaining reserve.

Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(4) Transactions with nonmembers.

Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(5) Business for the United States.

Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 176; Oct. 16, 1962, Pub. L. 87-834, § 17(b)(1), 76 Stat. 1051.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834 substituted "part I of subchapter T (sec. 1381 and following)" for "section 522" in two instances.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (a) of this section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

CROSS REFERENCES

Corporate deductions for dividends received inapplicable to dividends from corporation exempt from tax under this section, see section 246 of this title.

Corporations organized for purpose of financing ordinary crop operations of members of associations subject to this part, exemption of, see section 501 of this title.

Documentary stamp taxes inapplicable to farmers', fruit growers' or cooperative associations, see section 4382 of this title.

Employment under Federal Insurance Contributions Act and Federal Unemployment Tax Act as excluding services performed in employ of organization exempt from tax under this section, see sections 3121, 3306 of this title.

Lottery under wagering taxes as excluding drawings conducted by organization exempt from tax under this section, see section 4421 of this title.

Partial exclusion of dividends received by individuals inapplicable to dividends from corporation exempt from tax under this section, see section 116 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 116, 246, 1245, 1250, 1251, 1381, 3121, 3306, 4382, 4421, 4920, 6044 of this title; title 15 section 77c.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46-301 of the District of Columbia Code.

§ 522. Repealed. Pub. L. 87-834, § 17(b)(2), Oct. 16, 1962, 76 Stat. 1051.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 177, related to tax on farmers' cooperatives.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

PART V.—SHIPOWNERS' PROTECTION AND INDEMNITY ASSOCIATIONS

Sec.
526. Shipowners' protection and indemnity associations.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, substituted "Part V" for "Part IV" as the Part designation.

§ 526. Shipowners' protection and indemnity associations.

There shall not be included in gross income the receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax on their taxable income from interest, dividends, and rents. (Aug. 16, 1954, ch. 736, 68A Stat. 178.)

Subchapter G.—Corporations Used to Avoid Income Tax on Shareholders

Part
I. Corporations improperly accumulating surplus.
II. Personal holding companies.
III. Foreign personal holding companies.
IV. Deduction for dividends paid.

PART I.—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

Sec.
531. Imposition of accumulated earnings tax.
532. Corporations subject to accumulated earnings tax.
533. Evidence of purpose to avoid income tax.
534. Burden of proof.
535. Accumulated taxable income.
536. Income not placed on annual basis.
537. Reasonable needs of the business.

§ 531. Imposition of accumulated earnings tax.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

(2) 38½ percent of the accumulated taxable income in excess of $100,000.

(Aug. 16, 1954, ch. 736, 68A Stat. 179.)

CROSS REFERENCES

Adjustments for—

Accumulated taxable income as excluding deduction for tax imposed by this section, see section 535 of this title.

Undistributed foreign personal holding company income as excluding deduction for tax imposed by this section, see section 556 of this title.

Undistributed personal holding company income as excluding deduction for tax imposed by this section, see section 545 of this title.

Foreign tax credit disallowed for tax imposed by this section, see section 901 of this title.

Notification by Secretary or his delegate informing taxpayer that proposed notice of deficiency includes an amount with respect to tax imposed by this section, see section 534 of this title.

Provisions for computation of tax on change of annual accounting period upon making returns for period less than 12 months as inapplicable in computation of tax imposed by this section, see section 536 of this title.

Recovery exclusion with respect to recovery of bad debts, prior taxes, and delinquency amounts, see section 111 of this title.

Unincorporated business enterprises electing to be taxed as domestic corporations as subject to tax imposed by this section, see section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 46, 56, 111, 532, 534, 535, 536, 545, 556, 563, 901 of this title.

§ 532. Corporations subject to accumulated earnings tax.

(a) General rule.

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) Exceptions.

The accumulated earnings tax imposed by section 531 shall not apply to—

(1) a personal holding company (as defined in section 542)

(2) a foreign personal holding company (as defined in section 552), or

(3) a corporation exempt from tax under subchapter F (section 501 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 179.)

CROSS REFERENCES

Construction reserve fund deposits under Merchant Marine Act of 1936 as not constituting accumulation of earnings or profits, see section 1161 (f) of Title 46, Shipping.

Evidence of purpose to avoid income tax, see section 533 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 531, 533 of this title.

§ 533. Evidence of purpose to avoid income tax.

(a) Unreasonable accumulation determinative of purpose.

For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or investment company.

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders. (Aug. 16, 1954, ch. 736, 68A Stat. 179.)

CROSS REFERENCES

Reasonable needs of the business, see section 537 of this title.

§ 534. Burden of proof.

(a) General rule.

In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall—

(1) if notification has not been sent in accordance with subsection (b), be on the Secretary or his delegate, or

(2) if the taxpayer has submitted the statement described in subsection (c), be on the Secretary or his delegate with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary.

Before mailing the notice of deficiency referred to in subsection (a), the Secretary or his delegate may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531. In the case of a notice of deficiency to which subsection (e) (2) applies and which is mailed on or before the 30th day after the date of the enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day.

(c) Statement by taxpayer.

Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary or his delegate may prescribe by regulations, the taxpayer may submit a statement of the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy assessment.

If pursuant to section 6861 (a) a jeopardy assessment is made before the mailing of the notice of deficiency referred to in subsection (a), for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531, constitute the notification described in subsection (b), and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

(e) Application of section.

(1) Notwithstanding any other provision of law, this section shall apply with respect to taxable years to which this subchapter applies and (except as provided in paragraph (2)) to taxable years to which the corresponding provisions of prior revenue laws apply.

(2) In the case of a notice of deficiency for a taxable year to which this subchapter does not apply, this section shall apply only in the case of proceedings tried on the merits after the date of the enactment of this paragraph.

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Aug. 11, 1955, ch. 805, §§ 4, 5, 69 Stat. 690, 691; Sept. 2, 1958, Pub. L. 85-866, title I, § 89(b), 72 Stat. 1665.)

REFERENCES IN TEXT

Date of the enactment of this paragraph and of this sentence, referred to in the text, is Aug. 11, 1955.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-866 inserted "certified mail or" preceding "registered mail".

1955—Subsec. (b). Act Aug. 11, 1955, § 5, added second sentence relating to notice of deficiency to which subsec. (e)(2) applies.

Subsec. (e). Act. Aug. 11, 1955, § 4, permitted, in certain instances, application of this section to cases involving taxable years to which prior revenue laws apply.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) by Pub. L. 85-866 applicable only if mailing occurred after Sept. 2, 1958, see section 89(d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

§ 535. Accumulated taxable income.

(a) Definition.

For purposes of this subtitle, the term "accumulated taxable income" means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) Adjustments to taxable income.

For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) Taxes.

There shall be allowed as a deduction Federal income and excess profits taxes (other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940) and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions.

The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170 (b) (2).

(3) Special deductions disallowed.

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss.

The net operating loss deduction provided in section 172 shall not be allowed.

(5) Capital losses.

There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211 (a).

(6) Long-term capital gains.

There shall be allowed as a deduction the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryback or carryover provided in section 1212) minus the taxes imposed by this subtitle attributable to such excess. The taxes attributable to such excess shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined with regard to the capital loss carryback and carryover provided in section 1212).

(7) Capital loss.

No allowance shall be made for the capital loss carryback or carryover provided in section 1212.

(8) Bank affiliates.

There shall be allowed the deduction described in section 601 (relating to bank affiliates).

(9) Distributions of divested stock.

There shall be allowed as a deduction the amount of any dividend distribution received of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

(10) Special adjustment on disposition of antitrust stock received as a dividend.

If—

(A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

(B) the amount of the distribution determined under section 301(f)(2) exceeded the basis of the stock determined under section 301(f)(3), and

(C) paragraph (9) did not apply in respect of such distribution,

then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.

(c) Accumulated earnings credit.

(1) General rule.

For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b) (6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) Minimum credit.

The credit allowable under paragraph (1) shall in no case be less than the amount by which $100,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(3) Holding and investment companies.

In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which $100,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(4) Accumulated earnings and profits.

For purposes of paragraphs (2) and (3), the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563 (a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

(5) Cross reference.

For denial of credit provided in paragraph (2) or (3) where multiple corporations are formed to avoid tax, see section 1551, and for limitation on such credit in the case of certain controlled corporations, see sections 1561 and 1564.

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Sept. 2, 1958, Pub. L. 85-866, title I, § 31, title II, § 205(a), 72 Stat. 1631, 1680; Feb. 2, 1962, Pub. L. 87-403, § 3(b), 76 Stat. 6; Oct. 16, 1962, Pub. L. 87-834, § 9(d)(2), 76 Stat. 1001; Feb. 26, 1964, Pub. L. 88-272, title II, § 207(b)(4), 78 Stat. 42; Dec. 30, 1969, Pub. L. 91-172, title IV, § 401(b)(2)(C), title V, § 512 (f)(5), (6), 83 Stat. 602, 641.)

AMENDMENTS

1969—Subsec. (b)(6). Pub. L. 91-172, § 512(f)(5), substituted "capital loss carryback or carryover" for "capital loss carryover" and "capital loss carryback and carryover" for "capital loss carryover" in subpar. (B).

Subsec. (b)(7). Pub. L. 91-172, § 512(f)(6), substituted "Capital loss" for "Capital loss carryover" in par. catchline and "capital loss carryback or carryover" for "capital loss carryover" in text.

Subsec. (c)(5). Pub. L. 91-172, § 401(b)(2)(C), substituted "section 1551, and for limitation on such credit in the case of certain controlled corporations, see sections 1561 and 1564" for "section 1551".

1964—Subsec. (b)(1). Pub. L. 88-272 substituted "section 275(a)(4)" for "section 164(b)(6)."

1962—Subsec. (b)(1). Pub. L. 87-834 substituted "accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year" for "accrued during the taxable year."

Subsec. (b) (9), (10). Pub. L. 87-403 added subsec. (b) (9), (10).

1958—Subsec. (b)(2). Pub. L. 85-866, § 31(a), deleted following "without regard to" the words "the limitation in".

Subsec. (b)(6)(B). Pub. L. 85-866, § 31(a), substituted "in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212)" for "such excess in taxable income".

Subsec. (c). Pub. L. 85-866, § 205(a), substituted "$100,000" for "$60,000" in pars. (2) and (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (b)(6), (7) by section 512(f)(5), (6) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Amendment of subsec. (c)(5) by section 401(b)(2)(C) of Pub. L. 91-172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91-172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88-272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of subsec. (b)(1) by Pub. L. 87-834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87-834, set out as a note under section 902 of this title.

Amendment of this section by Pub. L. 87-403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87-403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (b)(2) and (b)(6)(B) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 205 (b) of Pub. L. 85-866 provided that: "The amendments made by subsection (a) [to subsec. (c) (2), (3) of this section and section 1551 of this title] shall apply with respect to taxable years beginning after December 31, 1957."

CROSS REFERENCES

Provisions respecting disposal of coal with retained economic interest as inapplicable in determining amount of deduction under subsection (b) (6) of this section, see section 631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 531, 601, 631, 1551, 1564 of this title.

§ 536. Income not placed on annual basis.

Section 443 (b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531. (Aug. 16, 1954, ch. 736, 68A Stat. 182.)

CROSS REFERENCES

Personal holding company tax computation as not subject to section 443 (b), see section 546 of this title.

Regulated investment company taxable income computation as not subject to section 443 (b), see section 852 of this title.

Undistributed foreign personal holding company income computation as not subject to section 443 (b), see section 557 of this title.

§ 537. Reasonable needs of the business.

(a) General rule.

For purposes of this part, the term "reasonable needs of the business" includes—

(1) the reasonably anticipated needs of the business,

(2) the section 303 redemption needs of the business, and

(3) the excess business holdings redemption needs of the business.

(b) Special rules.

For purposes of subsection (a)—

(1) Section 303 redemption needs.

The term "section 303 redemption needs" means, with respect to the taxable year of the corporation in which a shareholder of the corporation died or any taxable year thereafter, the amount needed (or reasonably anticipated to be needed) to make a redemption of stock included in the gross estate of the decedent (but not in excess of the maximum amount of stock to which section 303(a) may apply).

(2) Excess business holdings redemption needs.

The term "excess business holdings redemption needs" means, with respect to taxable years of the corporation ending after May 26, 1969, the amount needed (or reasonably anticipated to be needed) to redeem from a private foundation stock which—

(A) such foundation held on May 26, 1969 (or which was received by such foundation pursuant to a will or irrevocable trust to which section 4943(c)(5) applies), and

(B) constituted excess business holdings on May 26, 1969, or would have constituted excess business holdings as of such date if there were taken into account (i) stock received pursuant to a will or trust described in subparagraph (A), and (ii) the reduction in the total outstanding stock of the corporation which would have resulted solely from the redemption of stock held by the private foundation.

(3) Obligations incurred to make redemptions.

In applying paragraphs (1) and (2), the discharge of any obligation incurred to make a redemption described in such paragraphs shall be treated as the making of such redemption.

(4) No inference as to prior taxable years.

The application of this part to any taxable year before the first taxable year specified in paragraph (1) or (2) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Dec. 30, 1969, Pub. L. 91–172, title IX, § 906(a), 83 Stat. 714.)

AMENDMENTS

1969—Pub. L. 91–172 designated existing provisions as subsec. (a)(1), and added subsecs. (a)(2), (3) and (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 906(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [adding subsecs. (a)(2), (3) and (b) of this section] shall apply to the tax imposed under section 531 of the Internal Revenue Code of 1954 [section 531 of this title] with respect to taxable years ending after May 26, 1969."

CROSS REFERENCES

Unreasonable accumulation determinative of purpose to avoid income tax, see section 533 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 311 of this title.

PART II.—PERSONAL HOLDING COMPANIES

Sec.
541. Imposition of personal holding company tax.
542. Definition of personal holding company.
543. Personal holding company income.
544. Rules for determining stock ownership.
545. Undistributed personal holding company income
546. Income not placed on annual basis.
547. Deduction for deficiency dividends.

§ 541. Imposition of personal holding company tax.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the undistributed personal holding company income (as defined in section 545) of every personal holding company (as defined in section 542) a personal holding company tax equal to 70 percent of the undistributed personal holding company income. (Aug. 16, 1954, ch. 736, 68A Stat. 182; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(a), 78 Stat. 79.)

AMENDMENTS

1964—Pub. L. 88–272 reduced the tax from 75 percent of undistributed income not in excess of $2,000, and 85 percent when in excess of $2,000, to 70 percent.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

CROSS REFERENCES

Adjustments for—

Accumulated taxable income as excluding deduction for tax imposed by this section, see section 535 of this title.

Undistributed foreign personal holding company income as excluding deduction for tax imposed by this section, see section 556 of this title.

Undistributed personal holding company income as excluding deduction for tax imposed by this section, see section 545 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 56, 111, 535, 545, 546, 547, 556, 563, 882, 901, 6682, 6683 of this title.

§ 542. Definition of personal holding company.

(a) General rule.

For purposes of this subtitle, the term "personal holding company" means any corporation (other than a corporation described in subsection (c)) if—

(1) Adjusted ordinary gross income requirement.

At least 60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a)), and

(2) Stock ownership requirement.

At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642 (c) or a corresponding provision of a prior income tax law shall be considered an individual. The preceding sentence shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(b) Corporations filing consolidated returns.

(1) General rule.

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) Ineligible affiliated group.

Paragraph (1) shall not apply to an affiliated group of corporations, other than an affiliated group of railroad corporations the common parent of which would be eligible to file a consolidated

return under section 141 of the Internal Revenue Code of 1939 prior to its amendment by the Revenue Act of 1942, if—

(A) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) Excluded corporations.

Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) Certain dividend income received by a common parent.

In applying paragraph (2) (A) and (B), personal holding company income and adjusted ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(c) Exceptions.

The term "personal holding company" as defined in subsection (a) does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following);

(2) a bank as defined in section 581, or a domestic building and loan association within the meaning of section 7701(a)(19) without regard to subparagraphs (D) and (E) thereof;

(3) a life insurance company;

(4) a surety company;

(5) a foreign personal holding company as defined in section 552;

(6) a lending or finance company if—

(A) 60 percent or more of its ordinary gross income (as defined in section 543(b)(1)) is derived directly from the active and regular conduct of a lending or finance business;

(B) the personal holding company income for the taxable year (computed without regard to income described in subsection (d)(3) and income derived directly from the active and regular conduct of a lending or finance business, and computed by including as personal holding company income the entire amount of the gross income from rents, royalties, produced film rents, and compensation for use of corporate property by shareholders) is not more than 20 percent of the ordinary gross income;

(C) the sum of the deductions which are directly allocable to the active and regular conduct of its lending or finance business equals or exceeds the sum of—

(i) 15 percent of so much of the ordinary gross income derived therefrom as does not exceed $500,000, plus

(ii) 5 percent of so much of the ordinary gross income derived therefrom as exceeds $500,000 but not $1,000,000; and

(D) the loans to a person who is a shareholder in such company during the taxable year by or for whom 10 percent or more in value of its outstanding stock is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)), outstanding at any time during such year do not exceed $5,000 in principal amount;

(7) a foreign corporation (other than a corporation which has income to which section 543(a)(7) applies for the taxable year), if all of its stock outstanding during the last half of the taxable year is owned by nonresident alien individuals, whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations;

(8) A small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern.

(d) Special rules for applying subsection (c)(6).

(1) Lending or finance business defined.

(A) In general.

Except as provided in subparagraph (B), for purposes of subsection (c)(6), the term "lending or finance business" means a business of—

(i) making loans,

(ii) purchasing or discounting accounts receivable, notes, or installment obligations,

(iii) rendering services or making facilities available in connection with activities described in clauses (i) and (ii) carried on by the corporation rendering services or making facilities available, or

(iv) rendering services or making facilities available to another corporation which is engaged in the lending or finance business (within the meaning of this paragraph), if such services or facilities are related to the lending or finance business (within such meaning)

of such other corporation and such other corporation and the corporation rendering services or making facilities available are members of the same affiliated group (as defined in section 1504).

(B) Exceptions.

For purposes of subparagraph (A), the term "lending or finance business" does not include the business of—

(i) making loans, or purchasing or discounting accounts receivable, notes, or installment obligations, if (at the time of the loan, purchase, or discount) the remaining maturity exceeds 60 months, unless the loans, notes, or installment obligations are evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements arising out of the sale of goods or services in the course of the borrower's or transferor's trade or business, or

(ii) making loans evidenced by, or purchasing, certificates of indebtedness issued in a series, under a trust indenture, and in registered form or with interest coupons attached.

For purposes of clause (i), the remaining maturity shall be treated as including any period for which there may be a renewal or extension under the terms of an option exercisable by the borrower.

(2) Business deductions.

For purposes of subsection (c)(6)(C), the deductions which may be taken into account shall include only—

(A) deductions which are allowable only by reason of section 162 or section 404, except there shall not be included any such deduction in respect of compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 544(a)(2)), and

(B) deductions allowable under section 167, and deductions allowable under section 164 for real property taxes, but in either case only to the extent that the property with respect to which such deductions are allowable is used directly in the active and regular conduct of the lending or finance business.

(3) Income received from certain affilated corporations.

For purposes of subsection (c)(6)(B), in the case of a lending or finance company which meets the requirements of subsection (c)(6)(A), there shall not be treated as personal holding company income the lawful income received from a corporation which meets the requirements of subsection (c)(6) and which is a member of the same affiliated group (as defined in section 1504) of which such company is a member.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Aug. 12, 1955, ch. 871, § 3, 69 Stat. 718; Sept. 23, 1959, Pub. L. 86-376, § 3(a), 73 Stat. 700; Oct. 9, 1962, Pub. L. 87-768, § 1, 76 Stat. 766; Feb. 26, 1964, Pub. L. 88-272, title II, § 225 (b), (c), (k)(1), 78 Stat. 79, 80, 93; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(h)(1), 80 Stat. 1559; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(16), 83 Stat. 528.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(8), is principally classified to chapter 14B of Title 15, Commerce and Trade. For distribution of the Act in the Code, see Short Title note under section 661 of Title 15.

That Act, referred to in subsec. (c)(8), refers to the Small Business Investment Act of 1958.

AMENDMENTS

1969—Subsec. (a)(2). Pub. L. 91-172 substituted "section 401(a), 501(c)(17), or 509(a)" for "section 503(b)" in the list of sections that contain the description of organizations that may be considered as individuals for the purpose of establishing stock ownership, and struck out provisions which would have kept an organization or trust created before July 1, 1950, from being so designated if it had been denied exemption under section 504 or an unlimited charitable deduction under section 681(c) of this title.

1966—Subsec. (c)(7). Pub. L. 89-809 substituted requirement that the foreign corporation be other than a corporation which has income to which section 543(a)(7) applies for the taxable year for requirement that the foreign corporation's gross income from sources within the United States for the period specified in section 861(a)(2)(B) be less than 50 percent of its total gross income from all sources, and expanded the devices included in methods of indirect ownership to encompass foreign estates, foreign trusts, and foreign partnerships.

1964—Subsec. (a)(1). Pub. L. 88-272, § 225(b), substituted "60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a))" for "80 percent of its gross income for the taxable year is personal holding company income as defined in section 543."

Subsec. (b). Pub. L. 88-272, § 225(k)(1), substituted "adjusted ordinary gross income" for "gross income", wherever appearing.

Subsec. (c)(2), (6)—(11). Pub. L. 88-272, § 225(c)(1), (2), inserted among the exceptions, domestic building and loan associations within section 7701(a)(19) without regard to subpars. (D) and (E) thereof, added par. (6), redesignated former pars. (10) and (11) as (7) and (8), respectively, and omitted former pars. (6)—(9) which related to licensed personal finance companies, lending companies, loan or investment corporations, and finance companies, respectively.

Subsec. (d). Pub. L. 88-272, § 225(c)(3), added subsec. (d).

1962—Subsec. (c)(7). Pub. L. 87-768 substituted "authorized to engage in and actively and regularly engaged in the small loan business (consumer finance business)" for "authorized to engage in the small loan business", inserted provisions excepting from the definition of "personal holding company" a lending company that received 80 percent or more of its gross income from lawful income from domestic subsidiary corporations (of which stock possessing at least 80 percent of the voting power of all classes of stock and of which at least 80 percent of each class of the nonvoting stock is owned directly by such lending company), which are themselves excepted under pars. (6), (7), (8), or (9) of this subsection, increased the maximum amount of the loan where no limit is prescribed from $500 to $1,500, and eliminated provisions which required loans to mature in not more than 36 months, and which limited interest, discount and other charges to not more than an amount equal to simple interest at 3 per cent per month payable in advance and computed only on unpaid balances.

1959—Subsec. (c)(11). Pub. L. 86-376 added subsec. (c)(11).

1955—Subsec. (a)(2). Act Aug. 12, 1955, § 3, added sentence at the end to except from consideration as "individuals" certain charitable foundations created before July 1, 1950.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(j)(16) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsecs. (a)(1), (b), (c) (6)—(8), and (d), by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, and amendment of subsec. (c)(2) by Pub. L. 88–272 applicable to taxable years beginning after Oct. 16, 1962, see section 225(1) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–768 provided that: "The amendment made by the first section of this Act [to subsec. (c)(7) of this section] shall apply with respect to taxable years beginning after December 31, 1961."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3(b) of Pub. L. 86–376 provided that: "The amendment made by this section [adding subsec. (c)(11) of this section] shall apply to taxable years beginning after December 31, 1958."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that: "The amendment made by section 3 of this Act [to subsection (a)(2) of this section] shall apply only with respect to taxable years beginning after December 31, 1954."

CROSS REFERENCES

Accumulated earnings tax as inapplicable to personal holding company defined in this section, see section 532 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

Personal holding company dividend defined, see section 316 of this title.

Regulated investment company as meaning any domestic corporation other than a personal holding company as defined in this section, see section 851 of this title.

Rules for determining stock ownership, see section 544 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 316, 333, 532, 541, 544, 545, 562, 851, 856, 864, 4920 of this title.

§ 543. Personal holding company income.

(a) General rule.

For purposes of this subtitle, the term "personal holding company income" means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)),

(B) interest on amounts set aside in a reserve fund under section 511 or 607 of the Merchant Marine Act, 1936, and

(C) a dividend distribution of divested stock (as defined in subsection (e) of section 1111), but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years before the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

(2) Rents.

The adjusted income from rents; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income, and

(B) the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(c) (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year (computed without regard to this paragraph and paragraph (6), and computed by including as personal holding company income copyright royalties and the adjusted income from mineral, oil, and gas royalties) exceeds 10 percent of the ordinary gross income.

(3) Mineral, oil, and gas royalities.

The adjusted income from mineral, oil, and gas royalties; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income,

(B) the personal holding company income for the taxable year (computed without regard to this paragraph, and computed by including as personal holding company income copyright royalties and the adjusted income from rents) is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are allowable under section 162 (relating to trade or business expenses) other than—

(i) deductions for compensation for personal services rendered by the shareholders, and

(ii) deductions which are specifically allowable under sections other than section 162, equals or exceeds 15 percent of the adjusted ordinary gross income.

(4) Copyright royalties.

Copyright royalties; except that copyright royalties shall not be included if—

(A) such royalties (exclusive of royalties received for the use of, or right to use, copyrights or interests in copyrights on works created in whole, or in part, by any shareholder) constitute 50 percent or more of the ordinary gross income,

(B) the personal holding company income for the taxable year computed—

(i) without regard to copyright royalties, other than royalties received for the use of, or right to use, copyrights or interests in copyrights in works created in whole, or in part, by any shareholder owning more than 10 percent of the total outstanding capital stock of the corporation,

(ii) without regard to dividends from any corporation in which the taxpayer owns at least 50 percent of all classes of stock entitled

to vote and at least 50 percent of the total value of all classes of stock and which corporation meets the requirements of this subparagraph and subparagraphs (A) and (C), and

(iii) by including as personal holding company income the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties,

is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are properly allocable to such royalties and which are allowable under section 162, other than—

(i) deductions for compensation for personal services rendered by the shareholders,

(ii) deductions for royalties paid or accrued, and

(iii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 25 percent of the amount by which the ordinary gross income exceeds the sum of the royalties paid or accrued and the amounts allowable as deductions under section 167 (relating to depreciation) with respect to copyright royalties.

For purposes of this subsection, the term "copyright royalties" means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code (other than by reason of section 2 or 6 thereof) and to which copyright protection is also extended by the laws of any country other than the United States of America by virtue of any international treaty, convention, or agreement, or interests in any such copyrighted works, and includes payments from any person for performing rights in any such copyrighted work and payments (other than produced film rents as defined in paragraph (5)(B)) received for the use of, or right to use, films. For purposes of this paragraph, the term "shareholder" shall include any person who owns stock within the meaning of section 544.

(5) Produced film rents.

(A) Produced film rents; except that such rents shall not be included if such rents constitute 50 percent or more of the ordinary gross income.

(B) For purposes of this section, the term "produced film rents" means payments received with respect to an interest in a film for the use of, or right to use, such film, but only to the extent that such interest was acquired before substantial completion of production of such film.

(6) Use of corporation property by shareholder.

Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement. This paragraph shall apply only to a corporation which has personal holding company income for the taxable year (computed without regard to this paragraph and paragraph (2), and computed by including as personal holding company income copyright royalties and the adjusted income from mineral, oil, and gas royalties) in excess of 10 percent of its ordinary gross income.

(7) Personal service contracts.

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(8) Estates and trusts.

Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries).

(b) Definitions.

For purposes of this part—

(1) Ordinary gross income.

The term "ordinary gross income" means the gross income determined by excluding—

(A) all gains from the sale or other disposition of capital assets,

(B) all gains (other than those referred to in subpargraph (A)) from the sale or other disposition of property described in section 1231(b), and

(C) in the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), all items of income which would, but for this subparagraph, constitute personal holding company income under any paragraph of subsection (a) other than paragraph (7) thereof:

(2) Adjusted ordinary gross income.

The term "adjusted ordinary gross income" means the ordinary gross income adjusted as follows:

(A) Rents.

From the gross income from rents (as defined in the second sentence of paragraph (3) of this subsection) subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, and amortization of property other than tangible personal property which is not customarily retained by any one lessee for more than three years,

(ii) property taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary or his delegate, to such gross income from rents. The amount subtracted under this subparagraph shall not exceed such gross income from rents.

(B) Mineral royalties, etc.

From the gross income from mineral, oil, and gas royalties described in paragraph (4), and from the gross income from working interests in an oil or gas well, subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, amortization, and depletion,

(ii) property and severance taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary or his delegate, to such gross income from royalties or such gross income from working interests in oil or gas wells. The amount subtracted under this subparagraph with respect to royalties shall not exceed the gross income from such royalties, and the amount subtracted under this subparagraph with respect to working interests shall not exceed the gross income from such working interests.

(C) Interests.

There shall be excluded—

(i) interest received on a direct obligation of the United States held for sale to customers in the ordinary course of trade or business by a regular dealer who is making a primary market in such obligations, and

(ii) interest on a condemnation award, a judgment, and a tax refund.

(D) Certain excluded rents.

From the gross income consisting of compensation described in subparagraph (D) of paragraph (3) subtract the amount allowable as deductions for the items described in clauses (i), (ii), (iii), and (iv) of subparagraph (A) to the extent allocable, under regulations prescribed by the Secretary or his delegate, to such gross income. The amount subtracted under this subparagraph shall not exceed such gross income.

(3) Adjusted income from rents.

The term "adjusted income from rents" means the gross income from rents, reduced by the amount subtracted under paragraph (2)(A) of this subsection. For purposes of the preceding sentence, the term "rents" means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but such term does not include—

(A) amounts constituting personal holding company income under subsection (a)(6),

(B) copyright royalties (as defined in subsection (a)(4)),

(C) produced film rents (as defined in subsection (a)(5)(B)), or

(D) compensation, however designated, for the use of, or the right to use, any tangible personal property manufactured or produced by the taxpayer, if during the taxable year the taxpayer is engaged in substantial manufacturing or production of tangible personal property of the same type.

(4) Adjusted income from mineral, oil, and gas royalties.

The term "adjusted income from mineral, oil, and gas royalties" means the gross income from mineral, oil, and gas royalties (including production payments and overriding royalties), reduced by the amount subtracted under paragraph (2)(B) of this subsection in respect of such royalties.

(c) Gross income of insurance companies other than life or mutual.

In the case of an insurance company other than life or mutual, the term "gross income" as used in this part means the gross income, as defined in section 832 (b) (1), increased by the amount of losses incurred, as defined in section 832 (b) (5), and the amount of expenses incurred, as defined in section 832 (b) (6), and decreased by the amount deductible under section 832 (c) (7) (relating to tax-free interest). (Aug. 16, 1954, ch. 736, 68A Stat. 186; Apr. 22, 1960, Pub. L. 86-435, § 1(a), (b), 74 Stat. 77; Feb. 2, 1962, Pub. L. 87-403, § 3(c), 76 Stat. 6; Feb. 26, 1964, Pub. L. 88-272, title II, § 225 (d), (k)(2), 78 Stat. 81, 93; Aug. 22, 1964, Pub. L. 88-484, § 3(a), 78 Stat. 598; Nov. 13, 1966, Pub L. 89-809, title I, § 104(h)(2), title II, § 206(a)(b), 80 Stat. 1559, 1578, 1579.)

AMENDMENTS

1966—Subsec. (a)(2). Pub. L. 89-809, § 206(b)(1), struck out provision that royalties received for the use of, or for the privilege of using, a patent, invention, model, or design, secret formula, process, or other similar property right be treated as rent if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers and if the amount constituting rent from such leases to customers meets the requirement of subparagraph (A).

Subsec. (b)(1). Pub. L. 89-809, § 104(h)(2), added subpar. (C).

Subsec. (b)(2). Pub. L. 89-809, § 206(b)(2), added subpar. (D).

Subsec. (b)(3). Pub. L. 89-809, § 206(a), struck out "amounts constituting personal holding company income under subsection (a)(6), nor copyright royalties (as defined in subsection (a)(4)), nor produced film rents (as defined in subsection (a)(5)(B))." following "but does not include", and added subpars. (A)—(D).

1964—Subsec. (a). Pub. L. 88-272, § 225(d), amended subsec. (a) generally, and among other changes, substituted "adjusted ordinary gross income" for "gross income", provided, relative to rental income, that in addition to the 50-percent test of par. (2)(A), now applied on the basis of adjusted income from rents and adjusted ordinary gross income, a second test for exclusion shall be whether the sum on the dividends paid during the

taxable year, the dividends paid on the last day of the year, and the consent dividends for the taxable year, equals or exceeds the amount by which the personal holding company income for the year exceeds 10 percent of the ordinary gross income, relative to mineral, oil, and gas royalties, that in addition to the 50-percent test of par. (3)(A), now applied on the basis of adjusted ordinary gross income, and the 15-percent test of par. (3)(C), from which test have been excluded deductions "specifically allowable under sections other than section 162" and is also now applied on the basis of adjusted gross income, the royalties shall be excluded if the personal holding company income for the taxable year is not more than 10 percent of the ordinary gross income, relative to copyright royalties, retained the 50-percent test as in par. (4)(A), making it applicable to ordinary gross income, included in the computation of the income for the taxable year the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties, excluded from the sum of deductions allocable to royalties, deductions specifically allowable under sections other than 162, and changed the requirement that deductions constitute 50 percent or more of gross income to provide that they must equal 25 percent of ordinary gross income reduced by royalties paid and by depreciation deductions with respect to copyrights, relative to produced film rents, that they be treated on their own basis and not as rentals, and defined "produced film rents", relative to use of corporation property by shareholders, that personal holding company income includes copyright royalties and the adjusted income from mineral, oil, and gas royalties, eliminated gains from the sale or other disposition of any interest in an estate or trust, from the sale or exchange of stock or securities, and from futures transactions in any commodity, and also the definition of "rents" which can now be found in subsec. (b)(3).

Subsec. (a)(2). Pub. L. 88–484 inserted sentence requiring royalties received for the use of, or for the privilege of using, a patent, invention, model, or design (whether or not patented), secret formula or process, or any other similar property right to be treated as rent, if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers, and if the amount (computed without regard to this sentence) constituting rent from such leases to customers meets the requirements of subparagraph (A).

Subsec. (b). Pub. L. 88–272, § 225(d), added subsec. (b), and omitted a prior subsec. (b) which provided that gross income and personal holding company income determined with respect to transactions relating to gains from stock and security transactions, and with respect to transactions relating to gains from commodity transactions, should include only the excess of gains over losses from such transactions.

Subsec. (d). Pub. L. 88–272, § 225(k)(2), eliminated subsec. (d) which related to special adjustment on disposition of antitrust stock received as a dividend.

1962—Subsec. (a)(1). Pub. L. 87–403 prescribed the conditions making inapplicable the provisions of the paragraph to dividend distribution of divested stock.

Subsec. (d). Pub. L. 87–403 added subsec. (d).

1960—Subsec. (a)(1). Pub. L. 86–435, § 1(b)(1), excluded copyright royalties.

Subsec. (a)(6). Pub. L. 86–435, § 1(b)(2), added sentence providing that copyright royalties constitute personal holding company income.

Subsec. (a)(9). Pub. L. 86–435, § 1(a), added subsec. (a)(9).

EFFECTIVE DATE OF 1966 AMENDMENT

Section 206(c) of Pub. L. 89–809 provided that: "The amendments made by subsections (a) and (b) [amending subsec. (a) and (b) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [November 13, 1966]. Such amendments shall also apply, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may prescribe), to taxable years beginning on or before such date and ending after December 31, 1965."

Amendment of subsec. (b)(1) by section 104(h)(2) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 3(b) of Pub. L. 88–484 provided that: "The amendment made by subsection (a) [to subsec. (a)(2) of this section] shall apply to taxable years beginning after December 31, 1963."

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86–435 provided that: "The amendments made by the first section of this Act [to subsec. (a) of this section and sections 544 (a), (b), and 553 of this title] shall apply only with respect to taxable years beginning after December 31, 1959."

CROSS REFERENCES

Foreign personal holding company income, see section 553 of this title.

Limitations on assessment and collection, see section 6501 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

Personal holding company—

Definition as dependent upon personal holding company income, see section 542 of this title.

Dividend defined, see section 316 of this title.

Rules for determining stock ownership, see section 544 of this title.

Unincorporated business enterprises electing to be taxed as domestic corporations and treatment of personal holding company income, see section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 544, 545, 856, 864, 6035, 6501 of this title.

§ 544. Rules for determining stock ownership.

(a) Constructive ownership.

For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542(a)(2), section 543(a)(7), section 543 (a)(6), or section 543(a)(4)—

(1) Stock not owned by individual.

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership.

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options.

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules.

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 542 (a) (2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership.

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule.

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities.

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543 (a) (6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (Aug. 16, 1954, ch. 736, 68A Stat. 188; Apr. 22, 1960, Pub. L. 86–435, § 1 (c), (d), 74 Stat. 78; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(k)(3), 78 Stat. 93.)

AMENDMENTS

1964—Pub. L. 88–272 substituted "section 543(a)(7)" for "section 543(a)(5)", and "section 543(a)(4)" for "section 543(a)(9)," wherever appearing.

1960—Subsec. (a). Pub. L. 86–435, § 1(c)(1), inserted a reference to section 543(a)(9) in the opening provisions.

Subsec. (a)(4)(B). Pub. L. 86–435, § 1(c)(2), included section 543(a)(9).

Subsec. (b). Pub. L. 86–435, § 1(d), added par. (4), and inserted a reference to par. (4) in the last sentence.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of subsecs. (a) and (b) of this section by Pub. L. 86–435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86–435, set out as a note under section 543 of this title.

CROSS REFERENCES

Collapsible corporations, see section 341 of this title.

Limitations on assessment and collection, see section 6501 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

Returns of officers, directors, and shareholders of foreign personal holding companies, see section 6035 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 341, 542, 543, 6501 of this title.

§ 545. Undistributed personal holding company income.

(a) Definition.

For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958 (a)) during the last half of the taxable year by United States persons, the term "undistributed personal holding company income" means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income.

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes.

There shall be allowed as a deduction Federal income and excess profits taxes (other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31,

1940) and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law. A taxpayer which, for each taxable year in which it was subject to the tax imposed by section 500 of the Internal Revenue Code of 1939, deducted Federal income and excess profits taxes when paid for the purpose of computing subchapter A net income under such Code, shall deduct taxes under this paragraph when paid, unless the taxpayer elects, in its return for a taxable year ending after June 30, 1954, to deduct the taxes described in this paragraph when accrued. Such an election shall be irrevocable and shall apply to the taxable year for which the election is made and to all subsequent taxable years.

(2) Charitable contributions.

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (8) of this subsection.

(3) Special deductions disallowed.

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss.

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172 (c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Long-term capital gains.

There shall be allowed as a deduction the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year, minus the taxes imposed by this subtitle attributable to such excess. The taxes attributable to such excess shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such excess in taxable income.

(6) Bank affiliates.

There shall be allowed the deduction described in section 601 (relating to bank affiliates).

(7) Payment of indebtedness incurred prior to January 1, 1934.

There shall be allowed as a deduction amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred before January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness.

(8) Expenses and depreciation applicable to property of the taxpayer.

The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary or his delegate) to the satisfaction of the Secretary or his delegate—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(9) Amount of a lien in favor of the United States.

There shall be allowed as a deduction the amount, not to exceed the taxable income of the taxpayer, of any lien in favor of the United States (notice of which has been filed as provided in section 6323 (f)) to which the taxpayer is subject at the close of the taxable year. The sum of the amounts deducted under this paragraph with respect to any lien shall, for the purposes of this section, be added to the taxable income of the taxpayer for the taxable year in which such lien is satisfied or released. Where an amount is added to the taxable income of a corporation by reason of the preceding sentence of this paragraph, the shareholders of the corporation may, pursuant to regulations prescribed by the Secretary or his delegate, elect to compute the income tax with respect to such dividends as are attributable to such amount as though they were received ratably over the period the lien was in effect.

(10) Distributions of divested stock.

There shall be allowed as a deduction the amount of any income attributable to the receipt of a distribution of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

(11) Special adjustment on disposition of antitrust stock received as a dividend.

If—

(A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

(B) the amount of the distribution determined under section 301(f)(2) exceeded the basis of the stock determined under section 301(f)(3), and

(C) Paragraph (10) did not apply in respect of such distribution,

then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.

(c) Special adjustment to taxable income.

(1) In general.

Except as otherwise provided in this subsection, for purposes of subsection (a) there shall be allowed as a deduction amounts used, or amounts irrevocably set aside (to the extent reasonable with reference to the size and terms of the indebtedness), to pay or retire qualified indebtedness.

(2) Corporations to which applicable.

This subsection shall apply only with respect to a corporation—

(A) which for at least one of the two most recent taxable years ending before the date of the enactment of this subsection was not a personal holding company under section 542, but would have been a personal holding company under section 542 for such taxable year if the law applicable for the first taxable year beginning after December 31, 1963, had been applicable to such taxable year, or

(B) to the extent that it succeeds to the deduction referred to in paragraph (1) by reason of section 381(c)(15).

(3) Qualified indebtedness.

(A) In general.

Except as otherwise provided in this paragraph, for purposes of this subsection the term "qualified indebtedness" means—

(i) the outstanding indebtedness incurred by the taxpayer after December 31, 1933, and before January 1, 1964, and

(ii) the outstanding indebtedness incurred after December 31, 1963, for the purpose of making a payment or set-aside referred to in paragraph (1) in the same taxable year, but, in the case of such a payment or set-aside which is made on or after the first day of the first taxable year beginning after December 31, 1963, only to the extent the deduction otherwise allowed in paragraph (1) with respect to such payment or set-aside is treated as nondeductible by reason of the election provided in paragraph (4).

(B) Exception.

For purposes of subparagraph (A), qualified indebtedness does not include any amounts which were, at any time after December 31, 1963, and before the payment or set-aside, owed to a person who at such time owned (or was considered as owning within the meaning of section 318(a)) more than 10 percent in value of the taxpayer's outstanding stock.

(C) Reduction for amounts irrevocably set aside.

For purposes of subparagraph (A), the qualified indebtedness with respect to a contract shall be reduced by amounts irrevocably set aside before the taxable year to pay or retire such indebtedness; and no deduction shall be allowed under paragraph (1) for payments out of amounts so set aside.

(4) Election not to deduct.

A taxpayer may elect, under regulations prescribed by the Secretary or his delegate, to treat as nondeductible an amount otherwise deductible under paragraph (1); but only if the taxpayer files such election on or before the 15th day of the third month following the close of the taxable year with respect to which such election applies, designating therein the amounts which are to be treated as nondeductible and specifying the indebtedness (referred to in paragraph (3)(A)(ii)) incurred for the purpose of making the payment or set-aside.

(5) Limitations.

The deduction otherwise allowed by this subsection for the taxable year shall be reduced by the sum of—

(A) the amount, if any, by which—

(i) the deductions allowed for the taxable year and all preceding taxable years beginning after December 31, 1963, for exhaustion, wear and tear, obsolescence, amortization, or depletion (other than such deductions which are disallowed in computing undistributed personal holding company income under subsection (b)(8)), exceed

(ii) any reduction, by reason of this subparagraph, of the deductions otherwise allowed by this subsection for such preceding taxable years, and

(B) the amount, if any, by which—

(i) the deductions allowed under subsection (b)(5) in computing undistributed personal holding company income for the taxable year and all preceding taxable years beginning after December 31, 1963, exceed

(ii) any reduction, by reason of this subparagraph, of the deductions otherwise allowed by this subsection for such preceding taxable years.

(6) Pro-rata reduction in certain cases.

For purposes of paragraph (3)(A), if property (of a character which is subject to an allowance for exhaustion, wear and tear, obsolescence, amortization, or depletion) is disposed of after December 31, 1963, the total amounts of qualified indebtedness of the taxpayer shall be reduced pro-rata in the taxable year of such disposition by the amount, if any, by which—

(A) the adjusted basis of such property at the time of such disposition, exceeds

(B) the amount of qualified indebtedness which ceased to be qualified indebtedness with respect to the taxpayer by reason of the assumption of the indebtedness by the transferee.

(d) Certain foreign corporations.

In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b). (Aug. 16, 1954, ch. 736, 68A Stat. 189; Sept. 2, 1958, Pub. L. 85–866, title I, § 32 (a), (b), 72 Stat. 1631; Feb. 2, 1962, Pub. L. 87–403, § 3(d), 76 Stat. 7; Oct. 16, 1962, Pub. L. 87–834, § 9(d)(2), 76 Stat. 1001; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 207(b)(5), 209(c)(2), 225(i) (1), (2), 78 Stat. 42, 46, 90; Nov. 2, 1966, Pub. L. 89–719, title I, § 101(b)(2), 80 Stat. 1132; Nov. 13, 1966, Pub. L. 89–809, title I, § 104(h)(3), 80 Stat. 1560; Dec. 30, 1969, Pub. L. 91–172, title II, § 201(a)(2)(B), 83 Stat. 558.)

AMENDMENTS

1969—Subsec. (b)(2). Pub. L. 91–172 substituted "section 170(b)(1)(A), (B), and (D)", "section 170(b)(2) and (d)(1)" for "section 170(b)(1)(A) and (B)" and "section 170(b)(2) and (5)", respectively, in the provisions of the first sentence setting out the sections appropriate to the computation of the deduction, and in the provisions of the second sentence describing applicability of terms for purposes of this paragraph, substituted "contribution base" and "section 170(b)(2) and (d)(1)" for "adjusted gross income" and "the first sentence of section 170(b)(2) and (5)," respectively.

1966—Subsec. (a). Pub. L. 89–809, § 104(h)(3)(A), substituted "in the manner provided in subsections (b), (c), and (d)" for "in the manner provided in subsection (b) and (c)" and added provisions governing the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons.

Subsec. (b)(9). Pub. L. 89–719 substituted "section 6323(f)" for "section 6323(a)(1), (2), or (3)."

Subsec. (d). Pub. L. 89–809, § 104(h)(3)(B), added subsec. (d).

1964—Subsec. (a). Pub. L. 88–272, § 225(i)(1), inserted the reference to subsection (c).

Subsec. (b)(1), (2). Pub. L. 88–272, §§ 207(b)(5), 209(c)(2), substituted "section 275(a)(4)" for "section 164(b)(6)" in par. (1), and inserted the reference to section 170(b)(5) in par. (2).

Subsec. (c). Pub. L. 88–272, § 225(i)(2), added subsec. (c).

1962—Subsec. (b)(1). Pub. L. 87–834 substituted "accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year" for "accrued during the taxable year."

Subsec. (b) (10), (11). Pub. L. 87–403 added subsec. (b) (10), (11).

1958—Subsec. (b) (2). Pub. L. 85–866, § 32(a), substituted in the first sentence ", but in computing such deduction the limitations in section 170 (b) (1) (A) and (B) shall apply, and section 170 (b) shall not apply " for "but with the limitations in section 170 (b) (1) (A) and (B) (in lieu of the limitation in section 170 (b) (2)", and inserted in the second sentence "(other than the 5-percent limitation)" and "the first sentence" following "with the adjustments" and "provided in ", respectively.

Subsec. (b) (4). Pub. L. 85–866, § 32 (b), inserted "computed without the deductions provided in part VIII (except section 248) of subchapter B".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (a) by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

Amendment of subsec. (b)(1) by Pub. L. 88–272, § 207 (b)(5), applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

Amendment of subsec. (b)(2) by Pub. L. 88–272, § 209 (c)(2), applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88–272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of subsec (b)(1) by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

Amendment of section by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) (2) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 32(c) of Pub. L. 85–866 provided that: "The amendment made by subsection (b) of this section [to subsec. (b) (4) of this section] shall apply with respect to adjustments under section 545 (b) (4) of the Internal Revenue Code of 1954 for taxable years beginning after December 31, 1957."

CROSS REFERENCES

Acquiring corporation as distributor or transferor corporation for purpose of determining applicability of subsection (b) (7) of this section, see section 381 of this title.

Charitable contributions deduction disallowed under certain circumstances when—

Made in trust, see section 681 of this title.

Made to exempt organization, see section 503 of this title.

Dividend carryover determined by making adjustments provided in this section to taxable income, see section 564 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

Personal holding company dividend defined, see section 316 of this title.

Provisions respecting disposal of coal with retained economic interest as inapplicable in determining amount of deduction under subsection (b) (5) of this section, see section 631 of this title.

Rules relating to deduction for dividends paid after close of taxable year, see section 563 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 316, 333, 381, 508, 541, 564, 601, 631, 4947, 4948 of this title.

§ 546. Income not placed on annual basis.

Section 443 (b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the personal holding company tax imposed by section 541. (Aug. 16, 1954, ch. 736, 68A Stat. 191.)

CROSS REFERENCES

Accumulated earnings tax computation as not subject to section 443 (b), see section 536 of this title.

Regulated investment company taxable income computation as not subject to section 443 (b), see section 852 of this title.

Undistributed foreign personal holding company computation as not subject to section 443 (b), see section 557 of this title.

§ 547. Deduction for deficiency dividends.

(a) General rule.

If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section.

(1) Allowance of deduction.

The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund.

If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination.

For purposes of this section, the term "determination" means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary or his delegate, an agreement signed by the Secretary or his delegate and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends.

(1) Definition.

For purposes of this section, the term "deficiency dividends" means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.

(2) Effect on dividends paid deduction.

(A) For taxable year in which paid.

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year and succeeding years.

(B) For prior taxable year.

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be allowed for purposes of section 563 (b) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(e) Claim required.

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary or his delegate) claim therefor is filed within 120 days after the determination.

(f) Suspension of statute of limitations and stay of collection.

(1) Suspension of running of statute.

If the corporation files a claim, as provided in subsection (e), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection.

In the case of any deficiency with respect to the tax imposed by section 541 established by a determination under this section—

(A) the collection of the deficiency and all interest, additional amounts, and assessable penalties shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for deficiency dividend deduction is filed under subsection (e), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part) and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(g) Deduction denied in case of fraud, etc.

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary or his delegate in pursuance of law.

(h) Effective date.

Subsections (a) through (f), inclusive, shall apply only with respect to determinations made more than 90 days after the date of enactment of this title. If the taxable year with respect to which the deficiency is asserted began before January 1, 1954, the term "deficiency dividend" includes only amounts which would have been includible in the computation under the Internal Revenue Code of 1939 of the basic surtax credit for such taxable year. Subsection (g) shall apply only if the taxable year with respect to which the deficiency is asserted begins after December 31, 1953. (Aug. 16, 1954, ch. 736, 68A Stat. 191.)

CROSS REFERENCES

Distributor or transfer corporation in carryover situations as entitled to deficiency dividend deduction, see section 381 of this title.

Personal holding company dividend defined, see section 316 of this title.

Suspension of running of period of limitation, see section 6503 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 316, 381 of this title.

PART III.—FOREIGN PERSONAL HOLDING COMPANIES

Sec.
551. Foreign personal holding company income taxed to United States shareholders.
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AMENDMENTS

1958—Pub. L. 85-866, title I, § 33(d)(2), Sept. 2, 1958, 72 Stat. 1632, added item 558.

§ 551. Foreign personal holding company income taxed to United States shareholders.

(a) General rule.

The undistributed foreign personal holding company income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than estates or trusts the gross income of which under this subtitle includes only income from sources within the United States), who are shareholders in such foreign personal holding company (hereinafter called "United States shareholders") in the manner and to the extent set forth in this part.

(b) Amount included in gross income.

Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 552 (a) (2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend (determined as if any distribution in liquidation actually made in such taxable year had not been made) if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed foreign personal holding company income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) Deduction for obligations of United States and its instrumentalities.

Each United States shareholder shall take into account in determining his income tax his proportionate share of partially tax-exempt interest on obligations described in section 35 or 242 which is included in the gross income of the company otherwise than by the application of the provisions of section 555 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another foreign personal holding company in which it is a shareholder). If the foreign personal holding company elects under section 171 to amortize the premiums on such obligations, for purposes of the preceding sentence each United States shareholder's proportionate share of such interest received by the foreign personal holding company shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such share.

(d) Information in return.

Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed foreign

personal holding company income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, owned 5 percent or more in value of the outstanding stock of such company, shall set forth in his return in complete detail the gross income, deductions and credits, taxable income, foreign personal holding company, and undistributed foreign personal holding company income of such company.

(e) Effect on capital account of foreign personal holding company.

An amount which bears the same ratio to the undistributed foreign personal holding company income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for the purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend, directly or indirectly, in the gross income of United States shareholders.

(f) Basis of stock in hands of shareholders.

The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of 6 years after the date prescribed by law for filing the return.

(g) Cross references.

(1) For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 1014 (b) (5).

(2) For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 6501.

(3) For treatment of gain on liquidation of certain foreign personal holding companies, see section 342.

(Aug. 16, 1954, ch. 736, 68A Stat. 193; Feb. 26, 1964, Pub. L. 88-272, title II, § 225(f)(4), 78 Stat. 88.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88-272 inserted "(determined as if any distribution in liquidation actually made in such taxable year had not been made)."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section Pub. L. 88-272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88-272, set out as a note under section 316 of this title.

CROSS REFERENCES

Adjustments to basis, see section 1016 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88-272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 1016, 6501 of this title.

§ 552. Definition of foreign personal holding company.

(a) General rule.

For purposes of this subtitle, the term "foreign personal holding company" means any foreign corporation if—

(1) Gross income requirement.

At least 60 percent of its gross income (as defined in section 555 (a)) for the taxable year is foreign personal holding company income as defined in section 553; but if the corporation is a foreign personal holding company with respect to any taxable year ending after August 26, 1937, then, for each subsequent taxable year, the minimum percentage shall be 50 percent in lieu of 60 percent, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 percent of the gross income is foreign personal holding company income. For purposes of this paragraph, there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 555 (c) (2); and

(2) Stock ownership requirement.

At any time during the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter called "United States group".

(b) Exceptions.

The term "foreign personal holding company" does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following); and

(2) a corporation organized and doing business under the banking and credit laws of a foreign country if it is established (annually or at other periodic intervals) to the satisfaction of the Secretary or his delegate that such corporation is not formed or availed of for the purpose of evading or avoiding United States income taxes which would otherwise be imposed upon its shareholders. If the Secretary or his delegate is satisfied that such corporation is not so formed or availed of, he shall issue to such corporation annually or at other periodic intervals a certification that the corporation is not a foreign personal holding company.

Each United States shareholder of a foreign corporation which would, except for the provisions of paragraph (2), be a foreign personal holding company, shall attach to and file with his income tax return for the taxable year a copy of the certification by the Secretary or his delegate made pursuant to paragraph (2). Such copy shall be filed with the taxpayer's return for the taxable year if he has been a shareholder of such corporation for any part of such year. (Aug. 16, 1954, ch. 736, 68A Stat. 195.)

CROSS REFERENCES

Accumulated earnings tax as inapplicable to foreign personal holding company defined in this section, see section 532 of this title.

Election as to taxable and partially taxable bonds under provisions respecting amortizable bond premium in case of bonds held by foreign personal holding company as defined in this section, see section 171 of this title.

Liquidation of certain foreign personal holding companies, see section 342 of this title.

Personal holding company as excluding foreign personal holding company, see section 542 of this title.

Returns of officers, directors, and shareholders of foreign personal holding companies, see section 6035 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 171, 342, 532, 542, 551, 553, 554, 555, 562, 1212 of this title.

§ 553. Foreign personal holding company income.

(a) Foreign personal holding company income.

For purposes of this subtitle, the term "foreign personal holding company income" means that portion of the gross income, determined for purposes of section 552, which consists of:

(1) Dividends, etc.

Dividends, interest, royalties, and annuities. This paragraph shall not apply to a dividend distribution of divested stock (as defined in subsection (e) of section 1111) but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years before the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

(2) Stock and securities transactions.

Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(3) Commodities transactions.

Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This paragraph shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(4) Estates and trusts.

Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries); and gains from the sale or other disposition of any interest in an estate or trust.

(5) Personal service contracts.

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(6) Use of corporation property by shareholder.

Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement. This paragraph shall apply only to a corporation which has foreign personal holding company income for the taxable year, computed without regard to this paragraph and paragraph (7), in excess of 10 percent of its gross income.

(7) Rents.

Rents, unless constituting 50 percent or more of the gross income. For purposes of this paragraph, the term "rents" means compensation, however designated, for the use of, or right to use, property, but does not include amounts constituting foreign personal holding company income under paragraph (6).

(b) Limitation on gross income in certain transactions.

For purposes of this part—

(1) gross income and foreign personal holding company income determined wih respect to transactions described in subsection (a)(2) (relating to gains from stock and security transactions) shall include only the excess of gains over losses from such transactions, and

(2) gross income and foreign personal holding company income determined with respect to transactions described in subsection (a)(3) (relating to gains from commodity transactions) shall include only the excess of gains over losses from such transactions.

(Aug. 16, 1954, ch. 736, 68A Stat. 195; Apr. 22, 1960, Pub. L. 86–435, § 1(e), 74 Stat. 78; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(e), 78 Stat. 85.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–272 designated existing provisions as subsec. (a), and substituted pars. (1)—(7) for "personal holding company income, as defined in section 543, except that all interest, whether or not treated as rent, and all royalties, whether or not mineral, oil, or gas royalties or copyright royalties, shall constitute "foreign personal holding company income."

Subsec. (b). Pub. L. 88–272 added subsec. (b).

1960—Pub. L. 86–435 included copyright royalties within foreign personal holding company income.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86–435, set out as a note under section 543 of this title.

CROSS REFERENCES

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552, 554, 954 of this title.

§ 554. Stock ownership.

(a) Constructive ownership.

For purposes of determining whether a corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 552(a)(2), section 553(a)(5), or section 553(a)(6)—

(1) Stock not owned by individual.

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership.

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options.

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules.

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 552(a)(2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) for purposes of section 553(a)(5) (relating to personal service contracts) or of section 553(a)(6) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as foreign personal holding company income.

(5) Constructive ownership as actual ownership.

Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule.

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities.

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 552(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) for purposes of section 553(a)(5) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as foreign personal holding company income; and

(3) for purposes of section 553(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (Aug. 16, 1954, ch. 736, 68A Stat. 196; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(e), 78 Stat. 86.)

AMENDMENTS

1964—Pub. L. 88–272 amended section generally by designating existing provisions as subsec. (a), and substituting pars. (1)—(6) therein and subsec. (b), for provisions which incorporated by reference substantially the same provisions as in such pars. (1)—(6) and subsec. (b).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

CROSS REFERENCES

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

§ 555. Gross income of foreign personal holding companies.

(a) General rule.

For purposes of this part, the term "gross income" means, with respect to a foreign corporation, gross income computed (without regard to the provisions of subchapter N (sec. 861 and following)) as if the foreign corporation were a domestic corporation which is a personal holding company.

(b) Additions to gross income.

In the case of a foreign personal holding company (whether or not a United States group, as defined in section 552 (a) (2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year of the second company which was the last day on which a United States group existed with respect to the

second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed foreign personal holding company income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) Application of subsection (b).

The rule provided in subsection (b)—

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undistributed foreign personal holding company income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 552 (a) (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 196.)

CROSS REFERENCES

Charitable contributions adjustment to taxable income, see section 556 of this title.

Deduction for obligations of United States and its instrumentalities, see section 551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 551, 552, 556, 6035 of this title.

§ 556. Undistributed foreign personal holding company income.

(a) Definition.

For purposes of this part, the term "undistributed foreign personal holding company income" means the taxable income of a foreign personal holding company adjusted in the manner provided in subsection (b), minus the dividends paid deduction (as defined in section 561).

(b) Adjustments to taxable income.

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes.

There shall be allowed as a deduction Federal income and excess profits taxes (other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940) and income, war profits, and excess-profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law. A taxpayer which, for each taxable year in which it was subject to the provisions of supplement P of the Internal Revenue Code of 1939, deducted Federal income and excess profits taxes when paid for the purpose of computing undistributed supplement P net income under such code, shall deduct taxes under this paragraph when paid, unless the corporation elects, under regulations prescribed by the Secretary or his delegate, after the date of enactment of this title to deduct the taxes described in this paragraph when accrued. Such election shall be irrevocable and shall apply to the taxable year for which the election is made and to all subsequent taxable years.

(2) Charitable contributions.

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1) (A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

(3) Special deductions disallowed.

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss.

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172 (c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Expenses and depreciation applicable to property of the taxpayer.

The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation) which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary or his delegate) to the satisfaction of the Secretary or his delegate—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(6) Taxes and contributions to pension trusts.

The deductions provided in section 164 (e) (relating to taxes of a shareholder paid by the corporation) and in section 404 (relating to pension, etc., trusts) shall not be allowed.

(7) Distributions of divested stock.

There shall be allowed as a deduction the amount of any income attributable to the receipt of a distribution of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

(8) Special adjustment on disposition of antitrust stock received as a dividend.

If—

(A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

(B) the amount of the distribution determined under section 301(f)(2) exceeded the basis of the stock determined under section 301(f)(3), and

(C) paragraph (7) did not apply in respect of such distribution,

then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.

(Aug. 16, 1954, ch. 736, 68A Stat. 196; Sept. 2, 1958, Pub. L. 85-866, title I, § 33(a), (b) (1), (c) (1), 72 Stat. 1632; Feb. 2, 1962, Pub. L. 87-403, § 3(e), 76 Stat. 7; Feb. 26, 1964, Pub. L. 88-272, title II, §§ 207 (b)(6), 209(c)(2), 78 Stat. 42, 46; Dec. 30, 1969, Pub. L. 91-172, title II, § 201(a)(2)(B), 83 Stat. 558.)

AMENDMENTS

1969—Subsec. (b)(2). Pub. L. 91-172 substituted "section 170(b)(1) (A), (B), and (D)" and "section 170(b)(2) and (d)(1)" for "section 170(b)(1) (A) and (B)" and "section 170(b)(2) and (5)" respectively in the provisions of the first sentence setting out the sections appropriate to the computation of the deduction, and in the provisions of the second sentence describing applicability of terms for purposes of this paragraph, substituted "contribution base" and "section 170(b)(2) and (d)(1)" for "adjusted gross income" and "the first sentence of section 170(b)(2) and (5)", respectively.

1964—Subsec. (b) (1), (2). Pub. L. 88-272 substituted "section 275(a)(4)" for section 164(b)(6)" in par. (1), and inserted the reference to section 170(b)(5) in par. (2).

1962—Subsec. (b)(7), (8). Pub. L. 87-403 added subsec. (b)(7), (8).

1958—Subsec. (b)(2). Pub. L. 85-866, § 33(a) (1) (2), substituted in the first sentence "but in computing such deduction the limitations in section 170 (b) (1) (A) and (B) shall apply, and section 170 (b) (2) shall not apply" for "but with the limitation in section 170 (b) (1) (A) and (B) (in lieu of the limitation in section 170 (b) (2))" and in the second sentence "the taxable income computed with the adjustments (other than the 5-percent limitation) provided in the first sentence of section 170 (b) (2) for "the taxable income computed with the adjustments provided in section 170 (b) (2)".

Subsec. (b)(3). Pub. L. 85-866, § 33 (b)(1), substituted "section 248" for "sections 242 and 248."

Subsec. (b)(4). Pub. L. 85-866, § 33 (c)(1), inserted "computed without the deductions provided in part VIII (except section 248) of subchapter B".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (b)(1) by Pub. L. 88-272, § 207 (b)(6), applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88-272, set out as a note under section 164 of this title.

Amendment of subsec. (b)(2) by Pub. L. 88-227, § 209 (c)(2), applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88-272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of this section by Pub. L. 87-403 applicable only with respect to distribution made after Feb. 2, 1962, see section 3(g) of Pub. L. 87-403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) (2) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 33 (b) (2) of Pub. L. 85-866 provided that: "The amendment made by paragraph (1) [to subsec (b) (3) of this section] shall apply only with respect to taxable years ending after December 31, 1957."

Section 33 (c) (2) of Pub. L. 85-866 provided that: "The amendment made by paragraph (1) [to subsec. (b) (4) of this section] shall apply with respect to adjustments under section 556 (b) (4) of the Internal Revenue Code of 1954 for taxable years ending after December 31, 1957."

CROSS REFERENCES

Provisions for computation of tax on change of annual accounting period upon making returns for period less than 12 months as inapplicable in computation of tax imposed by this section, see section 557 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 557, 4947, 4948 of this title.

§ 557. Income not placed on annual basis.

Section 443 (b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the undistributed foreign personal holding company income under section 556.

(Aug. 16, 1954, ch. 736, 68A Stat. 198.)

CROSS REFERENCES

Accumulated earnings tax computation as not subject to section 443 (b), see section 536 of this title.

Personal holding company tax computation as not subject to section 443 (b), see section 546 of this title.

Regulated investment company taxable income computation as not subject to section 443 (b), see section 852 of this title.

§ 558. Returns of officers, directors, and shareholders of foreign personal holding companies.

For provisions relating to returns of officers, directors, and shareholders of foreign personal holding companies, see section 6035.

(Added Pub. L. 85-866, title I, § 33 (d) (1), Sept. 2, 1958, 72 Stat. 1632.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

PART IV.—DEDUCTION FOR DIVIDENDS PAID

Sec.
561. Definition of deduction for dividends paid.
562. Rules applicable in determining dividends eligible for dividends paid deduction.
563. Rules relating to dividends paid after close of taxable year.
564. Dividend carryover.
565. Consent dividends.

§ 561. Definition of deduction for dividends paid.

(a) General rule.

The deduction for dividends paid shall be the sum of—

(1) the dividends paid during the taxable year,

(2) the consent dividends for the taxable year (determined under section 565), and

(3) in the case of a personal holding company, the dividend carryover described in section 564.

(b) Special rules applicable.

(1) In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

(2) If a corporation received antitrust stock (as defined in section 301(f) in a distribution to which section 301 applied and such corporation distributes such stock (or other property the basis of which is determined by reference to the basis of such stock) to its shareholders, proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, to the amount of the deduction provided for in subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Feb. 2, 1962, Pub. L. 87–403, § 3(f), 76 Stat. 8.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–403 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of this section by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

CROSS REFERENCES

Accumulated taxable income as taxable income minus, among others, dividends paid deduction, and accumulated earnings credit as related to dividends paid deduction, see section 535 of this title.

Deductions of dividends paid on certain preferred stock as reducing deduction for dividends paid under this section, see section 583 of this title.

Deficiency dividend deduction of personal holding companies, see section 547 of this title.

Taxation of regulated investment companies and their shareholders, see section 852 of this title.

Undistributed foreign personal holding company income as taxable income minus, among others, dividends paid deduction, see section 556 of this title.

Undistributed personal holding company income as taxable income minus, among others, dividends paid deduction, see section 545 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 545, 547, 564, 565, 583, 852, 857 of this title.

§ 562. Rules applicable in determining dividends eligible for dividends paid deduction.

(a) General rule.

For purposes of this part, the term "dividend" shall, except as otherwise provided in this section, include only dividends described in section 316 (relating to definition of dividends for purposes of corporate distributions).

(b) Distributions in liquidation.

(1) Except in the case of a personal holding company described in section 542 or a foreign personal holding company described in section 552—

(A) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(B) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

(2) In the case of a complete liquidation of a personal holding company, occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction, to the extent that such amount is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution computed without regard to this paragraph and without regard to subparagraph (B) of section 316(b)(2).

(c) Preferential dividends.

The amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

(d) Distributions by a member of an affiliated group.

In the case where a corporation which is a member of an affiliated group of corporations filing or required to file a consolidated return for a taxable year is required to file a separate personal holding company schedule for such taxable year, a distribution by such corporation to another member of the affiliated group shall be considered as a dividend for purposes of computing the dividends paid deduction if such distribution would constitute a dividend under the other provisions of this section to a re-

cipient which is not a member of an affiliated group. (Aug. 16, 1954, ch. 736, 68A Stat. 198; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(f)(3), 78 Stat. 88.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–272 designated existing provisions as subpars. (A) and (B) of par. (1), excepted personal holding companies in section 542, and foreign personal holding companies in section 552 therefrom, and added par. (2).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section Pub. L. 88–272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(1) of Pub. L. 88–272, set out as a note under section 316 of this title.

CROSS REFERENCES

Limitations on consent dividends, see section 565 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

Partial liquidation defined, see section 346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 316, 346, 543, 561, 563, 565, 852 of this title.

§ 563. Rules relating to dividends paid after close of taxable year.

(a) Accumulated earnings tax.

In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year.

(b) Personal holding company tax.

In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed either—

(1) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection, or

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

(c) Dividends considered as paid on last day of taxable year.

For the purpose of applying section 562 (a), with respect to distributions under subsection (a) or (b) of this section, a distribution made after the close of a taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year. (Aug. 16, 1954, ch. 736, 68A Stat. 199; Dec. 30, 1969, Pub. L. 91–172, title IX, § 914(a), 83 Stat. 823.)

AMENDMENTS

1969—Subsec. (b)(2). Pub. L. 91–172 substituted "20 percent" for "10 percent".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 914(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

CROSS REFERENCES

Accumulated earnings credit reduced under certain circumstances by dividends paid after close of taxable year but considered as paid during taxable year, see section 535 of this title.

Deficiency dividend deduction of personal holding companies, see section 547 of this title.

Personal holding company dividend defined, see section 316 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 316, 535, 543, 547, 561 of this title.

§ 564. Dividend carryover.

(a) General rule.

For purposes of computing the dividends paid deduction under section 561, in the case of a personal holding company the dividend carryover for any taxable year shall be the dividend carryover to such taxable year, computed as provided in subsection (b), from the two preceding taxable years.

(b) Computation of dividend carryover.

The dividend carryover to the taxable year shall be determined as follows:

(1) For each of the 2 preceding taxable years there shall be determined the taxable income computed with the adjustments provided in section 545 (whether or not the taxpayer was a personal holding company for either of such preceding taxable years), and there shall also be determined for each such year the deduction for dividends paid during such year as provided in section 561 (but determined without regard to the dividend carryover to such year).

(2) There shall be determined for each such taxable year whether there is an excess of such taxable income over such deduction for dividends paid or an excess of such deduction for dividends paid over such taxable income, and the amount of each such excess.

(3) If there is an excess of such deductions for dividends paid over such taxable income for the first preceding taxable year, such excess shall be allowed as a dividend carryover to the taxable year.

(4) If there is an excess of such deduction for dividends paid over such taxable income for the second preceding taxable year, such excess shall be reduced by the amount determined in paragraph (5), and the remainder of such excess shall be allowed as a dividend carryover to the taxable year.

(5) The amount of the reduction specified in paragraph (4) shall be the amount of the excess of the taxable income, if any, for the first preceding taxable year over such deduction for dividends paid, if any, for the first preceding taxable year.

(c) Determination of dividend carryover from taxable years to which this subtitle does not apply.

In a case where the first or second preceding taxable year began before the taxpayer's first taxable year under this subtitle, the amount of the dividend carryover to taxable years to which this

subtitle applies shall be determined under the provisions of the Internal Revenue Code of 1939.
(Aug. 16, 1954, ch. 736, 63A Stat. 200.)

CROSS REFERENCES

Items of distributor or transferor corporation in carryover situations as including dividend carryover described in this section, see section 381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 381, 561 of this title.

§ 565. Consent dividends.

(a) General rule.

If any person owns consent stock (as defined in subsection (f) (1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary or his delegate, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations.

A consent dividend shall not include—

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562 (c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent.

The amount of a consent dividend shall be considered, for purposes of this title—

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions.

If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations.

In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary or his delegate may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been, on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions.

(1) Consent stock.

Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends.

Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 543, 561 of this title.

Subchapter H.—Banking Institutions

Part
I. Rules of general application to banking institutions.
II. Mutual savings banks, etc.
III. Bank affiliates.

PART I.—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

Sec.
581. Definition of bank.
582. Bad debts, losses, and gains with respect to securities held by financial institutions.
583. Deductions of dividends paid on certain preferred stock.
584. Common trust funds.
585. Reserves for losses on loans of banks.
586. Reserves for losses on loans of small business investment companies, etc.

AMENDMENTS

1969—Pub. L. 91-172, title IV, § 431(c)(2), Dec. 30, 1969, 83 Stat. 620, substituted "Bad debts, losses, and gains with respect to securities held by financial institutions", for "Bad debt and loss deduction with respect to securities held by banks" in item 582, and added items 585 and 586.

§ 581. Definition of bank.

For purposes of sections 582 and 584, the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Sept. 28, 1962, Pub. L. 87-722, § 5, 76 Stat. 670.)

AMENDMENTS

1962—Pub. L. 87-722 substituted "authority of the Comptroller of the Currency" for "section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k)."

CROSS REFERENCES

Debts owed by political parties, etc., deduction of, see section 271 of this title.

Personal holding company as excluding bank as defined in this section, see section 542 of this title.

Returns of banks with respect to common trust funds, see section 6032 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 271, 279, 542, 585, 586, 593, 4912, 4914, 6032, 6223, 6323, 7512 of this title.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions.

(a) Securities.

Notwithstanding sections 165 (g) (1) and 166 (e), subsections (a), (b), and (c) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165 (g) (2) (C).

(b) Worthless stock in affiliated bank.

For purposes of section 165 (g) (1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions.

(1) General rule.

For purposes of this subtitle, in the case of a financial institution to which section 585, 586, or 593 applies, the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset.

(2) Transitional rule for banks.

In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).

(3) Special rules.

For purposes of this subsection—

(A) The term "qualifying security" means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Sept. 2, 1958, Pub. L. 85-866, title I, § 34, 72 Stat. 1632; Dec. 30, 1969, Pub. L. 91-172, title IV, § 433(a), (c), 83 Stat. 623, 624.)

AMENDMENTS

1969—Pub. L. 91-172, § 433(c), substituted "Bad debts, losses, and gains with respect to securities held by financial institutions" for "Bad debt and loss deduction with respect to securities held by banks" in the section catchline.

Subsec. (c). Pub. L. 91-172, § 433(a), redesignated existing provisions as par. (1), expanded the provisions by reference to sections 585, 586 and 593 in par. (1) as redesignated, and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85-866 deleted "with interest coupons or in registered form," preceding "exceed the gains".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 433(d) of Pub. L. 91-172 provided that:

"(1) **In general.**—The amendments made by this section [amending subsec. (c) of this section and section 1243(1) of this title] shall apply to taxable years beginning after July 11, 1969.

"(2) **Election for small business investment companies and business development corporations.**—Notwithstanding paragraph (1), in the case of a financial institution described in section 586(a) of the Internal Revenue Code of 1954 [section 586(a) of this title], the amendments made by this section [amending subsec. (c) of this section and section 1243(1) of this title] shall not apply for its taxable years beginning after July 11, 1969, and before July 11, 1974, unless the taxpayer so elects at such time and in such manner as shall be prescribed by the Secretary of the Treasury or his delegate. Such election shall be irrevocable and shall apply to all such taxable years."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (c) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Bonds and other evidences of indebtedness, sale or exchange, see section 1232 of this title.

Capital asset defined, see section 1221 of this title.

Dealers in securities, see section 1236 of this title.

Definition of bank, see section 581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 581, 1236 of this title.

§ 583. Deductions of dividends paid on certain preferred stock.

In computing the taxable income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone, or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this subtitle, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall reduce the deduction for dividends paid otherwise computed under section 561. (Aug. 16, 1954, ch. 736, 68A Stat. 202.)

§ 584. Common trust funds.

(a) Definitions.

For purposes of this subtitle, the term "common trust fund" means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

(b) Taxation of common trust funds.

A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) Income of participants in fund.

(1) Inclusions in taxable income.

Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months;

(C) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) Dividends and partially tax exempt interest.

The proportionate share of each participant in the amount of dividends to which section 116 applies, and in the amount of partially tax exempt interest on obligations described in section 35 or section 242, received by the common trust fund shall be considered for purposes of such sections as having been received by such participant. If the common trust fund elects under section 171 (relating to amortizable bond premium) to amortize the premium on such obligations, for purposes of the preceding sentence the proportionate share of the participant of such interest received by the common trust fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such share.

(d) Computation of common trust fund income.

The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed; and

(4) the standard deduction provided in section 141 shall not be allowed.

(e) Admission and withdrawal.

No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) Different taxable years of common trust fund and participant.

If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) Net operating loss deduction.

The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 203; Sept. 28, 1962, Pub. L. 87–722, § 4, 76 Stat. 670; Feb. 26, 1964, Pub. L. 88–272, title II, § 201(d)(5), 78 Stat. 32.)

AMENDMENTS

1964—Subsec. (c)(2). Pub. L. 88–272 deleted "section 34 or" preceding "section 116 applies."

1962—Subsec. (a)(2). Pub. L. 87–722 inserted "or the Comptroller of the Currency" after "the Board of Governors of the Federal Reserve System."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 171, 581, 851, 4920 of this title.

§ 585. Reserves for losses on loans of banks.

(a) Institutions to which section applies.

This section shall apply to the following financial institutions:

(1) any bank (as defined in section 581) other than an organization to which section 593 applies, and

(2) any corporation to which paragraph (1) would apply except for the fact that it is a foreign corporation, and in the case of any such foreign corporation this section shall apply only with respect to loans outstanding the interest on which is

effectively connected with the conduct of a banking business within the United States.

(b) Addition to reserves for bad debts.

(1) General rule.

For purposes of section 166(c), the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the greater of—

(A) for taxable years beginning before 1988 the addition to the reserve for losses on loans determined under the percentage method as provided in paragraph (2), or

(B) the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (3).

(2) Percentage method.

The amount determined under this paragraph for a taxable year shall be the amount necessary to increase the balance of the reserve for losses on loans (at the close of the taxable year) to the allowable percentage of eligible loans outstanding at such time, except that—

(A) If the reserve for losses on loans at the close of the base year is less than the allowable percentage of eligible loans outstanding at such time, the amount determined under this paragraph with respect to the difference shall not exceed one-fifth of such difference.

(B) If the reserve for losses on loans at the close of the base year is not less than the allowable percentage of eligible loans outstanding at such time, the amount determined under this paragraph shall be the amount necessary to increase the balance of the reserve at the close of the taxable year to (i) the allowable percentage of eligible loans outstanding at such time, or (ii) the balance of the reserve at the close of the base year, whichever is greater, but if the amount of eligible loans outstanding at the close of the taxable year is less than the amount of such loans outstanding at the close of the base year, the amount determined under clause (ii) shall be the amount necessary to increase the balance of the reserve at the close of the taxable year to the amount which bears the same ratio to eligible loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of eligible loans outstanding at the close of the base year.

For purposes of this paragraph, the term "allowable percentage" means 1.8 percent for taxable years beginning before 1976; 1.2 percent for taxable years beginning after 1975 but before 1982; and 0.6 percent for taxable years beginning after 1981. The amount determined under this paragraph shall not exceed 0.6 percent of eligible loans outstanding at the close of the taxable year or an amount sufficient to increase the reserve for losses on loans to 0.6 percent of eligible loans outstanding at the close of the taxable year, whichever is greater. For purposes of this paragraph, the term "base year" means: for taxable years beginning before 1976, the last taxable year beginning on or before July 11, 1969, for taxable years beginning after 1975 but before 1982, the last taxable year beginning before 1976, and for taxable years beginning after 1981, the last taxable year beginning before 1982; except that for purposes of subparagraph (A) such term means the last taxable year before the most recent adoption of the percentage method, if later.

(3) Experience method.

The amount determined under this paragraph for a taxable year shall be the amount necessary to increase the balance of the reserve for losses on loans (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary or his delegate, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year isl ess than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this paragraph, the base year shall be the last taxable year before the most recent adoption of the experience method, except that for taxable years beginning after 1987 the base year shall be the last taxable year beginning before 1988.

(4) Regulations; definition of eligible loan, etc.

The Secretary or his delegate shall define the terms "loan" and "eligible loan" and prescribe such regulations as may be necessary to carry out the purposes of this section; except that the term "eligible loan" shall not include—

(A) a loan to a bank (as defined in section 581),

(B) a loan to a domestic branch of a foreign corporation to which subsection (a)(2) applies,

(C) a loan secured by a deposit (i) in the lending bank, or (ii) in an institution described in subparagraph (A) or (B) if the lending bank has control over withdrawal of such deposit,

(D) a loan to or guaranteed by the United States, a possession or instrumentality thereof, or a State or a political subdivision thereof,

(E) a loan evidenced by a security as defined in section 165(g)(2)(C),

(F) a loan of Federal funds, and

(G) commercial paper, including short-term promissory notes which may be purchased on the open market.

(Added Pub. L. 91–172, title IV, § 431(a), Dec. 30, 1969, 83 Stat. 616.)

EFFECTIVE DATE

Section 431(d) of Pub. L. 91-172 provided that: "The amendments made by subsections (a) [enacting this section and section 586 of this title] and (c) [adding par. (4) to section 166(h) of this title] shall apply to taxable years beginning after July 11, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 172, 582, 593 of this title.

§ 586. Reserves for losses on loans of small business investment companies, etc.

(a) Institutions to which section applies.

This section shall apply to the following financial institutions:

(1) any small business investment company operating under the Small Business Investment Act of 1958, and

(2) any business development corporation.

For purposes of this section, the term "business development corporation" means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks (as defined in section 581) within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(b) Addition to reserves for bad debts.

(1) General rule.

For purposes of section 166(c), except as provided in paragraph (2) the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the amount necessary to increase the balance of the reserve for bad debts (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary or his delegate, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this subparagraph, the term "base year" means the last taxable year beginning on or before July 11, 1969.

(2) New financial institutions.

In the case of any taxable year beginning not more than 10 years after the day before the first day on which a financial institution (or any predecessor) was authorized to do business as a financial institution described in subsection (a), the reasonable addition to the reserve for bad debts of such financial institution shall not exceed the larger of the amount determined under paragraph (1) or the amount necessary to increase the balance of the reserve for bad debts at the close of the taxable year to the amount which bears the same ratio (as determined by the Secretary or his delegate) to loans outstanding at the close of the taxable year as (i) the total bad debts sustained by all institutions described in the applicable paragraph of subsection (a) during the 6 preceding taxable years (adjusted for recoveries of bad debts during such period), bears to (ii) the sum of the loans by all such institutions outstanding at the close of such taxable years.

(Added Pub. L. 91-172, title IV, § 431(a), Dec. 30, 1969, 83 Stat. 618.)

EFFECTIVE DATE

Section applicable to taxable years beginning after July 11, 1969, see section 431(d) of Pub. L. 91-172, set out as a note under section 585 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 172, 582 of this title.

PART II.—MUTUAL SAVINGS BANKS, ETC.

Sec.
591. Deduction for dividends paid on deposits.
592. Deduction for repayment of certain loans.
593. Reserves for losses on loans.
594. Alternative tax for mutual savings banks conducting life insurance business.
595. Foreclosure on property securing loans.
596. Limitation on dividends received deduction.

AMENDMENTS

1969—Pub. L. 91-172, title IV, § 434(b)(2), Dec. 30, 1969, 83 Stat. 625, added item 596.

1962—Pub. L. 87-834, § 6(d), Oct. 16, 1962, 76 Stat. 984, substituted "Reserves for losses on loans" for "Additions to reserve for bad debts" in item 593, and added item 595.

§ 591. Deduction for dividends paid on deposits.

In the case of mutual savings banks, cooperative banks, and domestic building and loan associations and other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, there shall be allowed as deductions in computing taxable income amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw. (Aug. 16, 1954, ch. 736, 68A Stat. 204; Oct. 16, 1962, Pub. L. 87-834, § 6(f), 76 Stat. 984.)

AMENDMENTS

1962—Pub. L. 87-834 included other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, and authorized amounts paid as interest as a deduction.

CROSS REFERENCES

Partial exclusion of dividends received by individuals, see section 116 of this title.

Special deduction for dividends received by corporation, see section 243 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 116, 243, 593, 861, 6223, 6323 of this title.

§ 592. Deduction for repayment of certain loans.

In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank without capital stock organized and operated for mutual purposes and without profit, there shall be allowed as deductions in computing taxable income amounts paid by the taxpayer during the taxable year in repayment of loans made before September 1, 1951, by (1) the United States or any agency or instrumentality thereof which is wholly owned by the United States, or (2) any mutual fund established under the authority of the laws of any State (Aug. 16, 1954, ch. 736, 68A Stat. 205.)

§ 593. Reserves for losses on loans.

(a) Organizations to which section applies.

This section shall apply to any mutual savings bank not having capital stock represented by shares, domestic building and loan association, or cooperative bank without capital stock organized and operated for mutual purposes and without profit.

(b) Addition to reserves for bad debts.

(1) In general.

For purposes of section 166(c), the reasonable addition for the taxable year to the reserve for bad debts of any taxpayer described in subsection (a) shall be an amount equal to the sum of—

(A) the amount determined to be a reasonable addition to the reserve for losses on nonqualifying loans, computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(3), plus

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph (2), (3), or (4), whichever amount is the largest, but the amount determined under this subparagraph shall in no case be greater than the larger of—

(i) the amount determined under paragraph (4), or

(ii) the amount which, when added to the amount determined under subparagraph (A), equals the amount by which 12 percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of such year (taking into account any portion thereof attributable to the period before the first taxable year beginning after December 31, 1951).

(2) Percentage of taxable income method.

(A) In general.

Subject to subparagraphs (B), (C), and (D), the amount determined under this paragraph for the taxable year shall be an amount equal to the applicable percentage of the taxable income for such year (determined under the following table):

For a taxable year beginning in—	The applicable percentage under this paragraph shall be—
1969	60 percent.
1970	57 percent.
1971	54 percent.
1972	51 percent.
1973	49 percent.
1974	47 percent.
1975	45 percent.
1976	43 percent.
1977	42 percent.
1978	41 percent.
1979 or thereafter	40 percent.

(B) Reduction of applicable percentage in certain cases.

If, for the taxable year, the percentage of the assets of a taxpayer described in subsection (a), which are assets described in section 7701(a)(19)(C), is less than—

(i) 82 percent of the total assets in the case of a taxpayer other than a mutual savings bank, the applicable percentage for such year provided by subparagraph (A) shall be reduced by ¾ of 1 percentage point for each 1 percentage point of such difference, or

(ii) 72 percent of the total assets in the case of a mutual savings bank, the applicable percentage for such year provided by subparagraph (A) shall be reduced by 1½ percentage points for each 1 percentage point of such difference.

If, for the taxable year, the percentage of the assets of such taxpayer which are assets described in section 7701(a)(19)(C) is less than 60 percent (50 percent for a taxable year beginning before 1973 in the case of a mutual savings bank), this paragraph shall not apply.

(C) Reduction for amounts referred to in paragraph (1)(A).

The amount determined under subparagraph (A) shall be reduced by that portion of the amount referred to in paragraph (1)(A) for the taxable year (not in excess of 100 percent) which bears the same ratio to such amount as (i) 18 percent (28 percent in the case of mutual savings banks) bears to (ii) the percentage of the assets of the taxpayer for such year which are not assets described in section 7701(a)(19)(C).

(D) Overall limitation on paragraph.

The amount determined under this paragraph shall not exceed the amount necessary to increase the balance at the close of the taxable year of the reserve for losses on qualifying real property loans to 6 percent of such loans outstanding at such time.

(E) Computation of taxable income.

For purposes of this paragraph, taxable income shall be computed—

(i) by excluding from gross income any amount included therein by reason of subsection (f),

(ii) without regard to any deduction allowable for any addition to the reserve for bad debts,

(iii) by excluding from gross income an amount equal to the net gain for the taxable year arising from the sale or exchange of stock of a corporation or of obligations the interest on which is excludable from gross income under section 103,

(iv) by excluding from gross income an amount equal to the lesser of ⅜ of the net long-term capital gain for the taxable year or ⅜ of the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii), and

(v) by excluding from gross income dividends with respect to which a deduction is allowable by part VIII of subchapter B, reduced by an amount equal to the applicable percentage (determined under subparagraphs (A) and (B)) of the dividends received deduction (determined without regard to section 596) for the taxable year.

(3) Percentage method.

The amount determined under this paragraph to be a reasonable addition to the reserve for losses on qualifying real property loans shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2), reduced by the amount referred to in paragraph (1)(A) for the taxable year.

(4) Experience method.

The amount determined under this paragraph for the taxable year shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(3).

(5) Determination of reserve for percentage method.

For purposes of paragraph (3), the amount deemed to be the balance of the reserve for losses on loans at the beginning of the taxable year shall be the total of the balances at such time of the reserve for losses on nonqualifying loans, the reserve for losses on qualifying real property loans, and the supplemental reserve for losses on loans.

(c) Treatment of reserve for bad debts.

(1) Establishment of reserves.

Each taxpayer described in subsection (a) which uses the reserve method of accounting for bad debts shall establish and maintain a reserve for losses on qualifying real property loans, a reserve for losses on nonqualifying loans, and a supplemental reserve for losses on loans. For purposes of this title, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans.

(2) Allocation of pre-1963 reserves.

For purposes of this section, the pre-1963 reserves shall, as of the close of December 31, 1962, be allocated to, and constitute the opening balance of—

(A) the reserve for losses on nonqualifying loans,

(B) the reserve for losses on qualifying real property loans, and

(C) the supplemental reserve for losses on loans.

(3) Method of allocation.

The allocation provided by paragraph (2) shall be made—

(A) first, to the reserve described in paragraph (2)(A), to the extent such reserve is not increased above the amount which would be a resonable addition under section 166(c) for a period in which the nonqualifying loans increased from zero to the amount thereof outstanding at the close of December 31, 1962;

(B) second, to the reserve described in paragraph (2)(B), to the extent such reserve is not increased above the amount which would be determined under paragraph (3)(A) or (4) of subsection (b) (whichever such amount is the larger) for a period in which the qualifying real property loans increased from zero to the amount thereof outstanding at the close of December 31, 1962; and

(C) then to the supplemental reserve for losses on loans.

(4) Pre-1963 reserves defined.

For purposes of this subsection, the term "pre-1963 reserves" means the net amount, determined as of the close of December 31, 1962 (after applying subsection (d)(1)), accumulated in the reserve for bad debts pursuant to section 166(c) (or the corresponding provisions of prior revenue laws) for taxable years beginning after December 31, 1951.

(5) Certain pre-1952 surplus.

If after the application of paragraph (3), the opening balance of the reserve described in paragraph (2)(B) is less than the amount described in paragraph (3)(B), then, for purposes of this subsection, the term "pre-1963 reserves" includes so much of the surplus, undivided profits, and bad debt reserves (determined as of December 31, 1962) attributable to the period before the first taxable year beginning after December 31, 1951, as does not exceed the amount by which such opening balance is less than the amount described in paragraph (3)(B). For purposes of the preceding sentence, the surplus, undivided profits, and bad debt reserves attributable to the period before the first taxable year beginning after December 31, 1951, shall be reduced by the amount thereof which is attributable to interest which would have been excludable from gross income under section 22(b)(4) of the Internal Revenue Code of 1939 (relating to interest on governmental obligations) or the corresponding provisions of prior laws. Notwithstanding the second sentence of paragraph (1), any amount which, by reason of the application of the first sentence of this paragraph, is allocated to the reserve described in paragraph (2)(B) shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subsection (b)(1)(B), and for such purpose such amount shall be treated as remaining in such reserve.

(6) Charging of bad debts to reserves.

Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such

loans, and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans; except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

(d) Taxable years beginning in 1962 and ending in 1963.

In the case of a taxable year beginning before January 1, 1963, and ending after December 31, 1962, of a taxpayer described in subsection (a) which uses the reserve method of accounting for bad debts, the taxable income shall be the sum of—

(1) that portion of the taxable income allocable to the part of the taxable year occurring before January 1, 1963, reduced by the amount of the deduction for an addition to a reserve for bad debts which would be allowable under section 166(c) (without regard to the amendments made by section 6 of the Revenue Act of 1962) if such part year constituted a taxable year, plus

(2) that portion of the taxable income allocable to the part of the taxable year occurring after December 31, 1962, reduced by the amount of the deduction for an addition to a reserve for bad debts which would be allowed under section 166(c) (taking into account the amendments made by section 6 of the Revenue Act of 1962) if such part year constituted a taxable year.

For purposes of the preceding sentence, the taxable income shall be determined without regard to any deduction under section 166(c), and the portion thereof allocable to each part year shall be determined on the basis of the ratio which the number of days in such part year bears to the number of days in the entire taxable year.

(e) Loans defined.

For purposes of this section—

(1) Qualifying real property loans.

The term "qualifying real property loan" means any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan, but such term does not include—

(A) any loan evidenced by a security (as defined in section 165(g)(2)(C));

(B) any loan, whether or not evidenced by a security (as defined in section 165(g)(2)(C)), the primary obligor on which is—

(i) a government or political subdivision or instrumentality thereof;

(ii) a bank (as defined in section 581); or

(iii) another member of the same affiliated group;

(C) any loan, to the extent secured by a deposit in or share of the taxpayer; or

(D) any loan which, within a 60-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes.

For purposes of subparagraph (B)(iii), the term "affiliated group" has the meaning assigned to such term by section 1504(a); except that (i) the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1504(a), and (ii) all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(2) Nonqualifying loans.

The term "nonqualifying loan" means any loan which is not a qualifying real property loan.

(3) Loan.

The term "loan" means debt, as the term "debt" is used in section 166.

(f) Distributions to shareholders.

(1) In general.

For purposes of this chapter, any distribution of property (as defined in section 317(a)) by a domestic building and loan association to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591, shall be treated as made—

(A) first out of its earnings and profits accumulated in taxable years beginning after December 31, 1951, to the extent thereof,

(B) then out of the reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under subsection (b)(4),

(C) then out of the supplemental reserve for losses on loans, to the extent thereof,

(D) then out of such other accounts as may be proper.

This paragraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of the association, except that any such distribution shall be treated as made first out of the amount referred to in subparagraph (B), second out of the amount referred to in subparagraph (C), third out of the amount referred to in subparagraph (A), and then out of such other accounts as may be proper. This paragraph shall not apply to any transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies.

(2) Amounts charged to reserve accounts and included in gross income.

If any distribution is treated under paragraph (1) as having been made out of the reserves described in subparagraphs (B) and (C) of such paragraph, the amount charged against such reserve shall be the amount which, when reduced by the amount of tax imposed under this chapter and attributable to the inclusion of such amount in gross income, is equal to the amount of such distribution; and the amount so charged against such reserve shall be included in gross income of the taxpayer.

(3) Special rules.

(A) For purposes of paragraph (1)(B), additions to the reserve for losses on qualifying real property loans for the taxable year in which the distribution occurs shall be taken into account.

(B) For purposes of computing under this section the amount of a reasonable addition to the reserve for losses on qualifying real property loans for any taxable year, any amount charged during any year to such reserve pursuant to the provisions of paragraph (2) shall not be taken into account.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Oct. 16, 1962, Pub. L. 87-834, § 6(a), 76 Stat. 977; Dec. 30, 1969, Pub. L. 91-172, title IV, § 432(a), (b), 83 Stat. 620, 622.)

REFERENCES IN TEXT

The amendments made by section 6 of the Revenue Act of 1962, referred to in subsec. (d) (1), (2), means the amendments made by section 6 of Pub. L. 87-834, which amended this section in its entirety. The text of this section prior to this amendment is set forth in the 1962 amendment note hereunder.

AMENDMENTS

1969—Subsec. (b) (1) (A). Pub. L. 91-172, § 432(a) (1), added provisions for the method of computing the amount of the reasonable addition to the reserve for losses on nonqualifying loans.

Subsec. (b) (2). Pub. L. 91-172, § 432(a) (2), substituted a table of applicable percentages of the taxable income for each year up to 1979 and thereafter for the amount in excess of 60 percent over the amount referred to in former subsec. (b) (1) (A), transferred the remaining provisions of former subsec. (b) (2) to subpar. (D), and added subpars. (B) to (E).

Subsec. (b) (3). Pub. L. 91-172, § 432(a) (2), substantially changed the method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b) (2).

Subsec. (b) (4). Pub. L. 91-172, § 432(a) (2), changed the method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b) (3).

Subsec. (b) (5). Pub. L. 91-172, § 432(a) (2), substituted provisions relating to the determination of reserve for percentage method for provisions relating to the limitation in case of certain domestic building and loan associations.

Subsec. (f). Pub. L. 91-172, § 432(b), excepted the application of par. (1) to any transaction to which section 381 of this title applied.

1962—Pub. L. 87-834 amended section generally to read as above set forth. Prior to such amendment, section read as follows:

"§ 593. Additions to reserve for bad debts.

"In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, the reasonable addition to a reserve for bad debts under section 166(c) shall be determined with due regard to the amount of the taxpayer's surplus or bad debt reserves existing at the close of December 31, 1951. In the case of a taxpayer described in the preceding sentence, the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of—

"(1) the amount of its taxable income for the taxable year, computed without regard to this section, or

"(2) the amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 432(e) of Pub. L. 91-172 provided that: "The amendments made by this section [amending this section and section 7701(a) (19), (32) of this title] shall be effective for taxable years beginning after July 11, 1969."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 6(g) (1) of Pub. L. 87-834 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1962, except that section 593(f) of the Internal Revenue Code of 1954 shall apply to distributions after December 31, 1962, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 57, 172, 582, 585, 595, 596, 1038 of this title.

§ 594. Alternative tax for mutual savings banks conducting life insurance business.

(a) Alternative tax.

In the case of a mutual savings bank not having capital stock represented by shares, authorized under State law to engage in the business of issuing life insurance contracts, and which conducts a life insurance business in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, there shall be imposed in lieu of the taxes imposed by section 11 or section 1201 (a), a tax consisting of the sum of the partial taxes determined under paragraphs (1) and (2):

(1) A partial tax computed on the taxable income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section had not been enacted; and

(2) a partial tax computed on the income of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to such department, at the rates and in the manner provided in subchapter L (sec. 801 and following) with respect to life insurance companies.

(b) Limitations of section.

Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 801. (Aug. 16, 1954, ch. 736, 68A Stat. 205; Mar. 13, 1956, ch. 83, § 5 (3), 70 Stat. 49.)

AMENDMENTS

1956—Subsec. (a) (2). Act Mar. 13, 1956, substituted "the income" for "the taxable income (as defined in section 803)".

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956 applicable only to taxable years beginning after Dec. 31, 1954, see not set out under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 811 of this title.

§ 595. Foreclosure on property securing loans.

(a) Nonrecognition of gain or loss as a result of foreclosure.

In the case of a creditor which is an organization described in section 593(a), no gain or loss shall be recognized, and no debt shall be considered as becoming worthless or partially worthless, as the result of such organization having bid in at foreclosure, or having otherwise reduced to ownership or possession by agreement or process of law, any property which was security for the payment of any indebtedness.

(b) Character of property.

For purposes of sections 166 and 1221, any property acquired in a transaction with respect to which gain or loss to an organization was not recognized by reason of subsection (a) shall be considered as property having the same characteristics as the indebtedness for which such property was security. Any amount realized by such organization with respect to such property shall be treated for purposes of this chapter as a payment on account of such indebtedness, and any loss with respect thereto shall be treated as a bad debt to which the provisions of section 166 (relating to allowance of a deduction for bad debts) apply.

(c) Basis.

The basis of any property to which subsection (a) applies shall be the basis of the indebtedness for which such property was security (determined as of the date of the acquisition of such property), properly increased for costs of acquisition.

(d) Regulatory authority.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to carry out the purposes of this section. (Added Pub. L. 87–834, § 6(b), Oct. 16, 1962, 76 Stat. 982.)

EFFECTIVE DATE

Section 6(g)(2) of Pub L. 87–834 provided that: "The amendment made by subsection (b) [adding this section] shall apply to transactions described in section 595(a) of the Internal Revenue Code of 1954 occurring after December 31, 1962, in taxable years ending after such date."

§ 596. Limitation on dividends received deduction.

In the case of an organization to which section 593 applies and which computes additions to the reserve for losses on loans for the taxable year under section 593(b)(2), the total amount allowed under sections 243, 244, and 245 (determined without regard to this section) for the taxable year as a deduction with respect to dividends received shall be reduced by an amount equal to the applicable percentage for such year (determined under subparagraphs (A) and (B) of section 593(b)(2)) of such total amount. (Added Pub. L. 91–172, title IV, § 434(a), Dec. 30, 1969, 83 Stat. 624.)

EFFECTIVE DATE

Section 434(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section and adding subsec. (d) to section 246 of this title] shall apply to taxable years beginning after July 11, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 593 of this title.

PART III.—BANK AFFILIATES

Sec.
601. Special deduction for bank affiliates.

§ 601. Special deduction for bank affiliates.

In the case of a holding company affiliate (as defined in section 2 of the Banking Act of 1933; 12 U. S. C. 221a (c)), there shall be allowed as a deduction, for purposes of section 535 (b) (8) (relating to the computation of accumulated taxable income) and section 545 (b) (6) (relating to the computation of undistributed personal holding company income), the amount of the earnings and profits which the Board of Governors of the Federal Reserve System certifies to the Secretary or to his delegate has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 5144 of the Revised Statutes (12 U. S. C. 61). The amount of the deduction under this section for any taxable year shall not exceed the taxable income for such year computed without regard to the special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.). The aggregate of the deductions allowable under this section and the credits allowable under the corresponding provision of any prior income tax law for all taxable years shall not exceed the amount required to be devoted under such section 5144 to such purposes. (Aug. 16, 1954, ch. 736, 68A Stat. 206.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 545 of this title.

Subchapter I.—Natural Resources

Part
I. Deductions.
II. Exclusions from gross income.
III. Sales and exchanges.
IV. Mineral production payments.
V. Continental shelf areas.

PART I.—DEDUCTIONS

Sec.
611. Allowance of deduction for depletion.
612. Basis for cost depletion.
613. Percentage depletion.
614. Definition of property.
615. Pre-1970 exploration expenditures.
616. Development expenditures.
617. Deduction and recapture of certain mining exploration expenditures.

AMENDMENTS

1969—Pub. L. 91–172, title V, §§ 503(b), 505(c), Dec. 30, 1969, 83 Stat. 631, 634, added "Part IV. Mineral production payments" and "Part V. Continental shelf areas."

Pub. L. 91–172, title V, § 504(c)(5), Dec. 30, 1969, 83 Stat. 633, substituted "Pre-1970 exploration expenditures" for "Exploration expenditures" in item 615 and substituted "Deduction and recapture of certain mining exploration expenditures" for "Additional exploration expenditures in the case of domestic mining" in item 617.

1966—Pub. L. 89–570, § 1(d), Sept. 12, 1966, 80 Stat. 762, added item 617.

§ 611. Allowance of deduction for depletion.

(a) General rule.

In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary or his delegate. For purposes of this part, the term "mines" includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining under section 613 (c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) Special rules.

(1) Leases.

In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) Life tenant and remainderman.

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) Property held in trust.

In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) Property held by estate.

In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) Cross reference.

For other rules applicable to depreciation of improvements, see section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 207; Sept. 2, 1958, Pub. L. 85-866, title I, § 35, 72 Stat. 1632.)

AMENDMENTS

1958—Subsec. (d) (4). Pub. L. 85-866 substituted "devisees" for "devises".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) (4) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 62, 163, 174, 613, 615, 616, 617, 642, 691, 804, 822, 1082, 4940 of this title.

§ 612. Basis for cost depletion.

Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain upon the sale or other disposition of such property. (Aug. 16, 1954, ch. 736, 68A Stat. 208.)

CROSS REFERENCES

Adjusted basis of mine or deposit, see sections 615 (d) and 616 (c) of this title.

Adjustments to basis in respect of depletion, see section 1016 (a) of this title.

Basis for depreciation, see section 167 (f) of this title.

Basis of property as cost, see section 1012 of this title.

§ 613. Percentage depletion.

(a) General rule.

In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which (1) is treated under section 1245 (relating to gain from disposition of certain depreciable property) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, and (2) is properly allocable to the property. In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) Percentage depletion rates.

The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 22 percent.

(A) oil and gas wells;

(B) sulphur and uranium; and

(C) if from deposits in the United States—anorthosite, clay, laterite, and nephelite syenite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

(2) 15 percent.

If from deposits in the United States—

(A) gold, silver, copper, and iron ore, and

(B) oil shale (except shale described in paragraph (5)).

(3) 14 percent.

(A) metal mines (if paragraph (1)(C) or (2)(A) does not apply), rock asphalt, and vermiculite; and

(B) if paragraph (1)(C), (5), or (6)(B) does not apply, ball clay, bentonite, china clay, sagger clay, and clay used or sold for use for purposes dependent on its refractory properties.

(4) 10 percent.

Asbestos (if paragraph (1)(C) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.

(5) 7½ percent.

Clay and shale used or sold for use in the manufacture of sewer pipe or brick, and clay, shale, and slate used or sold for use as sintered or burned lightweight aggregates.

(6) 5 percent.

(A) gravel, peat, pumice, sand, scoria, shale (except shale described in paragraph (2)(B) or (5)), and stone (except stone described in paragraph (7));

(B) clay used, or sold for use, in the manufacture of drainage and roofing tile, flower pots, and kindred products; and

(C) if from brine wells—bromine, calcium chloride, and magnesium chloride.

(7) 14 percent.

All other minerals, including, but not limited to, aplite, barite, borax, calcium carbonates, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, mollusk shells (including clam shells and oyster shells), phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (1) (C) does not apply) bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc (including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral (other than slate to which paragraph (5) applies) when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term "all other minerals" does not include—

(A) soil, sod, dirt, turf, water, or mosses; or

(B) minerals from sea water, the air, or similar inexhaustible sources.

For the purposes of this subsection, minerals (other than sodium chloride) extracted from brines pumped from a saline perennial lake within the United States shall not be considered minerals from an inexhaustible source.

(c) Definition of gross income from property.

For purposes of this section—

(1) Gross income from the property.

The term "gross income from the property" means, in the case of a property other than an oil or gas well, the gross income from mining.

(2) Mining.

The term "mining" includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) Extraction of the ores or minerals from the ground.

The term "extraction of the ores or minerals from the ground" includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) Treatment processes considered as mining.

The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(B) in the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment;

(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment;

(D) in the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit;

(E) the pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, and the furnacing of quicksilver ores;

(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln food into the kiln, but not including any subsequent process;

(G) in the case of clay to which paragraph (5) or (6) (B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process;

(H) in the case of oil shale—extraction from the ground, crushing, loading into the retort, and retorting, but not hydrogenation, refining, or any other process subsequent to retorting; and

(I) any other treatment process provided for by regulations prescribed by the Secretary or his delegate which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

(5) Treatment processes not considered as mining.

Unless such processes are otherwise provided for in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as "mining": electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.

(d) Application of percentage depletion rates to certain taxable years ending in 1954.

(1) General rule.

At the election of the taxpayer in respect of any property (within the meaning of the Internal Revenue Code of 1939), the percentage specified in subsection (b) in the case of any mine, well, or other natural deposit listed in such subsection shall apply to a taxable year ending after December 31, 1953, to which the Internal Revenue Code of 1939 applies.

(2) Method of computation.

The allowance for depletion, in respect of any property for which an election is made under paragraph (1) for any taxable year, shall be an amount equal to the sum of—

(A) that portion of a tentative allowance, computed under the Internal Revenue Code of 1939 without regard to paragraph (1) of this subsection, which the number of days in such taxable year before January 1, 1954, bears to the total number of days in such taxable year; plus

(B) that portion of a tentative allowance, computed under the Internal Revenue Code of 1939 (as modified solely by the application of paragraph (1) of this subsection), which the number of days in such taxable year after December 31, 1953, bears to the total number of days in such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 208; Sept. 2, 1958, Pub. L. 85-866, title 1, § 36 (a), 72 Stat. 1633; June 30, 1960, Pub. L. 86-564, title III, § 302 (a), (b), 74 Stat. 291; Oct. 16, 1962, Pub. L. 87-834, § 13(e), 76 Stat. 1034; Sept. 2, 1964, Pub. L. 88-571, § 6(a), 78 Stat. 860; Nov. 13, 1966, Pub. L. 89-809, title II, §§ 207(a), 208(a), 209 (a), (b), 80 Stat. 1579, 1580; Dec. 30, 1969, Pub. L. 91-172, title V, §§ 501(a), 502 (a), 83 Stat. 629, 630.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172, § 501(a), reduced the percentage depletion rate on oil and gas wells from 27½ percent to 22 percent, reduced to 22 percent other minerals formerly receiving percentage depletion at a rate of 23 percent, added molybdenum in the category of minerals subject to the 22 percent depletion rate, reduced to 14 percent the rate on minerals formerly receiving depletion at a 15 percent rate except in the case of domestic gold, silver, oil shale, copper, and iron ore, and added provision that for percentage depletion purposes, minerals other than sodium chloride, extracted from brine pumped from a saline perennial lake within the United States are not to be considered minerals from an inexhaustible source.

Subsec. (c)(4). Pub. L. 91-172, § 502(a), added subpar. (H). Former subpar. (H) was redesignated as subpar. (I).

1966—Subsec. (b)(2)(B). Pub. L. 89-809, § 207(a)(1), inserted "clay, laterite, and nephelite syenite" following "anorthosite".

Subsec. (b)(3)(B). Pub. L. 89-809, §§ 207(a)(2), 209(a)(2), substituted "if neither paragraph (2)(B), (5), or (6)(B) applies" for "if paragraph (5)(B) does not apply".

Subsec. (b)(5). Pub. L. 89-809, § 209(a)(1), added par. (5). Former par. (5) redesignated as par. (6).

Subsec. (b)(6). Pub. L. 89-809, §§ 208(a)(1), 209 (a)(1), (3), (4), redesignated former par. (5) as par. (6) and, in par. (6) as so redesignated, struck out "mollusk shells (including clam shells and oyster shells)," and substituted "shale (except shale described in paragraph (5)), and stone (except stone described in paragraph (7))" for "shale, and stone, except stone described in paragraph (6)" in subpar. (A), and struck out "building or paving brick," and "sewer pipe," in subpar. (B). Former par. (6) redesignated as par. (7).

Subsec. (b)(7). Pub. L. 89-809, §§ 208(a)(2), 209(a) (1), (5), redesignated former par. (6) as par. (7), and, in par. (7) as so redesignated, inserted "mollusk shells (including clam shells and oyster shells)," after "marble," and "(other than slate to which paragraph (5) applies" following "any other such mineral".

Subsec. (c)(4)(G). Pub. L. 89-809, § 209(b), substituted "paragraph (5) or (6)(B)" for "paragraph (5)(B)".

1964—Subsec. (b)(2)(B), (6). Pub. L. 88-571 inserted "beryllium" following "antimony" in subpar. (2)(B), and deleted "beryl" following "bauxite" in both subpars. (2)(B) and (6).

1962—Subsec. (a). Pub. L. 87-834 inserted provisions requiring the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property to be decreased by an amount equal to so much of any gain which is treated under section 1245 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, and is properly allocable to the property.

1960—Subsec. (b)(3). Pub. L. 86-564, § 302(a)(1), limited the 15 percent allowance for ball clay, bentonite, china clay, and sagger clay to cases where paragraph (5)(B) does not apply, and authorized a 15 percent allowance, if paragraph (5)(B) does not apply, for clay used or sold for use for purposes dependent on its refractory properties.

Subsec. (b)(5). Pub. L. 86-564, § 302(a)(2), substituted provisions authorizing a 5 percent allowance for clay used, or sold for use, in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products for provisions which authorized a 5 percent allowance for brick and tile clay.

Subsec. (b)(6). Pub. L. 86-564, § 302(a)(3), eliminated provisions which authorized a 15 percent allowance for refractory and fire clay. See subsec. (b)(3) of this section.

Subsec. (c)(2). Pub. L. 86-564, § 302(b)(1), substituted "the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto)" for "the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products", and "such treatment processes" for "the ordinary treatment processes."

Subsec. (c)(4). Pub. L. 86-564, § 302(b)(2), substituted "The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611" for "The term 'ordinary treatment processes' includes the following" in the opening provisions, included cleaning in cl. (B), substituted "ores or minerals which" for "minerals which" and included substantially equivalent processes in cl. (C), included uranium and minerals which are not customarily sold in the form of the crude mineral product and substituted "from the ore or the mineral or minerals from other material from the mine or other natural deposit" for "from the ore, including the furnacing of quicksilver ores" in cl. (D), included the furnacing of quicksilver ores in cl. (E), and added cls. (F)—(H).

Subsec. (c)(5). Pub. L. 86-564, § 302(b)(2), added subsec. (c)(5).

1958—Subsec. (d). Pub. L. 85-866 added subsec. (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 501(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to taxable years beginning after October 9, 1969."

Section 502(b) of Pub. L. 91–172 provided that: "The amendments made by subsection (a) [amending subsec. (c)(4)(G)–(I) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 207(b) of Pub. L. 89–809 provided that: "The amendments made by subsection (a) [amending subsecs. (b)(2) and (b)(3) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]."

Section 208(b) of Pub. L. 89–809 provided that: "The amendments made by subsection (a) [amending subsecs. (b)(6)(A) and (b)(7) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]."

Section 209(c) of Pub. L. 89–809 provided that: "The amendments made by subsections (a) and (b) [adding subsec. (b)(5) and amending subsecs. (b)(3)(B), (b)(6), (b)(7), and (c)(4)(G) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 6(b) of Pub. L. 88–571 provided that: "The amendments made by subsection (a) [to this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as a note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 302(c) of Pub. L. 86–564, as amended by Pub. L. 86–781, § 4, Sept. 14, 1960, 74 Stat. 1018, provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [to subsecs. (b), (3), (5), (6), (c), (2), (4), (5) of this section] shall be applicable only with respect to taxable years beginning after December 31, 1960.

"(2) Calcium carbonates, etc.—

"(A) Election for past years.—In the case of calcium carbonates or other minerals when used in making cement, if an election is made by the taxpayer under subparagraph (C)—

"(i) the amendments made by subsection (b) [to subsecs. (b), (3), (5), (6), (c), (2), (4), (5) of this section] shall apply to taxable years with respect to which such election is effective and

"(ii) provisions having the same effect as the amendments made by subsection (b) [to subsecs.. (b), (3), (5), (6), (c), (2), (4), (5) of this section] shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to taxable years with respect to which such election is effective in lieu of the corresponding provisions of such Code.

"(B) Years to which applicable.—An election made under subparagraph (C) to have the provisions of this paragraph apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which—

"(i) the assessment of a deficiency,

"(ii) the refund or credit of an overpayment, or

"(iii) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this paragraph [Sept. 14, 1960] by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this paragraph.

"(C) Time and manner of election.—An election to have the provisions of this paragraph apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subparagraph (F), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

"(D) Statutes of limitation.—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the application of the amendments made by subsection (b) [to subsecs. (c), (2), (4), (5) of this section] may be made with respect to any taxable year to which such amendments apply under an election made under subparagraph (C), and the period within which a claim for refund or credit of an overpayment attributable to the application of such amendments may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subparagraph (C). An election by a taxpayer under subparagraph (C) shall be considered as a consent to the application of the provisions of this subparagraph.

"(E) Terms; applicability of other laws.—Except where otherwise distinctly expressed or manifestly intended, terms used in this paragraph shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this paragraph as if this paragraph were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

"(F) Regulations.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph."

EFFECTIVE DATE OF 1958 AMENDMENT

Subsec. (d) of this section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

REFUND OR CREDIT OF OVERPAYMENTS; LIMITATIONS; INTEREST

Section 36 (b) of Pub. L. 85–866 provided that: "If refund or credit of any overpayment resulting from the application of the amendment made by subsection (a) of this section [adding subsec. (d) of this section] is prevented on the date of the enactment of this Act [Sept. 2, 1958], or within 6 months from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within 6 months from such date. No interest shall be paid on any overpayment resulting from the application of the amendment made by subsection (a) of this section [adding subsec. (d) of this section]."

ELECTION FOR CLAY AND SHALE USED IN MANUFACTURE OF CLAY PRODUCTS

Pub. L. 87–312, Sept. 26, 1961, 75 Stat. 674, provided:

"That (a) *Election for past years.*—In the case of brick and tile clay, fire clay, or shale used by the mine-owner or operator in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products (without regard to the applicable rate of percentage depletion), if an election is made under subsection (c), for the purpose of applying section 613(c) of the Internal Revenue Code of 1954 [subsec. (c) of this section] (and corresponding provision of the Internal Revenue Code of 1939) for each of the taxable years with respect to which the election is effective—

"(1) gross income from the property shall be 50 per centum of the amount for which the manufactured products are sold during the taxable year except that with respect to such manufactured products, gross income from the property shall not exceed an amount

equal to $12.50 multiplied by the number of short tons used in the manufactured products sold during the taxable year, and

"(2) for purposes of computing the 50 per centum limitation under section 613(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section] (or the corresponding provision of the Internal Revenue Code of 1939), the taxable income from the property (computed without allowance for depletion) shall be 50 per centum of the taxable income from the manufactured products sold during the taxable year (computed without allowance for depletion).

"(b) *Years to which applicable.*—An election made under subsection (c) to have the provisions of this section apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which—

"(1) the assessment of a deficiency,

"(2) the refund or credit of an overpayment, or

"(3) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this Act [Sept. 26, 1961] by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this Act [Sept. 26, 1961].

"(c) *Time and manner of election.*—An election to have the provisions of this section apply shall be made by the taxpayer on or before the sixtieth day after the date of publication in the Federal Register of final regulations issued under authority of subsection (f), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

"(d) *Statues of limitation.*—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the election under subsection (c) may be made with respect to any taxable year for which such election is effective, and the period within which a claim for refund or credit of an overpayment attributable to the election under such subsection may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subsection (c). An election by a taxpayer under subsection (c) shall be considered as a consent to the application of the provisions of this subsection.

"(e) *Terms; applicability of other laws.*—Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

"(f) *Regulations.*—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section."

ELECTION FOR QUARTZITE AND CLAY USED IN PRODUCTION OF REFRACTORY PRODUCTS

Pub. L. 87-321, § 2, Sept. 26, 1961, 75 Stat. 683, provided that:

"(a) *Election for past years.*—If an election is made under subsection (c), in the case of quartzite and clay used by the mine owner or operator in the production of refractory products, for the purpose of applying section 613 (c) of the Internal Revenue Code of 1954 [subsec. (c) of this section] (and corresponding provisions of the Internal Revenue Code of 1939) for each of the taxable years with respect to which the election is effective—

"(1) the term 'ordinary treatment processes' shall include crushing, grinding, and separating the mineral from waste, but shall not include any subsequent process; and

"(2) the gross income from mining for each short ton of such quartzite or clay used in the production of all refractory products sold during the taxable year shall be equal to 87½ percent of the lesser of—

"(A) the average lowest published or advertised price, or

"(B) the average lowest actual selling price,

at which, during the taxable year, the mine owner or operator offered to sell, or sold, such quartzite or clay (in the form and condition of such products after the application of only the processes described in paragraph (1) and before transportation from the plant in which such processes were applied). For purposes of this paragraph, exceptional, unusual, or nominal sales or selling prices shall be disregarded. If the mine owner or operator makes no sales of, or makes only exceptional, unusual, or nominal sales of, such quartzite or clay after application of only the processes described in paragraph (1), then in lieu of the price provided for in subparagraph (A) or (B) there shall be used the average lowest recognized selling price for the taxable year for such quartzite or clay in the marketing area of the mine owner or operator published in a trade journal or other industry publication.

"(b) *Years to which applicable.*—An election made under subsection (c) to have the provisions of this section apply shall be effective on and after January 1, 1951, for all taxable years beginning before January 1, 1961, in respect of which—

"(1) the assessment of a deficiency,

"(2) the refund or credit of an overpayment, or

"(3) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this Act [Sept. 26, 1961] by the operation of any law or rule of law. Such election shall also be effective on and after January 1, 1951, for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this Act [Sept. 26, 1961].

"(c) *Time and manner of election.*—An election to have the provisions of this section apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subsection (f), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

"(d) *Statutes of limitations.*—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the election under subsection (c) may be made with respect to any taxable year for which such election is effective, and the period within which a claim for refund or credit of an overpayment attributable to the election under such subsection may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subsection (c). An election by a taxpayer under subsection (c) shall be considered as a consent to the application of the provisions of this subsection.

"(e) *Terms; applicability of other laws.*—Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

"(f) *Regulations.*—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section."

CROSS REFERENCES

Allowance of deduction for depletion, see section 611 of this title.

Percentage depletion inapplicable to certain owners of coal or iron ore, see section 631 (c) of this title.

Sale of oil and gas properties, surtax on sale, see section 632 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 381, 611, 614, 617, 631, 636, 1082, 4940 of this title.

§ 614. Definition of property.

(a) General rule.

For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) Special rules as to operating mineral interests in oil and gas wells.

In the case of oil and gas wells—

(1) In general.

Except as otherwise provided in this subsection—

(A) all of the taxpayer's operating mineral interests in a separate tract or parcel of land shall be combined and treated as one property, and

(B) the taxpayer may not combine an operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land.

(2) Election to treat operating mineral interests as separate properties.

If the taxpayer has more than one operating mineral interest in a single tract or parcel of land, he may elect to treat one or more of such operating mineral interests as separate properties. The taxpayer may not have more than one combination of operating mineral interests in a single tract or parcel of land. If the taxpayer makes the election provided in this paragraph with respect to any interest in a tract or parcel of land, each operating mineral interest which is discovered or acquired by the taxpayer in such tract or parcel of land after the taxable year for which the election is made shall be treated—

(A) if there is no combination of interests in such tract or parcel, as a separate property unless the taxpayer elects to combine it with another interest, or

(B) if there is a combination of interests in such tract or parcel, as part of such combination unless the taxpayer elects to treat it as a separate property.

(3) Certain unitization or pooling arrangements.

(A) In general.

Under regulations prescribed by the Secretary or his delegate, if one or more of the taxpayer's operating mineral interests participate, under a voluntary or compulsory unitization or pooling agreement, in a single cooperative or unit plan of operation, then for the period of such participation—

(i) they shall be treated for all purposes of this subtitle as one property, and

(ii) the application of paragraphs (1), (2), and (4) in respect of such interests shall be suspended.

(B) Limitation.

Subparagraph (A) shall apply to a voluntary agreement only if all the operating mineral interests covered by such agreement—

(i) are in the same deposit, or are in 2 or more deposits the joint development or production of which is logical from the standpoint of geology, convenience, economy, or conservation, and

(ii) are in tracts or parcels of land which are contiguous or in close proximity.

(C) Special rule in the case of arrangements entered into a taxable years beginning before January 1, 1964.

If—

(i) two or more of the taxpayer's operating mineral interests participate under a voluntary or compulsory unitization or pooling agreement entered into in any taxable year beginning before January 1, 1964, in a single cooperative or unit plan of operation,

(ii) the taxpayer, for the last taxable year beginning before January 1, 1964, treated such interests as two or more separate properties, and

(iii) it is determined that such treatment was proper under the law applicable to such taxable year,

such taxpayer may continue to treat such interests in a consistent manner for the period of such participation.

(4) Manner, time, and scope of election.

(A) Manner and time.

Any election provided in paragraph (2) shall be made for each operating mineral interest, in the manner prescribed by the Secretary or his delegate by regulations, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1963, or the first taxable year in which any expenditure for development or operation in respect of such operating mineral interest is made by the taxpayer after the acquisition of such interest.

(B) Scope.

Any election under paragraph (2) shall be for all purposes of this subtitle and shall be binding on the taxpayer for all subsequent taxable years.

(5) Treatment of certain properties.

If, on the day preceding the first day of the first taxable year beginning after December 31, 1963, the taxpayer has any operating mineral interests which he treats under subsection (d) of this section (as in effect before the amendments made by the Revenue Act of 1964), such treatment shall be continued and shall be deemed to have been adopted pursuant to paragraphs (1) and (2) of this subsection (as amended by such Act).

(c) Special rules as to operating mineral interests in mines.

(1) Election to aggregate separate interests.

Except in the case of oil and gas wells, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an

operating unit, he may elect (for all purposes of this subtitle)—

(A) to form an aggregation of, and to treat as one property, all such interests owned by him which comprise any one mine or any two or more mines; and

(B) to treat as a separate property each such interest which is not included within an aggregation referred to in subparagraph (A).

For purposes of this paragraph, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. For purposes of this paragraph, a taxpayer may elect to form more than one aggregation of operating mineral interests within any one operating unit; but no aggregation may include any operating mineral interest which is a part of a mine without including all of the operating mineral interests which are a part of such mine in the first taxable year for which the election to aggregate is effective, and any operating mineral interest which thereafter becomes a part of such mine shall be included in such aggregation.

(2) Election to treat a single interest as more than one property.

Except in the case of oil and gas wells, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted by means of two or more mines for which expenditures for development or operation have been made by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary or his delegate, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary or his delegate, be included as a part of an aggregation in accordance with paragraphs (1) and (3), but the provisions of paragraph (4) shall not apply with respect to such separate property. The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary or his delegate.

(3) Manner and scope of election.

(A) In general.

Except as provided in subparagraph (D), the election provided by paragraph (1) shall be made for each operating mineral interest, in accordance with regulations prescribed by the Secretary or his delegate, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1957, or the first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. Except as provided in subparagraph (D), the election provided by paragraph (2) shall be made for any property, in accordance with regulations prescribed by the Secretary or his delegate, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years in the later: The first taxable year beginning after December 31, 1957, or the first taxable year in which expenditures for development or operation of more than one mine in respect of the property are made by the taxpayer after the acquisition of the property. No election may be made pursuant to this subparagraph for any operating mineral interest which constitutes part or all of an operating unit if the taxpayer makes an election pursuant to subparagraph (B) with respect to any operating mineral interest which constitutes part or all of such operating unit.

(B) Taxable years beginning before January 1, 1958.

The election provided by paragraph (1) may, at the election of the taxpayer, be made for each operating mineral interest, in accordance with regulations prescribed by the Secretary or his delegate, within the time provided in subparagraph (D), for whichever of the following taxable years is the later (not including any taxable year in respect of which an assessment of deficiency is prevented on the date of the enactment of the Technical Amendments Act of 1958 by the operation of any law or rule of law): The first taxable year of the taxpayer which begins after December 31, 1953, and ends after August 16, 1954, or the first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest. The election provided by paragraph (2) may, at the election of the taxpayer, be made for any property, in accordance with regulations prescribed by the Secretary or his delegate, within the time prescribed in subparagraph (D), for whichever of the following taxable years is the later (not including any taxable year in respect of which an assessment of deficiency is prevented on the date of the enactment of the Technical Amendments Act of 1958 by the operation of any law or rule of law): The first taxable year beginning after December 31, 1953, and ending after August 16, 1954, or the first taxable year in which expenditures for development or operation of more than one mine in respect of the property are made by the taxpayer after the acquisition of the property.

(C) Effect.

An election made under paragraph (1) or (2) shall be binding upon the taxpayer for all subsequent taxable years, except that the Secretary

or his delegate may consent to a different treatment of any interest with respect to which an election has been made.

(D) Election after final regulations.

Notwithstanding any other provision of this paragraph the time for making an election under paragraph (1) or (2) shall not expire prior to the first day of the first month which begins more than 90 days after the date of publication in the Federal Register of final regulations issued under the authority of this subsection.

(E) Statute of limitations.

If the taxpayer makes an election pursuant to subparagraph (B) and if assessment of any deficiency for any taxable year resulting from such election is prevented on the first day of the first month which begins more than 90 days after the date of publication in the Federal Register of final regulations issued under authority of this subsection, or at any time within one year after such day, by the operation of any law or rule of law, such assessment may, nevertheless, be made if made within one year after such day. An election by a taxpayer pursuant to subparagraph (B) shall be considered as a consent to the assessment pursuant to this subparagraph of any such deficiency. If refund or credit of any overpayment of income tax resulting from an election made pursuant to subparagraph (B) is prevented on such day, or at any time within one year after such day, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year after such day. This subparagraph shall not apply to any taxable year in respect of which an assessment of a deficiency, or a refund or credit of an overpayment, as the case may be, is prevented by the operation of any law or rule of law on the date of the enactment of the Technical Amendments Act of 1958.

(4) Special rule as to deductions under section 615 (a) prior to aggregation.

(A) In general.

If an aggregation of operating mineral interests formed under paragraph (1) includes any interest or interests in respect of which exploration expenditures, paid or incurred after the acquisition of such interest or interests, were deducted by the taxpayer under section 615 (a) for any taxable year all or any portion of which precedes the date on which such aggregation becomes effective, or the date on which such interest or interests become a part of such aggregation (as the case may be), then the tax imposed by this chapter for such taxable year shall be recomputed as provided in subparagraph (B). In the case of any taxable year beginning before January 1, 1958, this subparagraph shall apply to exploration expenditures deducted in respect of any interest or interests for such taxable year, only if such interest or interests constitute part or all of any operating unit with respect to which the taxpayer makes an election pursuant to paragraph (3) (B) which is applicable with respect to such taxable year.

(B) Recomputation of tax.

A recomputation of the tax imposed by this chapter shall be made for each taxable year described in subparagraph (A) for which exploration expenditures were deducted as though, for each such year, an election had been made to aggregate the separate operating mineral interest or interests with respect to which such exploration expenditures were deducted with those operating mineral interests included in the aggregation formed under paragraph (1) in respect of which any expenditure for exploration, development, or operation had been made by the taxpayer before or during the taxable year to which such election would apply. A recomputation of the tax imposed by this chapter (or by the corresponding provisions of the Internal Revenue Code of 1939) shall also be made for taxable years affected by the recomputation described in the preceding sentence. If the tax so recomputed for any taxable year or years, by reason of the application of this paragraph, exceeds the tax liability previously determined for such year or years, such excess shall be taken into account in the first taxable year to which the election to aggregate under paragraph (1) applies and succeeding taxable years as provided in subparagraph (C).

(C) Increase in tax.

The tax imposed by this chapter for the first taxable year to which the election to aggregate under paragraph (1) applies, and for each succeeding taxable year until the full amount of the excess described in subparagraph (B) has been taken into account, shall be increased by an amount equal to the quotient obtained by dividing such excess by the total number of taxable years described in subparagraph (A) in respect of which—

(i) exploration expenditures were deducted by the taxpayer under section 615 (a), and

(ii) the recomputation of tax described in the first sentence of subparagraph (B) results in an increase in tax or a reduction of a net operating loss.

If the taxpayer dies or ceases to exist, then so much of the excess described in subparagraph (B) as was not taken into account under the preceding sentence for taxable years preceding such death, or such cessation of existence, shall be taken into account for the taxable year in which such death, or such cessation of existence, occurs.

(D) Basis adjustment.

If the tax liability of a taxpayer is increased by reason of the application of this paragraph, proper adjustments shall be made with respect to the basis of the aggregated property owned by such taxpayer, in accordance with regulations prescribed by the Secretary or his delegate, as though the tax liability of the taxpayer for the prior taxable year or years had

been determined in accordance with the recomputation of tax described in subparagraph (B).

(d) Operating mineral interests defined.

For purposes of this section, the term 'operating mineral interest' includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the 50 percent limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(e) Special rule as to nonoperating mineral interests.

(1) Aggregation of separate interests.

If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary or his delegate shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary or his delegate consents to a different treatment.

(2) Nonoperating mineral interests defined.

For purposes of this subsection, the term "nonoperating mineral interests" includes only interests which are not operating mineral interests.

(Aug. 16, 1954, ch. 736, 68A Stat. 210; Sept. 2, 1958, Pub. L. 85-866, title I, § 37 (a—d), 72 Stat. 1633-1637; Feb. 26, 1964, Pub. L. 88-272, title II, § 226 (a), (b), 78 Stat. 94, 96.)

REFERENCES IN TEXT

The Revenue Act of 1964, referred to in subsec. (b), means Pub. L. 88-272. See short title note set out under section 1 of this title.

Date of the enactment of the Technical Amendments Act of 1958, referred to in subsec. (c) (3) (B), (E), was Sept. 2, 1958.

AMENDMENTS

1964—Subsec. (b). Pub. L. 88-272, § 226(a), amended subsec. (b) generally, and among other changes, substituted provisions stating that except as otherwise provided, all of the taxpayer's operating mineral interests in a separate tract or parcel of land will be combined and treated as one property, that the taxpayer may not combine any operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land, that if he has more than one operating mineral interest in a single tract of land he may elect to treat one or more of such interests as separate properties, limited, however, to one combination of interests in a single tract of land, and providing, in the event the election in par. (2) is made with respect to any tract of land, for the treatment of interests discovered or acquired by the taxpayer in such a tract after the taxable year for which the election is made, for provisions which permitted a taxpayer who owned two or more separate operating mineral interests which constituted all or a part of an operating unit, to elect to form one aggregation and treat as one property any two or more of these interests, treating as separate properties any interests which he did not include in the one aggregation, to aggregate separate interests whether or not in a single tract of land, or contiguous tracts of land, and which forbade him to form more than one aggregation within a single operating unit, inserted provisions in par. (3) relating to unitization or pooling arrangements, and in par (5), providing that if the taxpayer has operating mineral interests on the day preceding the first day of the first taxable year beginning after Dec. 31, 1963, which he treats under subsec. (d) of this section as in effect before amendment by Pub. L. 88-272, he shall continue such treatment and it shall be deemed adopted pursuant to pars. (1) and (2) of this subsection, and eliminated provisions defining "operating mineral interests", and providing for termination of election with respect to mines, excepting oil and gas wells. For definition of "operating mineral interests", see subsec. (d) of this section.

Subsec. (c). Pub. L. 88-272, § 226(b)(1),(2), eliminated par. (5) which defined operating mineral interests, and "1958" which preceded "Special rules" in the subsection catchline.

Subsec. (d). Pub. L. 88-272, § 226(b)(3), amended subsec. (d) generally by substituting the definition of operating mineral interests, for provisions relating to the 1939 Code treatment respecting operating mineral interest in case of oil and gas wells.

Subsec. (e)(2). Pub. L. 88-272, § 226(b)(4), deleted "within the meaning of subsection (b)(3)" from the end of the sentence.

1958—Subsec. (b)(4). Pub. L. 85-866, § 37(a), added subsec. (b)(4).

Subsec. (c). Pub. L. 85-866, § 37(b), added subsec. (c) and redesignated former subsec. (c) as (e).

Subsec. (d). Pub. L. 85-866, § 37(c), added subsec. (d).

Subsec. (e). Pub. L. 85-866, § 37 (b), (d), redesignated former subsec. (c) as (e) and substituted in first sentence of par. (1) "or in two or more adjacent tracts" for "or in two or more contiguous tracts" and "shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property" for "may, on showing of undue hardship, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests as one property".

EFFECTIVE DATE OF 1964 AMENDMENT

Section 226(d) of Pub. L. 88-272 provided that: "The amendments made by subsections (a) and (b) [to this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 37 (e) of Pub. L. 85-866 provided that: "The amendments made by subsections (a) and (c) [adding subsecs. (b) (4) and (d) of this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (b) [to subsecs. (c) and (e) of this section] shall apply with respect to taxable years beginning after December 31, 1957, except that such amendments shall, at the election of the taxpayer made in conformity with such amendments, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendment made by subsection (d) [to subsecs. (e) (1) of this section] shall apply with respect to taxable years beginning after December 31, 1957, except that with respect to any taxpayer such amendment shall, at the election of the taxpayer, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

ALLOCATION OF BASIS IN CERTAIN CASES

Section 226(c) of Pub. L. 88-272 provided that:

"For purposes of the Internal Revenue Code of 1954—

"(1) Fair market value rule.—Except as provided in paragraph (2), if a taxpayer has a section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning after December 31, 1963) of each property included in such aggregation shall be determined by multiplying the adjusted basis of the aggregation by a fraction—

"(A) the numerator of which is the fair market value of such property, and

"(B) the denominator of which is the fair market value of such aggregation.

For purposes of this paragraph, the adjusted basis and the fair market value of the aggregation, and the fair market value of each property included therein,

shall be determined as of the day preceding the first day of the first taxable year which begins after December 31, 1963.

"(2) Allocation of adjustments, etc.—If the taxpayer makes an election under this paragraph with respect to any section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning December 31, 1963) of each property included in such aggregation shall be the adjusted basis of such property at the time it was first included in the aggregation by the taxpayer, adjusted for that portion of those adjustments to the basis of the aggregation which are reasonably attributable to such property. If, under the preceding sentence, the total of the adjusted bases of the interests included in the aggregation exceeds the adjusted basis of the aggregation (as of the day preceding the first day of the first taxable year which begins after December 31, 1963), the adjusted bases of the properties which include such interests shall be adjusted, under regulations prescribed by the Secretary of the Treasury or his delegate, so that the total of the adjusted bases of such interests equals the adjusted basis of the aggregation. An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

"(3) Definitions. For purposes of this subsection—

"(A) Section 614(b) aggregation.—

"The term 'section 614(b) aggregation' means any aggregation to which section 614(b)(1)(A) of the Internal Revenue Code of 1954 (as in effect before the amendments made by subsection (a) of this section) applied for the day preceding the first day of the first taxable year beginning after December 31, 1963.

"(B) Property.

"The term 'property' has the same meaning as is applicable, under section 614 of the Internal Revenue Code of 1954, to the taxpayer for the first taxable year beginning after December 31, 1963."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 57, 617, 636 of this title.

§ 615. Pre-1970 exploration expenditures.

(a) In general.

In the case of expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit, there shall be allowed as a deduction in computing taxable income so much of such expenditures as does not exceed $100,000. This section shall apply only with respect to the amount of such expenditures which, but for this section, would not be allowable as a deduction for the taxable year. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures paid or incurred. In no case shall this section apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas.

(b) Election of taxpayer.

If the taxpayer elects, in accordance with regulations prescribed by the Secretary or his delegate, to treat as deferred expenses any portion of the amount deductible for the taxable year under subsection (a), such portion shall not be deductible in the manner provided in subsection (a) but shall be deductible on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made under this subsection for any taxable year shall be binding for such year.

(c) Limitation.

(1) In general.

This section shall not apply to any amount paid or incurred to the extent that it would, when added to the amounts which have been deducted under subsection (a) and the amounts which have been treated as deferred expenses under subsection (b), or the corresponding provisions of prior law, exceed $400,000.

(2) Amounts taken into account.

For purposes of paragraph (1), there shall be taken into account amounts deducted and amounts treated as deferred expenses by—

(A) the taxpayer, and

(B) any individual or corporation who has transferred to the taxpayer any mineral property.

(3) Application of paragraph (2)(B).

Paragraph (2)(B) shall apply with respect to all amounts deducted and all amounts treated as deferred expenses which were paid or incurred before the latest such transfer from the individual or corporation to the taxpayer. Paragraph (2)(B) shall apply only if—

(A) the taxpayer acquired any mineral property from the individual or corporation under circumstances which make paragraph (7), (8), (11), (15), (17), (20), or (22) of section 113(a) of the Internal Revenue Code of 1939 apply to such transfer;

(B) the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under this section had the distributor or transferor corporation elected to defer such expenses; or

(C) the taxpayer acquired any mineral property from the individual or corporation under circumstances which make section 334(b), 362(a) and (b), 372(a), 373(b)(1), 1051, or 1082 apply to such transfer.

(d) Adjusted basis of mine or deposit.

The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, but such amounts, and the adjustments to basis provided in section 1016 (a)(10) shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

(e) Election to have section apply.

This section (other than subsections (f) and (g)) shall apply only if the taxpayer so elects in such manner as the Secretary or his delegate may by regulations prescribe. Such election shall be made before the expiration of 3 years after the time prescribed by law (determined without any extension thereof) for filing the return for the first taxable year ending after the date of the enactment of this subsection in

which expenditures described in subsection (a) are paid or incurred after such date. Such election may not be revoked after the expiration of such 3 years.

(f) Section 615 and section 617 elections to be mutually exclusive.

A taxpayer who has made an election under subsection (e) (which he has not revoked) may not make an election under section 617(a). A taxpayer who has made an election under section 617(a) (which he has not revoked) may not make an election under subsection (e) of this section.

(g) Effect of transfer of mineral property.

(1) Transfer before election.

If—

(A) any person transfers any mineral property to another person in a transaction as a result of which the basis of such property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, and

(B) the transferor has not, at the time of the transfer, made an election under either subsection (a) of section 617 or subsection (e) of this section,

then no election by the transferor under either such subsection shall apply with respect to expenditures which are made by the transferor after the date of the enactment of this subsection and before the date of the transfer and which are properly chargeable to such property. For purposes of the preceding sentence, a transferor of mineral property who made an election under subsection (a) of section 617 or subsection (e) of this section before the transfer but who revokes such election after the transfer shall be treated with respect to such property as not having made an election under either such subsection.

(2) Effect of election by transferee under section 617.

If—

(A) the taxpayer receives mineral property in a transaction described in paragraph (1)(A),

(B) an election made by the transferor under subsection (e) applies with respect to expenditures which are made by him after the date of the enactment of this subsection and before the date of the transfer and which are properly chargeable to such property, and

(C) the taxpayer has made or makes an election under section 617(a),

then in applying section 617 with respect to the transferee, the amounts allowed as deductions under this section to the transferor, which (but for the transferor's election) would be reflected in the adjusted basis of such property in the hands of the transferee, shall be treated as expenditures allowed as deductions under section 617(a) to the transferor. Notwithstanding subsections (b) and (d) of this section (and section 381(c)(10)), any deferred expenses described in subsection (b) which are not allowed as deductions to the transferor for a period before the transfer may not be deducted by the transferee and in his hands shall be charged to capital account.

(h) Termination.

The provisions of this section shall not apply with respect to expenditures paid or incurred after December 31, 1969. (Aug. 16, 1954, ch. 736, 68A Stat. 211; July 6, 1960, Pub. L. 86–594, § 1, 74 Stat. 333; Sept. 12, 1966, Pub. L. 89–570, § 2(a), 80 Stat. 763; Dec. 30, 1969, Pub. L. 91–172, title V, § 504(a), 83 Stat. 632.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsecs. (e) and (g)(1) following (B), (g)(2)(B), means Sept. 12, 1966, the date of enactment of Pub. L. 89–570 which added such subsecs.

AMENDMENTS

1969—Pub. L. 91–172 substituted "Pre-1970 exploration expenditures" for "Exploration expenditures" in the section catchline, and added subsec. (h).

1966—Subsecs. (e)—(g). Pub. L. 89–570 added subsecs. (e)—(g).

1960—Subsec. (c). Pub. L. 86–594 amended subsection generally, and among other changes, substituted provisions making section inapplicable to any amount paid or incurred to the extent that it would, when added to the amounts which have been deducted under subsec. (a) and the amounts which have been treated as deferred expenses under subsec. (b) or the corresponding provisions of prior law, exceed $400,000, for provisions which made section inapplicable to any amount paid or incurred in any taxable year if in any four preceding years a deduction or election has been allowed or exercised, and eliminated provisions which made par. (2)(B) applicable if the taxpayer acquired any mineral property under circumstances which made paragraph (13) of section 113(a) of the Internal Revenue Code of 1939 applicable to the transfer.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 504(d) of Pub. L. 91–172 provided that:

"(1) **In general.**—The amendments made by this section [amending this section and sections 243, 381, 617, 703 and 1016 of this title] shall apply with respect to exploration expenditures paid or incurred after December 31, 1969.

"(2) **Presumption of election under section 617.**—For purposes of section 617 of the Internal Revenue Code of 1954 [section 617 of this title], an election under section 615(e) of such Code [subsec. (e) of this section], which is effective with respect to exploration expenditures paid or incurred before January 1, 1970, shall be treated as an election under section 617(a) of such Code [section 617(a) of this title] with respect to exploration expenditures paid or incurred after December 31, 1969. The preceding sentence shall not apply to any taxpayer who notifies the Secretary of the Treasury or his delegate (at such time and in such manner as the Secretary or his delegate prescribes by regulations) that he does not desire his election under section 615(e) [subsec. (e) of this section] to be so treated."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86–594 provided that: "The amendment made by the first section of this Act [to subsec. (c) of this section] shall apply only with respect to taxable years beginning after the date of the enactment of this Act [July 6, 1960]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 243, 381, 614, 617, 703, 1016, 1091 of this title.

§ 616. Development expenditures.

(a) In general.

Except as provided in subsection (b), there shall be allowed as a deduction in computing taxable in-

come all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) Election of taxpayer.

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary or his delegate, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) Adjusted basis of mine or deposit.

The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016 (a) (9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611. (Aug. 16, 1954, ch. 736, 68A Stat. 212.)

CROSS REFERENCES

Exception from denial of deduction for capital expenditures, see section 263 (a) (1) (A) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 381, 1016 of this title.

§ 617. Deduction and recapture of certain mining exploration expenditures.

(a) Allowance of deduction.

(1) General rule.

At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under section 613.

(2) Elections.

(A) Method.

Any election under this subsection shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(B) Time and scope.

The election provided by paragraph (1) for the taxable year may be made at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year. Such an election for the taxable year shall apply to all expenditures described in paragraph (1) paid or incurred by the taxpayer during the taxable year or during any subsequent taxable year. Such an election may not be revoked after the last day of the third month following the month in which the final regulations issued under the authority of this subsection are published in the Federal Register, unless the Secretary or his delegate consents to such revocation.

(C) Deficiencies.

The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to an election or revocation of an election under this subsection, shall not expire before the last day of the 2-year period beginning on the day after the date on which such election or revocation of election is made; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(b) Recapture on reaching producing stage.

(1) Recapture.

If, in any taxable year, any mine with respect to which expenditures were deducted pursuant to subsection (a) reaches the producing stage, then—

(A) If the taxpayer so elects with respect to all such mines reaching the producing stage during the taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines, and the amount so included in income shall be treated for purposes of this subtitle as expenditures which (i) are paid or incurred on the respective dates on which the mines reach the producing stage, and (ii) are properly chargeable to capital account.

(B) If subparagraph (A) does not apply with respect to any such mine, then the deduction for depletion under section 611 with respect to the property shall be disallowed until the amount of depletion which would be allowable but for

this subparagraph equals the amount of the adjusted exploration expenditures with respect to such mine.

(2) Elections.

(A) Method.

Any election under this subsection shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(B) Time and scope.

The election provided by paragraph (1) for any taxable year may be made or changed not later than the time prescribed by law for filing the return (including extensions thereof) for such taxable year.

(c) Recapture in case of bonus or royalty.

If an election has been made under subsection (a) with respect to expenditures relating to a mining property and the taxpayer receives or accrues a bonus or a royalty with respect to such property, then the deduction for depletion under section 611 with respect to the bonus or royalty shall be disallowed until the amount of depletion which would be allowable but for this subsection equals the amount of the adjusted exploration expenditures with respect to the property to which the bonus or royalty relates.

(d) Gain from dispositions of certain mining property.

(1) General rule.

Except as otherwise provided in this subsection, if mining property is disposed of the lower of—

(A) the adjusted exploration expenditures with respect to such property, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property.

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of a mining property (other than an undivided interest), the entire amount of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a mining property (or a portion thereof), a proportionate part of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditure to the extent the taxpayer establishes to the satisfaction of the Secretary or his delegate that such expenditure relates neither to the portion (or interest therein) disposed of nor to any mine, in the property held by the taxpayer before the disposition, which has reached the producing stage.

(3) Exceptions and limitations.

Paragraphs (1), (2), and (3) of section 1245(b) (relating to exceptions and limitations with respect to gain from disposition of certain depreciable property) shall apply in respect of this subsection in the same manner and with the same effect as if references in section 1245(b) to section 1245 or any provision thereof were references to this subsection or the corresponding provisions of this subsection and as if references to section 1245 property were references to mining property.

(4) Application of subsection.

This subsection shall apply notwithstanding any other provision of this subtitle.

(e) Basis of property.

(1) Basis.

The basis of any property shall not be reduced by the amount of any depletion which would be allowable but for the application of this section.

(2) Adjustments.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (d)(1).

(f) Definitions.

For purposes of this section

(1) Adjusted exploration expenditures.

The term "adjusted exploration expenditures" means, with respect to any property or mine—

(A) the amount of the expenditures allowed for the taxable year and all preceding taxable years as deductions under subsection (a) to the taxpayer or any other person which are properly chargeable to such property or mine and which (but for the election under subsection (a)) would be reflected in the adjusted basis of such property or mine, reduced by

(B) for the taxable year and for each preceding taxable year, the amount (if any) by which (i) the amount which would have been allowable for percentage depletion under section 613 but for the deduction of such expenditures, exceeds (ii) the amount allowable for depletion under section 611,

properly adjusted for any amounts included in gross income under subsection (b) or (c) and for any amounts of gain to which subsection (d) applied.

(2) Mining property.

The term "mining property" means any property (within the meaning of section 614 after the application of subsections (c) and (e) thereof) with respect to which any expenditures allowed as a deduction under subsection (a)(1) are properly chargeable.

(3) Disposal of coal or domestic iron ore with a retained economic interest.

A transaction which constitutes a disposal of coal or iron ore under section 631(c) shall be treated as a disposition. In such a case, the excess

referred to in subsection (d)(1)(B) shall be treated as equal to the gain (if any) referred to in section 631(c).

(g) Special rules relating to partnership property.

(1) Property distributed to partner.

In the case of any property or mine received by the taxpayer in a distribution with respect to part or all of his interest in a partnership, the adjusted exploration expenditures with respect to such property or mine include the adjusted exploration expenditures (not otherwise included under subsection (f)(1)) with respect to such property or mine immediately prior to such distribution, but the adjusted exploration expenditures with respect to any such property or mine shall be reduced by the amount of gain to which section 751 (b) applied realized by the partnership (as constituted after the distribution) on the distribution of such property or mine.

(2) Property retained by partnership.

In the case of any property or mine held by a partnership after a distribution to a partner to which section 751(b) applied, the adjusted exploration expenditures with respect to such property or mine shall, under regulations prescribed by the Secretary or his delegate, be reduced by the amount of gain to which section 751(b) applied realized by such partner with respect to such distribution on account of such property or mine.

(h) Limitation.

(1) In general.

Subsection (a) shall apply to any amount paid or incurred after December 31, 1969, with respect to any deposit of ore or other mineral located outside the United States, only to the extent that such amount, when added to the amounts which are or have been deducted under subsection (a) and section 615(a) and the amounts which are or have been treated as deferred expenses under section 615(b), or the corresponding provisions of prior law, does not exceed $400,000.

(2) Amounts taken into account.

For purposes of paragraph (1), there shall be taken into account amounts deducted and amounts treated as deferred expenses by—

(A) the taxpayer, and

(B) any individual or corporation who has transferred to the taxpayer any mineral property.

(3) Application of paragraph (2)(B).

Paragraph (2)(B) shall apply with respect to all amounts deducted and all amounts treated as deferred expenses which were paid or incurred before the latest such transfer from the individual or corporation to the taxpayer. Paragraph (2)(B) shall apply only if—

(A) the taxpayer acquired any mineral property from the individual or corporation under circumstances which make paragraph (7), (8), (11), (15), (17), (20), or (22) of section 113(a) of the Internal Revenue Code of 1939 apply to such transfer;

(B) the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under section 615(b) had the distributor or transferor corporation elected to defer such expenses; or

(C) the taxpayer acquired any mineral property from the individual or corporation under circumstances which make section 334(b), 362 (a) and (b), 372(a), 373(b)(1), 1051, or 1082 apply to such transfer.

(Added Pub. L. 89–570, § 1 (a), Sept 12, 1966, 80 Stat. 759, and amended Pub. L. 91–172, title V, § 504(b), Dec. 30, 1969, 83 Stat. 632.)

REFERENCE IN TEXT

Section 113(a) of the Internal Revenue Code of 1939, referred to in subsec. (h)(3)(A), is now covered by various sections of this title. See distribution tables for distribution of said section 113(a) of the Internal Revenue Code of 1939 to sections of this title.

AMENDMENTS

1969—Pub. L. 91–172, § 504(b)(1), substituted "Deduction and recapture of certain mining exploration expenditures" for "Additional exploration expenditures in the case of domestic mining" in the section catchline.

Subsec. (a)(1). Pub. L. 91–172, § 504(b)(2), struck out reference to United States, the Outer Continental Shelf and the Outer Continental Shelf Lands Act from general rule dealing with allowance of deductions for expenditures in ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral.

Subsec. (h). Pub. L. 91–172, § 504(b)(3), substituted provisions imposing limitations on the operation of this section for provision making cross reference to subsecs. (f) and (g) of section 615.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 504(b) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, and for purposes of this section, elections under section 615(e) of this title, effective with respect to exploration expenditures paid or incurred before Jan. 1, 1970, to be treated as an election under subsec. (a) of this section with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d) of Pub. L. 91–172, set out as a note under section 615 of this title.

EFFECTIVE DATE

Section 3 of Pub. L. 89–570 provided that: "The amendments made by this Act [enacting this section and amending sections 170, 301, 312, 341, 453, 615, 703, and 751 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 12, 1966] but only in respect of expenditures paid or incurred after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 301, 312, 341, 381, 453, 615, 703, 751 of this title.

PART II.—EXCLUSIONS FROM GROSS INCOME

Sec.
621. Payments to encourage exploration, development, and mining for defense purposes.

§ 621. Payments to encourage exploration, development, and mining for defense purposes.

There shall not be included in gross income any amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan, and whether or not repayable, for the encouragement of exploration, development, or mining of critical and strategic minerals or metals pursuant to or in connection with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, or any forgiveness or discharge of

any part of such amount. Any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense nor increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but on the repayment of any portion of any such grant or loan which has been expended in accordance with the terms thereof such deductions and such increase in basis shall to the extent of such repayment be allowed as if made at the time of such repayment. (Aug. 16, 1954, ch. 736, 68A Stat. 212.)

PART III.—SALES AND EXCHANGES

Sec.
631. Gain or loss in the case of timber, coal, or domestic iron ore.
632. Sale of oil or gas properties.

AMENDMENTS

1964—Pub. L. 88–272, title II, § 227(b)(2), Feb. 26, 1964, 78 Stat. 98, inserted the reference to domestic iron ore in item 631.

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore.

(a) Election to consider cutting as sale or exchange.

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 6 months before the beginning of such year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary or his delegate, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary or his delegate. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber with a retained economic interest.

In the case of the disposal of timber held for more than 6 months before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest.

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. Such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore—

(1) to a person whose relationship to the person disposing of such iron ore would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore.

(Aug. 16, 1954, ch. 736, 68A Stat. 213; Feb. 26, 1964 Pub. L. 88–272, title II, § 227 (a)(1), (b)(1), 78 Stat. 97, 98.)

AMENDMENTS

1964—Pub. L. 88–272, § 227(b)(1), inserted the reference to domestic iron ore in the section catchline.

Subsec. (c). Pub. L. 88–272, § 227(a)(1), inserted "or domestic iron ore" in the subsection catchline, "or iron

ore mined in the United States" after "coal (including lignite)", "or iron ore" after "coal" wherever appearing, and provided that the subsection shall not apply to any disposal of iron ore to a person whose relationship to the person disposing of such ore would result in the disallowance of losses under section 267 of 717(b), or to a person owned or controlled by the same interests which own or control the person disposing of such iron ore.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88-272, set out as a note under section 272 of this title.

CROSS REFERENCES

Disposal of coal or domestic iron ore, see section 272 of this title.

Gain or loss under this section excluded from net earnings from self-employment, see section 1402 (a) (4) of this title.

Property used in trade or business as including timber, coal or domestic iron ore under this section, see section 1231 (b) (2) of this title.

Tax on foreign corporations not engaged in business in United States, applicability of subsections (b) and (c) of this section, see section 881 (a) of this title.

Tax on nonresident alien individuals, applicability of subsections (b) and (c) of this section to, see section 871 (a) (1) of this title.

Unrelated business taxable income, inapplicability of this section to, see section 512 (b) (5) of this title.

Withholding tax on nonresident aliens, applicability of subsections (b) and (c) of this section to, see section 1441 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 272, 512, 617, 871, 881, 882, 1201, 1231, 1402, 1441 of this title; title 42 section 411.

§ 632. Sale of oil or gas properties.

In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the tax imposed by section 1 attributable to such sale shall not exceed 33 percent of the selling price of such property or interest. (Aug. 16, 1954, ch. 736, 68A Stat. 214; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 803(d)(4), 83 Stat. 684.)

AMENDMENTS

1969—Pub. L. 91-172 substituted "tax" for "surtax" and "33 per cent" for "30 per cent".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91-172, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

PART IV.—MINERAL PRODUCTION PAYMENTS

Sec.
636. Income tax treatment of mineral production payments.

AMENDMENTS

1969—Pub. L. 91-172, title V, § 503(a), Dec. 30, 1969, 83 Stat. 630, added Part heading and section analysis.

§ 636. Income tax treatment of mineral production payments.

(a) Carved-out production payments.

A production payment carved out of mineral property shall be treated, for purposes of this subtitle, as if it were a mortgage loan on the property, and shall not qualify as an economic interest in the mineral property. In the case of a production payment carved out for exploration or development of a mineral property, the preceding sentence shall apply only if and to the extent gross income from the property (for purposes of section 613) would be realized, in the absence of the application of such sentence, by the person creating the production payment.

(b) Retained production payment on sale of mineral property.

A production payment retained on the sale of a mineral property shall be treated, for purposes of this subtitle, as if it were a purchase money mortgage loan and shall not qualify as an economic interest in the mineral property.

(c) Retained production payment on lease of mineral property.

A production payment retained in a mineral property by the lessor in a leasing transaction shall be treated, for purposes of this subtitle, insofar as the lessee (or his successors in interest) is concerned, as if it were a bonus granted by the lessee to the lessor payable in installments. The treatment of the production payment in the hands of the lessor shall be determined without regard to the provisions of this subsection.

(d) Definition.

As used in this section, the term "mineral property" has the meaning assigned to the term "property" in section 614(a).

(e) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 91-172, title V, § 503(a), Dec. 30, 1969, 83 Stat. 630.)

EFFECTIVE DATE

Section 503(c) of Pub. L. 91-172 provided that:

"(1) **General rule.**—The amendments made by this section [adding this section] shall apply with respect to mineral production payments created on or after August 7, 1969, other than mineral production payments created before January 1, 1971, pursuant to a binding contract entered into before August 7, 1969.

"(2) **Election.**—At the election of the taxpayer (made at such time and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations), the amendments made by this section shall apply with respect to all mineral production payments which the taxpayer carved out of mineral properties after the beginning of his last taxable year ending before August 7, 1969. No interest shall be allowed on any refund or credit of any overpayment resulting from such election for any taxable year ending before August 7, 1969.

"(3) **Special rule.**—With respect to a taxpayer who does not elect the treatment provided in paragraph (2) and who carves out one or more mineral production payments on or after August 7, 1969, during the taxable year which includes such date, the amendments made by this section shall apply to such production payments only to the extent the aggregate amount of such production payments exceeds the lesser of—

"(A) the excess of

"(i) the aggregate amount of production payments carved out and sold by the taxpayer during the 12-month period immediately preceding his taxable year which includes August 7, 1969, over

"(ii) the aggregate amount of production payments carved out before August 7, 1969, by the taxpayer during his taxable year which includes such date, or

"(B) the amount necessary to increase the amount of the taxpayer's gross income, within the meaning of chapter 1 of subtitle A of the Internal Revenue Code of

1954 [this title], for the taxable year which includes August 7, 1969, to an amount equal to the amount of deductions (other than any deduction under section 172 of such Code) [section 172 of this title] allowable for such year under such chapter.

The preceding sentence shall not apply for purposes of determining the amount of any deduction allowable under section 611 [section 611 of this title] or the amount of foreign tax credit allowable under section 904 of such Code [section 904 of this title]."

PART V.—CONTINENTAL SHELF AREAS

Sec.
638. Continental shelf areas.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 505(a), Dec. 30, 1969, 83 Stat. 634, added Part heading and section analysis.

§ 638. Continental shelf areas.

For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits—

(1) the term "United States" when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and

(2) the terms "foreign country" and "possession of the United States" when used in a geographical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country or such possession and over which the foreign country (or the United States in case of such possession) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this paragraph shall apply in the case of a foreign country only if it exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation.

No foreign country shall, by reason of the application of this section, be treated as a country contiguous to the United States. (Added Pub. L. 91–172 title V, § 505(a), Dec. 30, 1969, 83 Stat. 634.)

Subchapter J.—Estates, Trusts, Beneficiaries, and Decedents

Part
I. Estates, trusts, and beneficiaries.
II. Income in respect of decedents.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 511 of this title.

PART I.—ESTATES, TRUSTS, AND BENEFICIARIES

Subpart
A. General rules for taxation of estates and trusts.
B. Trusts which distribute current income only.
C. Estates and trusts which may accumulate income or which distribute corpus.
D. Treatment of excess distributions by trusts.
E. Grantors and others treated as substantial owners.
F. Miscellaneous.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 543, 554 of this title.

SUBPART A.—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

Sec.
641. Imposition of tax.
642. Special rules for credits and deductions.
643. Definitions applicable to subparts A, B, C, and D.

§ 641. Imposition of tax.

(a) Application of tax.

The tax imposed by section 1(d) shall apply to the taxable income of estates or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment.

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. (Aug. 16, 1954, ch. 736, 68A Stat. 215; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(d)(3), 83 Stat. 684.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted "The tax imposed by section 1(d)", for "The Taxes imposed by this chapter on individuals".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

CROSS REFERENCES

Charitable trusts subject to tax, see section 511 (b) of this title.

Income from an interest in an estate or trust as gross income, see section 61 (a) (15) of this title.

Rates of tax on individuals, see section 1 of this title.

Returns—

Estates and trusts, see section 6012 (a), (3), (4), (5), (b) (4) of this title.

Joint fiduciaries, see section 6012 (b) (5) of this title.

Taxable income defined, see section 63 of this title.

§ 642. Special rules for credits and deductions.

(a) Credits against tax.

(1) Partially tax-exempt interest.

An estate or trust shall be allowed the credit against tax for partially tax-exempt interest provided by section 35 only in respect of so much of such interest as is not properly allocable to any beneficiary under section 652 or 662. If the estate

or trust elects under section 171 to treat as amortizable the premium on bonds with respect to the interest on which the credit is allowable under section 35, such credit (whether allowable to the estate or trust or to the beneficiary) shall be reduced under section 171 (a) (3).

(2) Foreign taxes.

An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(b) Deduction for personal exemption.

An estate shall be allowed a deduction of $600. A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300. All other trusts shall be allowed a deduction of $100. The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(c) Deduction for amounts paid or permanently set aside for a charitable purpose.

(1) General rule.

In the case of an estate or trust (other than[1] a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170(c) (determined without regard to section 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations.

(2) Amounts permanently set aside.

In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was—

(A) created on or before October 9, 1969, if—

(i) an irrevocable remainder interest is transferred to or for the use of an organization described in section 170(c), or

(ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or

(B) established by a will executed on or befor October 9, 1969, if—

(i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

(ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or

(iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

(3) Pooled income funds.

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 6 months, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments.

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

(5) Definition of pooled income fund.

For purposes of paragraph (3), a pooled income fund is a trust—

(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

[1] So in original.

(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

(E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and

(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is made the rate of return shall be deemed to be 6 percent per annum, except that the Secretary or his delegate may prescribe a different rate of return.

(6) Taxable private foundations.

In the case of a private foundation which is not exempt from taxation under section 501(a) for the taxable year, the provisions of this subsection shall not apply and the provisions of section 170 shall apply.

(d) Net operating loss deduction.

The benefit of the deduction for net operating losses provided by section 172 shall be allowed to estates and trusts under regulations prescribed by the Secretary or his delegate.

(e) Deduction for depreciation and depletion.

An estate or trust shall be allowed the deduction for depreciation and depletion only to the extent not allowable to beneficiaries under sections 167 (h) and 611 (b).

(f) Amortization deductions.

The benefit of the deductions for amortization provided by sections 168, 169, 184, and 187 shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary or his delegate.

(g) Disallowance of double deductions.

Amounts allowable under section 2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary or his delegate, a statement that the amounts have not been allowed as deductions under section 2053 or 2054 and a waiver of the right to have such amounts allowed at any time as deductions under section 2053 or 2054. This subsection shall not apply with respect to deductions allowed under part II (relating to income in respect of decedents).

(h) Unused loss carryovers and excess deductions on termination available to beneficiaries.

If on the termination of an estate or trust, the estate or trust has—

(1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subsections (b) or (c)) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary or his delegate, to the beneficiaries succeeding to the property of the estate or trust.

(i) Cross references.

(1) For disallowance of standard deduction in case of estates and trusts, see section 142(b)(4).

(2) For special rule for determining the time of receipt of dividends by a beneficiary under section 652 or 662, see section 116(c)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Oct. 16, 1962, Pub. L. 87–834, § 13(c)(2)(A), 76 Stat. 1034; Feb. 26, 1964, Pub. L. 88–272, title II, § 201(d)(6) (A), (B), 78 Stat. 32; Oct. 4, 1966, Pub. L. 89–621, § 2(a), 80 Stat. 872; Dec. 30, 1969, Pub. L. 91–172, title II, § 201 (b), title VII, § 704(b)(2), 83 Stat. 558, 669.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–172, § 201(b), designated existing provisions, with minor changes, as par. (1) and added pars. (2) to (6).

Subsec. (f). Pub. L. 91–172, § 704(b)(2), removed reference to emergency or grain storage facilities both in subsec. catchline and in text, and added reference to sections 184 and 187 in text.

1966—Subsec. (g). Pub. L. 89–621 inserted "or of any other person" after "shall not be allowed as a deduction in computing the taxable income of the estate".

1964—Subsec. (a)(3). Pub. L. 88–272, § 201(d)(6)(A), deleted par. (3) which related to dividends received by individuals.

Subsec. (i). Pub. L. 88–272, § 201(d)(6)(B), designated existing provisions as par. (1), and added par. (2).

1962—Subsec. (e). Pub. L. 87–834 substituted a reference to section 167 (h) for a reference to section 167(g).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (c) of this section by section 201(b) of Pub. L. 91–172 applicable with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after Dec. 31, 1969, except that subsec. (c)(5), as amended, applicable to transfers in trust made after July 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment of subsec. (f) by section 704(b)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as a note under section 169 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2(b) of Pub. L. 89–621 provided that: "The amendment made by subsection (a) [amending subsec. (g) of this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1966], but only with respect to amounts paid or incurred, and losses sustained, after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (e) of this section by Pub. L. 87–834 applicable to taxable years beginning after Dec.

31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as a note under section 1245 of this title.

CROSS REFERENCES

Deductions—

Estates and trusts accumulating income or distributing corpus, see section 661 of this title.

Trusts distributing current income only, see section 651 of this title.

Value of gross estate, see section 2053 et seq. of this title.

Limitation on charitable deductions, see section 681 of this title.

Returns by trust claiming charitable deduction under subsection (c) of this section, see section 6034 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 507, 508, 542, 643, 651, 661, 662, 663, 665, 681, 904, 2055, 2522, 4947, 4948, 6034 of this title.

§ 643. Definitions applicable to subparts A, B, C, and D.

(a) Distributable net income.

For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

(1) Deduction for distributions.

No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

(2) Deduction for personal exemption.

No deduction shall be taken under section 642 (b) (relating to deduction for personal exemptions).

(3) Capital gains and losses.

Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642 (c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.

(4) Extraordinary dividends and taxable stock dividends.

For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) Tax-exempt interest.

There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

(6) Income of foreign trust.

In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust created by a United States person. In the case of such a trust, (i) there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges, and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.

(7) Dividends.

There shall be included the amount of any dividends excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends received).

If the estate or trust is allowed a deduction under section 642 (c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642 (c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(b) Income.

For purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.

(c) Beneficiary.

For purposes of this part, the term "beneficiary" includes heir, legatee, devisee.

(d) Foreign trusts created by United States persons.

For purposes of this part, the term "foreign trust created by a United States person" means that portion of a foreign trust (as defined in section 7701(a)(31)) attributable to money or property transferred directly or indirectly by a United States person (as defined in section 7701(a)(30), or under the will of a decedent who at the date of his death was a United

States citizen or resident. (Aug. 16, 1954, ch. 736, 68A Stat. 217; Oct. 16, 1962, Pub. L. 87-834, § 7(a), 76 Stat. 985.)

AMENDMENTS

1962—Subsec. (a)(6). Pub. L. 87-834, § 7(a)(1), substituted "Income of foreign trust" for "Foreign income" in the subsection catchline, designated existing provisions as subpar. (A), and added subpars. (B) and (C).

Subsec. (d). Pub. L. 87-834, § 7(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7(j) of Pub. L. 87-834 provided that: "The amendments made by this section [amending this section and sections 665, 666 and 668 of this title and adding section 669 of this title] (other than by subsections (f), (g) and (h) [adding sections 6048, 6677 and 7701(a)(30), (31) of this title]), shall apply with respect to distributions made after December 31, 1962."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 512, 6166 of this title.

SUBPART B.—TRUSTS WHICH DISTRIBUTE CURRENT INCOME ONLY

Sec.
651. Deduction for trusts distributing current income only.
652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only.

§ 651. Deduction for trusts distributing current income only.

(a) Deduction.

In the case of any trust the terms of which—

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642 (c) (relating to deduction for charitable, etc., purposes),

there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in paragraph (1).

(b) Limitation on deduction.

If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto. (Aug. 16, 1954, ch. 736, 68A Stat. 219.)

CROSS REFERENCES

Deduction for estates and trusts accumulating income or distributing copies, see section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 652, 663 of this title.

§ 652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only.

(a) Inclusion.

Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

(b) Character of amounts.

The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary or his delegate.

(c) Different taxable years.

If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year. (Aug. 16, 1954, ch. 736, 68A Stat. 219.)

CROSS REFERENCES

Computation of deduction for capital gains in case of estate or trust, see section 1202 of this title.

Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus, see section 662 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 116, 642, 1202 of this title.

SUBPART C.—ESTATES AND TRUSTS WHICH MAY ACCUMULATE INCOME OR WHICH DISTRIBUTE CORPUS

Sec.
661. Deductions for estates and trusts accumulating income or distributing corpus.
662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.
663. Special rules applicable to sections 661 and 662.
664. Charitable remainder trusts.

AMENDMENTS

1969—Pub. L. 91-172, title II, § 201(e)(2), Dec. 30, 1969, 83 Stat. 564, added item 664.

§ 661. Deduction for estates and trusts accumulating income or distributing corpus.

(a) Deduction.

In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

(1) any amount of income for such taxable year required to be distributed currently (including

any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and

(2) any other amounts properly paid or credited or required to be distributed for such taxable year;

but such deduction shall not exceed the distributable net income of the estate or trust.

(b) Character of amounts distributed.

The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642 (c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary or his delegate.

(c) Limitation on deduction.

No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust. (Aug. 16, 1954, ch. 736, 68A Stat. 220.)

CROSS REFERENCES

Deduction for trusts distributing current income only, see section 651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 662, 663, 665, 666, 677, 678, 6166 of this title.

§ 662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.

(a) Inclusion.

Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section 661 (a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) Amounts required to be distributed currently.

The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642 (c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase "the amount of income for the taxable year required to be distributed currently" includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) Other amounts distributed.

All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of—

(A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

(b) Character of amounts.

The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642 (c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary or his delegate. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section 642 (c) which is not attributable to income of the taxable year.

(c) Different taxable years.

If the taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited, or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year. (Aug. 16, 1954, ch. 736, 68A Stat. 220.)

CROSS REFERENCES

Computation of deduction for capital gains in cases of estate or trust, see section 1202 of this title.

Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only, see section 652 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 116, 642, 663, 668, 677, 678, 1202 of this title.

§ 663. Special rules applicable to sections 661 and 662.

(a) Exclusions.

There shall not be included as amounts falling within section 661 (a) or 662 (a)—

(1) Gifts, bequests, etc.

Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(2) Charitable, etc., distributions.

Any amount paid or permanently set aside or otherwise qualifying for the deduction provided in section 642 (c) (computed without regard to sections 508(d), 681, and 4948(c)(4)).

(3) Denial of double deduction.

Any amount paid, credited, or distributed in the taxable year, if section 651 or section 661 applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

(b) Distributions in first sixty-five days of taxable year.

(1) General rule.

If within the first 65 days of any taxable year of a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year.

(2) Limitation.

Paragraph (1) shall apply with respect to any taxable year of a trust only if the fiduciary of such trust elects, in such manner and at such time as the Secretary or his delegate prescribes by regulations, to have paragraph (1) apply for such taxable year.

(c) Separate shares treated as separate trusts.

For the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts, including the application of subpart D, shall be determined in accordance with regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 222; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(17), title III, § 331(b), 83 Stat. 528, 598.)

AMENDMENTS

1969—Subsec. (a)(2). Pub. L. 91–172, § 101(j)(17), substituted "sections 508(d), 681, and 4948(c)(4)", for "section 681".

Subsec. (b)(2). Pub. L. 91–172, § 331(b), incorporated existing provisions of subpar. (C) of former first sentence making subsec. (b) applicable only to a trust where the fiduciary elected to have the subsec. apply and part of former second sentence making the election applicable in accordance with prescribed regulations; substituted provisions for regulations to spell out manner and time of election for part of former second sentence requiring the election to be made not later than the time prescribed by law for filing the return for the year, including any extension; and omitted: subpars. (A) and (B) of former first sentence which had provided for application of subsec. (b) only to a trust "(A) which was in existence prior to January 1, 1954" and "(B) which, under the terms of its governing instrument, may not distribute in any taxable year amounts in excess of the income of the preceding taxable year"; part of former second sentence which required the election to be made for first taxable year to which this part is applicable; and the third sentence that "If such election is made with respect to a taxable year, this subsection shall apply to all amounts properly paid or credited within the first 65 days of all subsequent taxable years of such trust."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(2) by section 101(j)(17) of Pub. L. 91–172, to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment of subsec. (b)(2) of this section by section 331(b) of Pub. L. 91–172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§ 664. Charitable remainder trusts.

(a) General rule.

Notwithstanding any other provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary or his delegate, apply in the case of a charitable remainder annuity trust and a charitable remainder unitrust.

(b) Character of distributions.

Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d)(1)(A) or the payment described in subsection (d)(2)(A):

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

For purposes of this section, the trust shall determine the amount of its undistributed capital gain on a cumulative net basis.

(c) Exemption from income taxes.

A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).

(d) Definitions.

(1) Charitable remainder annuity trust.

For purposes of this section, a charitable remainder annuity trust is a trust—

(A) from which a sum certain (which is not less than 5 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) may be paid to or for the use of any person other than an organization described in section 170(c), and

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use.

(2) Charitable remainder unitrust.

For purposes of this section, a charitable remainder unitrust is a trust—

(A) from which a fixed percentage (which is not less than 5 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) may be paid to or for the use of any person other than an organization described in section 170(c), and

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use.

(3) Exception.

Notwithstanding the provisions of paragraphs (2) (A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year—

(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(e) Valuation for purposes of charitable contribution.

For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year. (Added Pub. L. 91–172, title II, § 201(e)(1), Dec. 30, 1969, 83 Stat. 562.)

EFFECTIVE DATE

Section applicable to transfers in trust made after July 31, 1969, see section 201(g)(5), set out as a note under section 170 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 2055, 2522 of this title.

SUBPART D.—TREATMENT OF EXCESS DISTRIBUTIONS BY TRUSTS

Sec.
665. Definitions applicable to subpart D.
666. Accumulation distribution allocated to preceding years.
667. Denial of refund to trusts; authorization of credit to beneficiaries.
668. Treatment of amounts deemed distributed in preceding years.
669. Treatment of capital gain deemed distributed in preceding years.

AMENDMENTS

1969—Pub. L. 91–172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 592, deleted "5" following "allocated to" in item 666, inserted "authorization of credit to beneficiaries" in item 667, and substituted "Treatment of capital gain deemed distributed in preceding years" for "Special rules applicable to certain foreign trusts" in item 669.

1962—Pub. L. 87–834, § 7(i)(1), Oct. 16, 1962, 76 Stat. 988, added item 669.

§ 665. Definitions applicable to subpart D.

(a) Undistributed net income.

For purposes of this subpart, the term "undistributed net income" for any taxable year means the amount by which distributable net income of the trust for such taxable year exceeds the sum of—

(1) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a), and

(2) the amount of taxes imposed on the trust attributable to such distributable net income.

(b) Accumulation distribution.

For purposes of this subpart, the term "accumulation distribution" means, for any taxable year of the trust, the amount by which—

(1) the amounts specified in paragraph (2) of section 661(a) for such taxable year, exceed

(2) distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a).

(c) Special rule applicable to distributions by certain foreign trusts.

For purposes of this subpart, any amount paid to a United States person which is from a payor who is not a United States person and which is derived directly or indirectly from a foreign trust created by a United States person shall be deemed in the year of payment to have been directly paid by the foreign trust.

(d) Taxes imposed on the trust.

For purposes of this subpart, the term "taxes imposed on the trust" means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart) and which, under regulations prescribed by the Secretary or his delegate, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666 (b) and (c) or 669 (d) and (e) to any beneficiary.

(e) Preceding taxable year.

For purposes of this subpart—

(1) in the case of a trust (other than a foreign trust created by a United States person), the term "preceding taxable year" does not include any taxable year of the trust—

(A) which precedes by more than 5 years the taxable year of the trust in which an accumulation distribution is made, if it is made in a taxable year beginning before January 1, 1974,

(B) which begins before January 1, 1969, in the case of an accumulation distribution made during a taxable year beginning after December 31, 1973, or

(C) which begins before January 1, 1969, in the case of a capital gain distribution made during a taxable year beginning after December 31, 1968; and

(2) in the case of a foreign trust created by a United States person, such term does not include any taxable year of the trust to which this part does not apply.

In the case of a preceding taxable year with respect to which a trust qualifies (without regard to this subpart) under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary or his delegate, be treated as a trust to which subpart C applies.

(f) Undistributed capital gain.

For purposes of this subpart, the term "undistributed capital gain" means, for any taxable year of the trust beginning after December 31, 1968, the amount by which—

(1) gains in excess of losses from the sale or exchange of capital assets, to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during such taxable year, or (B) paid, permanently set aside, or used for the purposes specified in section 642(c), exceed

(2) the amount of taxes imposed on the trust attributable to such gains.

For purposes of paragraph (1), the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.

(g) Capital gain distribution.

For purposes of this subpart, the term "capital gain distribution" for any taxable year of the trust means, to the extent of undistributed capital gain for such taxable year, that portion of—

(1) the excess of the amounts specified in paragraph (2) of section 661(a) for such taxable year over distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a), over

(2) the undistributed net income of the trust for all preceding taxable years.

(Aug. 16, 1954, ch. 736, 68A Stat. 223; Oct. 16, 1962, Pub. L. 87–834, § 7(b), 76 Stat. 985; Dec. 30, 1969, Pub. L. 91–172, title III, § 331(a), 83 Stat. 592.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 inserted "attributable to such distributable net income" following "on the trust" in par. (2).

Subsec. (b). Pub. L. 91–172 substituted "Accumulation distribution" for "Accumulation distributions of trusts other than certain foreign trusts" as subsec. heading, combined existing provisions of subsecs. (b) and (c) defining "accumulation distribution" in the case of a trust (other than a foreign trust created by a United States person) and of a foreign trust created by a United States person, respectively, in provisions now designated as pars. (1) and (2), deleting "the amount (if in excess of $2,000)" preceding "by which" in the introductory text and inserting "(but not below zero)" in par. (2), and deleted the second sentence providing that for purposes of this subsection, the amount specified in par. (2) of section 661(a) shall be determined without regard to section 666 and excepting from "accumulation distributions": accumulations before birth or attainment of age 21; distributions for emergency needs; distributions, where beneficiary attained specified age or ages and there were not more than 4 distributions, at intervals of 4 or more years; and final distribution of trust was made more than 9 years after date of last transfer to the trust.

Subsec. (c). Pub. L. 91–172 substituted "Special rule applicable to distributions by certain foreign trusts" for "Accumulation distribution of certain foreign trusts" as subsec. heading, inserted introductory phrase "For purposes of this subpart", reenacted provisions of former third sentence as the subsection, deleted the first sentence which defined in the case of a foreign trust created by a United States person the term "accumulation distribution", now covered by subsec. (b) of this section, and deleted the second sentence which stated that "For purposes of this subsection, the amount specified in paragraph (2) of section 661(a) shall be determined without regard to section 666."

Subsec. (d). Pub. L. 91–172 substituted "taxable year of the trust" for "taxable year on the trust", "allocable to the undistributed portions of distributable net income and gains to excess of losses from sales or exchanges of capital assets" for "allocable to the undistributed portion of the distributable net income", and "reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary" for "reduced by any amount of such taxes allowed, under sections 667 and 668, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year".

Subsec. (e). Pub. L. 91–172 substituted provisions of the first sentence contained in pars. 1(A) to (C) and (2) for prior first sentence which read "For purposes of this subpart, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply" and reenacted the provisions of the second sentence.

Subsecs. (f), (g). Pub. L. 91–172 added subsecs. (f) and (g).

1962—Subsec. (b). Pub. L. 87–834, § 7(b)(1), substituted "Accumulation distributions of trusts other than certain foreign trusts" for "Accumulation distribution" in the subsection catchline, and inserted "in the case of a trust (other than a foreign trust created by a United States person)," following "purposes of this subpart,".

Subsec. (c). Pub. L. 87–834, § 7(b)(2), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsecs. (d), (e). Pub. L. 87–834, § 7(b)(2), redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 331(d) of Pub. L. 91–172 provided that:

"(1) **General Rule.**—Except as otherwise provided in this subsection, the amendments made by this section [to sections 663(b)(2), 665 to 669, and 6401(b) of this title] shall apply to taxable years beginning after December 31, 1968.

"(2) **Exceptions.**—

"(A) Amounts paid, credited, or required to be distributed by a trust (other than a foreign trust created by a United States person) on or before the last day of a taxable year of the trust beginning before January 1, 1974, shall not be deemed to be accumulation distributions to the extent that such amounts were accumulated by a trust in taxable years of such trust beginning before January 1, 1969, and would have been excepted from the definition of an accumulation distribution by reason of paragraphs (1), (2), (3), or (4) of section 665(b) of the Internal Revenue Code of 1954, as in effect on December 31, 1968 [former subsec. (b)(1), (2), (3), or (4) of this section], if they had been distributed on the last day of the last taxable year of the trust beginning before January 1, 1969.

"(B) For taxable years of a trust beginning before January 1, 1970, the first sentence of section 666(a) of the Internal Revenue Code of 1954 (as amended by this section) [section 666(a) of this title] shall not apply, and the amount of the accumulation distribution of the trust for such taxable years shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) [section 661(a)(2) of this title] distributed on the last day of each of the preceding taxable years to the extent that such amount exceeds the total of any undistributed net income for any taxable years intervening between the taxable year with respect of which the accumulation distribution is determined and such preceding taxable year.

"(C) In the case of a trust which was in existence on December 31, 1969, section 669 of the Internal Revenue Code of 1954, as amended by this section [section 669 of this title], shall not apply to capital gain distributions made to a beneficiary before January 1, 1972. If the beneficiary receives capital gain distributions from more than one such trust before January 1, 1972, the preceding sentence shall apply to capital gain distributions from only one of such trusts, such one to be designated by the taxpayer in accordance with regulations prescribed by the Secretary or his delegate. For purposes of the preceding sentence, capital gain distributions received from a trust qualifying under section 2056(b)(5) of the Internal Revenue Code of 1954 [section 2056(b)(5) of this title] by a surviving spouse (who is the beneficiary of only one such trust) shall be disregarded."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

§ 666. Accumulation distribution allocated to preceding years.

(a) Amount allocated.

In the case of a trust which is subject to subpart C, the amount of the accumulation distribution of such trust for a taxable year shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years, commencing with the earliest of such years, to the extent that such amount exceeds the total of any undistributed net income for all earlier preceding taxable years. The amount deemed to be distributed in any such preceding taxable year under the preceding sentence shall not exceed the undistributed net income for such preceding taxable year. For purposes of this subsection, undistributed net income for each of such preceding taxable years shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(b) Total taxes deemed distributed.

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year, and such portion of such distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes imposed on the trust for such preceding taxable year attributable to the undistributed net income. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(c) Pro rata portion of taxes deemed distributed.

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661 (a) distributed on the last day of any preceding taxable year and such portion of the accumulation distribution is less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661 (a). Such additional amount shall be equal to the taxes imposed on the trust for such taxable year attributable to the undistributed net income multiplied by the ratio of the portion of the accumulation distribution to the undistributed net income of the trust for such year. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to the accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(d) Rule when information is not available.

If adequate records are not available to determine the proper application of this subpart to an amount distributed by a trust, such amount shall be deemed to be an accumulation distribution consisting of undistributed net income earned during the earliest preceding taxable year of the trust in which it can be established that the trust was in existence. (Aug. 16, 1954, ch. 736, 68A Stat. 224; Oct. 16, 1962, Pub. L. 87–834, § 7(c), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, § 331(a), 83 Stat. 593.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted in the first sentence "In the case of a trust which is subject to

subpart (C)" for "In the case of a trust (other than a foreign trust created by a United States person) which for a taxable year beginning after December 31, 1953, is subject to subpart (C)", "for a taxable year" for "for such taxable year", and "undistributed net income for all earlier preceding taxable years" for "undistributed net incomes for any taxable years intervening between the taxable year with respect to which the accumulation distribution is determined and such preceding taxable year" and in the second sentence "for such" for "of such", inserted in the first sentence ", commencing with the earliest of such years," following "preceding taxable years", deleted "5" preceding "preceding taxable years" in the first and third sentences and the last sentence reading "In the case of a foreign trust created by a United States person, this subsection shall apply to the preceding taxable years of the trust without regard to any provision of the preceding sentences which would (but for this sentence) limit its application to the 5 preceding taxable years."

Subsec. (b). Pub. L. 91–172 inserted "attributable to the undistributed net income" following "taxable year" in the second sentence and "attributable to such undistributed net income" preceding "shall be computed" in the third sentence.

Subsec. (c). Pub. L. 91–172 inserted "attributable to the undistributed net income" preceding "multiplied by the ratio" in the second sentence and "attributable to such undistributed net income" preceding "shall be computed" in the third sentence.

Subsec. (d). Pub. L. 91–172 added subsec. (d).

1962—Subsec. (a). Pub. L. 87–834 inserted words "(other than a foreign trust created by a United States person)" following "In the case of a trust", and inserted sentence making this subsection applicable, in the case of a foreign trust created by a United States person, to the preceding taxable years of the trust without regard to any provision of the preceding sentences of this subsection which would (but for this sentence) limit its application to the 5 preceding taxable years.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, except that for taxable years of a trust beginning before Jan. 1, 1970, first sentence of subsec. (a) not applicable and amount of accumulation distribution stated, see section 331(d)(1) and (2)(B) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 665, 667, 668, 669 of this title.

§ 667. Denial of refund to trusts; authorization of credit to beneficiaries.

(a) Denial of refund to trusts.

No refund or credit shall be allowed to a trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under section 666 or 669.

(b) Authorization of credit to beneficiary.

There shall be allowed as a credit (without interest) against the tax imposed by this subtitle on the beneficiary an amount equal to the amount of the taxes deemed distributed to such beneficiary by the trust under sections 666 (b) and (c) and 669 (d) and (e) during preceding taxable years of the trust on the last day of which the beneficiary was in being, reduced by the amount of the taxes deemed distributed to such beneficiary for such preceding taxable years to the extent that such taxes are taken into account under sections 668(b)(1) and 669(b) in determining the amount of the tax imposed by section 668. (Aug. 16, 1954, ch. 736, 68A Stat. 225; Dec. 30, 1969, Pub. L. 91–172, title III, § 331(a), 83 Stat. 594.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 incorporated existing provisions of first sentence in provisions designated as subsec. (a), included distributions made under section 669 of this title, and eliminated provisions for credit of taxes imposed on the trust against tax of beneficiary, now covered in subsec. (b) of this section.

Subsec. (b). Pub. L. 91–172 incorporated provision of first sentence for credit of taxes imposed on the trust against tax of beneficiary, and provided for interest free credit and method of computation of its amount. The second sentence had provided that the amount of taxes which may not be refunded or credited to the trust shall be an amount equal to the excess of (1) the taxes imposed on the trust for any preceding taxable year (computed without regard to the accumulation distribution for the taxable year) over (2) the amount of taxes for such preceding taxable year imposed on the undistributed portion of distributable net income of the trust for such preceding taxable year after the application of this subpart on account of the accumulation distribution determined for such taxable year.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§ 668. Treatment of amounts deemed distributed in preceding years.

(a) General rule.

The total of the amounts which are treated under sections 666 and 669 as having been distributed by the trust in a preceding taxable year shall be included in the income of a beneficiary of the trust when paid, credited, or required to be distributed to the extent that such total would have been included in the income of such beneficiary under section 662 (a)(2) and (b) if such total had been paid to such beneficiary on the last day of such preceding taxable year. The tax imposed by this subtitle on a beneficiary for a taxable year in which any such amount is included in his income shall be determined only as provided in this section and shall consist of the sum of—

(1) a partial tax computed on the taxable income reduced by an amount equal to the total of such amounts, at the rate and in the manner as if this section had not been enacted,

(2) a partial tax determined as provided in subsection (b) of this section, and

(3) in the case of a beneficiary of a trust which is not required to distribute all of its income currently, a partial tax determined as provided in section 669.

For purposes of this subpart, a trust shall not be considered to be a trust which is not required to distribute all of its income currently for any taxable year prior to the first taxable year in which income is accumulated.

(b) Tax on distribution.

(1) Alternative methods.

Except as provided in paragraph (2), the partial tax imposed by subsection (a)(2) shall be the lesser of—

(A) the aggregate of the taxes attributable to the amounts deemed distributed under section

666 had they been included in the gross income of the beneficiary on the last day of each respective preceding taxable year, or

(B) the tax determined by multiplying, by the number of preceding taxable years of the trust, on the last day of which an amount is deemed under section 666(a) to have been distributed, the average of the increase in tax attributable to recomputing the beneficiary's gross income for each of the beneficiary's 3 taxable years immediately preceding the year of the accumulation distribution by adding to the income of each of such years an amount determined by dividing the amount deemed distributed under section 666 and required to be included in income under subsection (a) by such number of preceding taxable years of the trust,

less an amount equal to the amount of taxes deemed distributed to the beneficiary under sections 666 (b) and (c).

(2) Special rules.

(A) If a beneficiary was not in existence on the last day of a preceding taxable year of the trust with respect to which a distribution is deemed made under section 666(a), the partial tax under either paragraph (1)(A) or (1)(B) shall be computed as if the beneficiary were in existence on the last day of such year on the basis that the beneficiary had no gross income (other than amounts deemed distributed to him under sections 666 and 669 by the same or other trusts) and no deductions for such year.

(B) The partial tax shall not be computed under the provisions of subparagraph (B) of paragraph (1) if, in the same prior taxable year of the beneficiary in which any part of the accumulation distribution is deemed under section 666(a) to have been distributed to such beneficiary, some part of prior accumulation distributions by each of two or more other trusts is deemed under section 666(a) to have been distributed to such beneficiary.

(C) If the partial tax is computed under paragraph (1)(B), and the amount of the undistributed net income deemed distributed in any preceding taxable year of the trust is less than 25 percent of the amount of the accumulation distribution divided by the number of preceding taxable years to which the accumulation distribution is allocated under section 666(a), the number of preceding taxable years of the trust with respect to which an amount is deemed distributed to a beneficiary under section 666(a) shall be determined without regard to such year.

(3) Effect of other accumulation distributions and capital gain distributions.

In computing the partial tax under paragraph (1) for any beneficiary, the income of such beneficiary for each of his prior taxable years—

(A) shall include amounts previously deemed distributed to such beneficiary in such year under section 666 or 669 as a result of prior accumulation distributions or capital gain distributions (whether from the same or another trust), and

(B) shall not include amounts deemed distributed to such beneficiary in such year under section 669 as a result of a capital gain distribution from the same trust in the current year.

(4) Multiple distributions in the same taxable year.

In the case of accumulation distributions made from more than one trust which are includible in the income of a beneficiary in the same taxable year, the distributions shall be deemed to have been made consecutively in whichever order the beneficiary shall determine.

(5) Information requirements with respect to beneficiary.

(A) Except as provided in subparagraph (B), the partial tax shall not be computed under the provisions of paragraph (1)(A) unless the beneficiary supplies such information with respect to his income, for each taxable year with which or in which ends a taxable year of the trust on the last day of which an amount is deemed distributed under section 666(a), as the Secretary or his delegate prescribes by regulations.

(B) If by reason of paragraph (2)(B) the provisions of paragraph (1)(B) do not apply, the determination of the amount of the beneficiary's income for a taxable year for which the beneficiary has not supplied the information required under subparagraph (A) shall be made by the Secretary or his delegate on the basis of information available to him.

(Aug. 16, 1954, ch. 736, 68A Stat. 225; Oct. 16, 1962, Pub. L. 87–834, § 7(d), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, § 331(a), 83 Stat. 594.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted "General rule" for "Amounts treated as received in prior taxable years" as subsec. heading, reenacted existing first sentence, inserting therein reference to section 669 and deleting therefrom "or beneficiaries" following "beneficiary" in three instances, inserted the second sentence for determination and computation of tax on beneficiary of distributions and the third sentence declaring a trust shall not be considered to be a trust which is not required to distribute all of its income currently for any taxable year prior to the first taxable year in which income is accumulated, and deleted former second, third and fourth sentences, the second sentence stating that "The portion of such total included under the preceding sentence in the income of any beneficiary shall be based upon the same ratio as determined under the second sentence of section 662(a)(2) for the taxable year in respect of which the accumulation distribution is determined, except that proper adjustment of such ratio shall be made, in accordance with regulations prescribed by the Secretary or his delegate, for amounts which fall within paragraphs (1) through (4) of section 665(b).", the third sentence stating that "The tax of the beneficiaries attributable to the amounts treated as having been received on the last day of such preceding taxable year of the trust shall not be greater than the aggregate of the taxes attributable to those amounts had they been included in the gross income of the beneficiaries on such day in accordance with section 662(a)(2) and (b).", now incorporated in subsec. (b)(1)(A) of this section, and the third sentence reading "Except as provided in section 669, in the case of a foreign trust created by a United States person the preceding sentence shall not apply to any beneficiary who is a United States person."

Subsec. (b). Pub. L. 91–172 substituted provisions relating to tax on distribution, par. (1) providing for alternative methods and incorporating in subpar. (A) former third sentence of subsec. (a) of this section and former section 669(a)(1)(A) of this title and in subpar. (B)

former section 669(a)(1)(B), pars. (2) to (5) relating to special rules, effect of other accumulation distributions and capital gain distributions, multiple distributions in the same taxable year, and information requirements with respect to beneficiary, the latter incorporating provisions of former section 669(b) of this title, for prior provisions relating to credit for taxes paid by trust and now incorporated in section 667 of this title.

1962—Subsec. (a). Pub. L. 87–834 inserted sentence providing "Except as provided in section 669, in the case of a foreign trust created by a United States person the preceding sentence shall not apply to any beneficiary who is a United States person."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 667, 669, 1302 of this title.

§ 669. Treatment of capital gain deemed distributed in preceding years.

(a) Amount allocated.

In the case of a trust which is not required to distribute all of its income currently, the amount of a capital gain distribution of such trust for a taxable year shall be deemed to be an amount properly paid, credited, or required to be distributed on the last day of each of the preceding taxable years, commencing with the earliest of such years, to the extent that such amount exceeds the total of any undistributed capital gain for all earlier preceding taxable years. The amount deemed to be distributed in any such preceding taxable year under the preceding sentence shall not exceed the undistributed capital gain for such preceding taxable year. For purposes of this subsection, undistributed capital gain for each of such preceding taxable years shall be computed without regard to such capital gain distribution and without regard to any capital gain distribution determined for any succeeding taxable year.

(b) Tax on distribution.

The partial tax imposed by section 668(a)(3) shall be the lesser of—

(1) the aggregate of the taxes attributable to the amounts deemed distributed under this section, had such amounts been included in the gross income of the beneficiary on the last day of each respective preceding taxable year, or

(2) the tax determined by multiplying by the number of preceding taxable years of the trust, on the last day of which net gains from the sale or exchange of capital assets are deemed under subsection (a) to have been distributed, the average of the increase in tax attributable to recomputing the beneficiary's gross income for each of the beneficiary's 3 taxable years immediately preceding the year of the capital gain distribution by adding to the income of each of such years an amount determined by dividing the total of the amounts deemed distributed under this section and required to be included in income under section 668(a) by such number of preceding taxable years of the trust,

less an amount equal to the amount of taxes deemed distributed to the beneficiary under subsections (d) and (e) which are attributable to the capital gain distribution.

(c) Effect of other distributions; special rules, etc.

In computing the partial tax under subsection (b) for any beneficiary, the income of such beneficiary for each of his prior taxable years—

(1) shall include amounts previously deemed distributed to such beneficiary in such year under section 666 or 669 as a result of prior accumulation distributions or capital gain distributions (whether from the same or another trust), and

(2) shall include amounts deemed distributed to such beneficiary in such year under section 666 as a result of an accumulation distribution from the same trust in the current year.

Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided by paragraphs (2), (4), and (5) of section 668(b) shall be applied for purposes of this section.

(d) Total taxes deemed distributed.

If any portion of a capital gain distribution for any taxable year is deemed under subsection (a) to be an amount properly paid, credited or required to be distributed on the last day of any preceding taxable year, and such portion of such capital gain distribution is not less than the undistributed capital gain for such preceding taxable year, the trust shall be deemed to have properly distributed on the last day of such preceding taxable year an additional amount. Such additional amount shall be equal to the taxes imposed on the trust for such preceding taxable year attributable to such undistributed capital gain. For purposes of this subsection, the undistributed capital gain and the taxes imposed on the trust for such preceding taxable year attributable to such gain shall be computed without regard to such capital gain distribution and without regard to any capital gain distribution determined for any succeeding taxable year.

(e) Pro rata portion of taxes deemed distributed.

If any portion of a capital gain distribution for any taxable year is deemed under subsection (a) to be an amount properly paid, credited, or required to be distributed on the last day of any preceding taxable year and such portion of the capital gain distribution is less than the undistributed capital gain for such preceding taxable year, the trust shall be deemed to have properly distributed on the last day of such preceding taxable year an additional amount. Such additional amount shall be equal to the taxes imposed on the trust for such taxable year attributable to such undistributed capital gain multiplied by the ratio of the portion of the capital gain distribution to the undistributed capital gain of the trust for such year. For purposes of this subsection, the undistributed capital gain and the taxes imposed on the trust for such preceding taxable year attributable to such gain shall be computed

without regard to the capital gain distribution and without regard to any capital gain distribution determined for any succeeding taxable year.

(f) Character of capital gain.

For purposes of this section, the character of the capital gain of a trust for any taxable year with respect to a beneficiary shall be the same as it was with respect to the trust. (Added Pub. L. 87–834, § 7(e), Oct. 16, 1962, 76 Stat. 986, and amended Pub. L. 91–172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 596.)

AMENDMENTS

1969—Pub. L. 91–172 substituted provisions relating to treatment of capital gain deemed distributed in preceding years (subsecs. (a) to (f) providing for amount allocated; tax on distributions; effect of other distributions, special rules, etc.; total taxes deemed distributed; pro rata portion of taxes deemed distributed; and character of capital gain), for prior provisions for special rules applicable to certain foreign trusts (former subsec. (a) respecting limitation on tax par. (1) stating the general rule (now covered in section 668(b)(1)(A), (B) of this title), par. (2) the exceptions, and par. (3) the effect of prior election, where the subsequent election is under par. (1)(A) and (B) and former subsec. (b) respecting information requirement (now covered in section 668(b)(5) of this title), such former provisions of this section now covered generally throughout this part.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, except that in the case of a trust in existence on Dec. 31, 1969, this section not applicable to capital gain distribution to a beneficiary before Jan. 1, 1972, or to the distribution designated by the taxpayer when made from more than one trust, see section 331(d)(1) and (2)(C) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE

Section applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 665, 667, 668 of this title.

SUBPART E.—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

Sec.
671. Trust income, deductions, and credits attributable to grantors and others as substantial owners.
672. Definitions and rules.
673. Reversionary interests.
674. Power to control beneficial enjoyment.
675. Administrative powers.
676. Power to revoke.
677. Income for benefit of grantor.
678. Person other than grantor treated as substantial owner.

§ 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners.

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart. (Aug. 16, 1954, ch. 736, 68A Stat. 226.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 678 of this title.

§ 672. Definitions and rules.

(a) Adverse party.

For purposes of this subpart, the term "adverse party" means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b) Nonadverse party.

For purposes of this subpart, the term "nonadverse party" means any person who is not an adverse party.

(c) Related or subordinate party.

For purposes of this subpart, the term "related or subordinate party" means any nonadverse party who is—

(1) the grantor's spouse if living with the grantor;

(2) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(d) Rule where power is subject to condition precedent.

A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power. (Aug. 16, 1954, ch. 736, 68A Stat. 226.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 678 of this title.

§ 673. Reversionary interests.

(a) General rule.

The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust.

(b) Repealed. Pub. L. 91–172, title II, § 201(c), Dec. 30, 1969, 83 Stat. 560.

(c) Reversionary interest taking effect at death of income beneficiary.

The grantor shall not be treated under subsection (a) as the owner of any portion of a trust where his reversionary interest in such portion is not to take effect in possession or enjoyment until the death of the person or persons to whom the income therefrom is payable.

(d) Postponement of date specified for reacquisition.

Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effected and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement. (Aug. 16, 1954, ch. 736, 68A Stat. 227; Dec. 30, 1969, Pub. L. 91–172, title II, § 201(c), 83 Stat. 560.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 struck out provisions relating to trusts where the income was payable to a charitable beneficiary for at least a two-year period.

EFFECTIVE DATE OF 1969 AMENDMENT

Repeal of subsec. (b) of this section applicable to transfers in trust made after April 22, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 674, 676, 677, 678 of this title.

§ 674. Power to control beneficial enjoyment.

(a) General rule.

The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(b) Exceptions for certain powers.

Subsection (a) shall not apply to the following powers regardless of by whom held:

(1) Power to apply income to support of a dependent.

A power described in section 677 (b) to the extent that the grantor would not be subject to tax under that section.

(2) Power affecting beneficial enjoyment only after expiration of 10-year period.

A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(3) Power exercisable only by will.

A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(4) Power to allocate among charitable beneficiaries.

A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 170 (c) (relating to definition of charitable contributions).

(5) Power to distribute corpus.

A power to distribute corpus either—

(A) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(B) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(6) Power to withhold income temporarily.

A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable—

(A) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or

(B) on termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(7) Power to withhold income during disability of a beneficiary.

A power exercisable only during—

(A) the existence of a legal disability of any current income beneficiary, or

(B) the period during which any income beneficiary shall be under the age of 21 years,

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(8) Power to allocate between corpus and income.

A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(c) Exception for certain powers of independent trustees.

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor—

(1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(d) Power to allocate income if limited by a standard.

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (6) or (7) of subsection (b) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children. (Aug. 16, 1954, ch. 736, 68A Stat. 227.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 672, 677, 678 of this title.

§ 675. Administrative powers.

The grantor shall be treated as the owner of any portion of a trust in respect of which—

(1) Power to deal for less than adequate and full consideration.

A power exercisable by the grantor or a non-adverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.

(2) Power to borrow without adequate interest or security.

A power exercisable by the grantor or a non-adverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

(3) Borrowing of the trust funds.

The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor.

(4) General powers of administration.

A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

(Aug. 16, 1954, ch. 736, 68A Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 672, 678 of this title.

§ 676. Power to revoke.

(a) General rule.

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.

(b) Power affecting beneficial enjoyment only after expiration of 10-year period.

Subsection (a) shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest. But the grantor may be treated as the owner after the expiration of such period unless the power is relinquished. (Aug. 16, 1954, ch. 736, 68A Stat. 230.)

CROSS REFERENCES

Nonadverse party defined, see section 672 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This sections is referred to in section 678 of this title.

§ 677. Income for benefit of grantor.

(a) General rule.

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

(1) distributed to the grantor or the grantor's spouse;

(2) held or accumulated for future distribution to the grantor or the grantor's spouse; or

(3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(b) Obligations of support.

Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661 (a) and shall be taxed to the grantor under section 662. (Aug. 16, 1954, ch. 736, 68A Stat. 230; Dec. 30, 1969, Pub. L. 91-172, title III, § 332(a), 83 Stat. 599.)

AMENDMENTS

1969—Subsec. (a)(1)-(3). Pub. L. 91-172, § 332(a)(1), inserted "or the grantor's spouse" following "the grantor" in pars. (1), (2), and (3).

Subsec. (b). Pub. L. 91-172, § 332(a)(2), inserted "(other than the grantor's spouse)" following "beneficiary".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 332(b) of Pub. L. 91-172 provided that: "The amendments made by subsection (a) [to subsecs. (a)(1) to (3) and (b) of this section] shall apply in respect of property transferred in trust after October 9, 1969."

CROSS REFERENCES

Definitions—

Adverse party, see section 672 (a) of this title.

Non-adverse party, see section 672 (b) of this title.

Income from interest in an estate or trust as gross income, in section 61 (a) (15) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 674, 678, 1246 of this title.

§ 678. Person other than grantor treated as substantial owner.

(a) General rule.

A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject to grantor of a trust to treatment as the owner thereof.

(b) Exception where grantor is taxable.

Subsection (a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust is otherwise treated as the owner under sections 671 to 677, inclusive.

(c) Obligations of support.

Subsection (a) shall not apply to a power which enables such person, in the capacity of trustee or cotrustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661 (a) and shall be taxed to the holder of the power under section 662.

(d) Effect of renunciation or disclaimer.

Subsection (a) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence. (Aug. 16, 1954, ch. 736, 68A Stat. 231.)

SUBPART F.—MISCELLANEOUS

Sec.
681. Limitation on charitable deduction.
682. Income of an estate or trust in case of divorce, etc.
683. Applicability of provisions.

§ 681. Limitation on charitable deduction.

(a) Trade or business income.

In computing the deduction allowable under section 642 (c) to a trust, no amount otherwise allow-

able under section 642 (c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term "unrelated business income" means an amount equal to the amount which, if such trust were exempt from tax under section 501 (a) by reason of section 501 (c) (3), would be computed as its unrelated business taxable income under section 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

(b) Cross reference.

For disallowance of certain charitable, etc., deductions otherwise allowable under section 642(c), see sections 508(d) and 4948 (c) (4).

(Aug. 16, 1954, ch. 736, 68A Stat. 232; Oct. 22, 1968, Pub. L. 90-630, § 6(b), 82 Stat. 1330; Dec. 30, 1969, Pub. L. 91-172, title I, §§ 101(j) (18), (19), 121(d) (2) (B), 83 Stat. 528, 547.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 121(d) (2) (B), substituted reference to certain property acquired with borrowed funds for reference to certain leases.

Subsec. (b). Pub. L. 91-172, § 101(j) (18), (19), redesignated former subsec. (d) as subsec. (b), and, in subsec. (b), as so redesignated, substituted "sections 518(d) and 4948(c) (4)" for section 503(e). Former subsec. (b) dealing generally with the operation of trusts, was striken.

Subsec. (c). Pub. L. 91-172, § 101(j) (18), struck out former subsec. (c) dealing with accumulated income.

Subsec. (d). Pub. L. 91-172, § 101(j) (19) redesignated former subsec. (d) as subsec. (b).

1968—Subsec. (c). Pub. L. 90-630 added provision that par. (1) does not apply to income attributable to property transferred to a trust before January 1, 1951, by the creator thereof if the trust was irrevocable on such date and if the income is required to be accumulated pursuant to the mandatory terms of the instrument creating the trust.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a) by section 121(d) (2) (B) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

Amendment of subsecs. (b)-(d) by section 101(j) (18), (19) of Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k) (1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment of section by section 6(b) of Pub. L. 90-630 applicable with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, with provisions having the same effect as such amendment for purposes of sections 3814 and 162(g) (4) of the Internal Revenue Code of 1939 being treated as included in such sections with respect to taxable years beginning after December 31, 1950, see section 6(c) of Pub. L. 90-630, set out as a note under section 504 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 513, 642, 663 of this title.

§ 682. Income of an estate or trust in case of divorce, etc.

(a) Inclusion in gross income of wife.

There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) Wife considered a beneficiary.

For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) or section 71 applies, such wife shall be considered as the beneficiary specified in this part. A periodic payment under section 71 to any portion of which this part applies shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

(c) Cross reference.

For definitions of "husband" and "wife," as used in this section, see section 7701 (a) (17).

(Aug. 16, 1954, ch. 736, 68A Stat. 234.)

CROSS REFERENCES

Deductions for payments under this section not allowed, see section 215 of this title.

Definition of husband and wife, see section 7701 (a) (17) of this title.

Payment under this section not treated as payment for support of defendant, see section 152 (b) (4) of this title.

Wife taxable on alimony and separate maintenance payments received, see section 71 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 71, 72, 101, 215, 7701 of this title.

§ 683. Applicability of provisions.

(a) General rule.

This part shall apply only to taxable years beginning after December 31, 1953, and ending after the date of the enactment of this title.

(b) Exceptions.

In the case of any beneficiary of an estate or trust—

(1) this part shall not apply to any amount paid, credited, or to be distributed by the estate or trust in any taxable year of such estate or trust to which this part does not apply, and

(2) the Internal Revenue Code of 1939 shall apply for purposes of determining the amount includible in the gross income of the beneficiary.

To the extent that any amount paid, credited, or to be distributed by an estate or trust in the first taxable year of such estate or trust to which this part applies would be treated, if the Internal Revenue Code of 1939 were applicable, as paid, credited, or to be distributed on the last day of the preceding taxable year, such amount shall not be taken into account for purposes of this part but shall be taken into account as provided in the Internal Revenue Code of 1939. (Aug. 16, 1954, ch. 736, 68A Stat. 235.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 691 of this title.

PART II.—INCOME IN RESPECT OF DECEDENTS

Sec.
691. Recipients of income in respect of decedents.
692. Income taxes of members of Armed Forces on death.

§ 691. Recipients of income in respect of decedents.

(a) Inclusion in gross income.

(1) General rule.

The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) Income in case of sale, etc.

If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) Character of income determined by reference to decedent.

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) Installment obligations acquired from decedent.

In the case of an installment obligation received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

(A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453 (d)) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453 (d)).

(b) Allowance of deductions and credit.

The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 33 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes.

In the case of a deduction specified in section 162, 163, 164, or 212 and a credit specified in section 33, in the taxable year when paid—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion.

In the case of the deduction specified in section 611, to the person described in subsection (a) (1) (A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) Deduction for estate tax.

(1) Allowance of deduction.

(A) General rule.

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an

amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a) (1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a) (1).

(B) Estates and trusts.

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a) (1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year. This subparagraph shall apply to the same taxable years, and to the same extent, as is provided in section 683.

(2) Method of computing deduction.

For purposes of paragraph (1)—

(A) The term "estate tax" means the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a) (1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a) (1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

(d) Amounts received by surviving annuitant under joint and survivor annuity contract.

(1) Deduction for estate tax.

For purposes of computing the deduction under subsection (c) (1) (A), amounts received by a surviving annuitant—

(A) by determining the excess of the value annuity contract where the decedent annuitant died after December 31, 1953, and after the annuity starting date (as defined in section 72 (c) (4)), and

(B) during the surviving annuitant's life expectancy period, shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

(2) Net value for estate tax purposes.

In determining the net value for estate tax purposes under subsection (c) (2) (B) for purposes of this subsection, the value for estate tax purposes of the items described in paragraph (1) of this subsection shall be computed—

(A) as an annuity under a joint and survivor of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under section 72 during the surviving annuitant's life expectancy period, and

(B) by multiplying the figure so obtained by the ratio which the value of the annuity for estate tax purposes bears to the value of the annuity at the date of the death of the deceased.

(3) Definitions.

For purposes of this subsection—

(A) The term "life expectancy period" means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary or his delegate.

(B) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary or his delegate.

(e) Installment obligations transmitted at death when prior law applied to transmission.

(1) In general.

Effective with respect to the first taxable year to which the election referred to in paragraph (2) applies and to each taxable year thereafter, subsection (a) (4) shall apply in the case of installment obligations in respect of which section 44(d) of the Internal Revenue Code of 1939 (or the corresponding provisions of prior law) did not apply by reason of the filing of the bond referred to in such section or provisions. Subsection (c) of this section shall not apply in respect of any amount included in gross income by reason of this paragraph.

(2) Election.

Installment obligations referred to in paragraph (1) may, at the election of the taxpayer holding such obligations, be treated as obligations in respect of which subsection (a) (4) applies. An election under this subsection for any taxable year shall be made not later than the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(3) Release of bond.

The liability under any bond filed under section 44(d) of the Internal Revenue Code of 1939 (or the corresponding provisions of prior law) in respect of which an election under this subsection applies is hereby released with respect to taxable years to which such election applies.

(f) Cross reference.

For application of this section to income in respect of a deceased partner, see section 753.

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Feb. 26, 1964, Pub. L. 88–272, title II, § 221(c)(2), 78 Stat. 75; Sept. 2, 1964, Pub. L. 88–570, § 1, 78 Stat. 854.)

AMENDMENTS

1964—Subsec. (c)(2)(B). Pub. L. 88–272 substituted "421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subschapter D applies" for "421(d)(6)(B), relating to the deduction for estate tax with respect to restricted stock options."

Subsec. (e). Pub. L. 88–570 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 88–570 redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

CROSS REFERENCES

Basis of property acquired from decedent, inapplicability of section 1014 to this section, see section 1014 (c) of this title.

Income in respect of decedent as gross income, see section 61 (a) (14) of this title.

Partner receiving income in respect of decedent, see section 753 of this title.

Returns of decedents, see section 6012 (b) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 421, 452, 753, 1014, 1245, 1250, 1251 of this title.

§ 692. Income taxes on members of Armed Forces on death.

In the case of any individual who dies during an induction period (as defined in section 112 (c) (5)) while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(Aug. 16, 1954, ch. 736, 68A Stat. 238.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

Subchapter K.—Partners and Partnerships

Part
I. Determination of tax liability.
II. Contributions, distributions, and transfers.
III. Definitions.
IV. Effective date for subchapter.

PART I.—DETERMINATION OF TAX LIABILITY

Sec.
701. Partners, not partnership, subject to tax.
702. Income and credits of partner.
703. Partnership computations.
704. Partner's distributive share.
705. Determination of basis of partner's interest.
706. Taxable years of partner and partnership.
707. Transactions between partner and partnership.
708. Continuation of partnership.

§ 701. Partners, not partnership, subject to tax.

A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

(Aug. 16, 1954, ch. 736, 68A Stat. 239.)

CROSS REFERENCES

Definitions of partnership, see sections 761 (a), 7701 (a) (2) of this title.

Partnerships electing to be taxed as corporations, see section 1361 of this title.

§ 702. Income and credits of partner.

(a) General rule.

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 6 months,

(2) gains and losses from sales or exchanges of capital assets held for more than 6 months,

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170 (c)),

(5) dividends with respect to which there is provided an exclusion under section 116 or a deduction under part VIII of subchapter B,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) partially tax-exempt interest on obligations of the United States or on obligations of instrumentalities of the United States as described in section 35 or section 242 (but, if the partnership elects to amortize the premiums on bonds as provided in section 171, the amount received on such obligations shall be reduced by the reduction provided under section 171 (a) (3)),

(8) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary or his delegate, and

(9) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

(b) Character of items constituting distributive share.

The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (8) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Gross income of a partner.

In any case where it is necessary to determine the gross income of a partner for purposes of this title, such amount shall include his distributive share of the gross income of the partnership. (Aug. 16, 1954, ch. 736, 68A Stat. 239; Feb. 26, 1964, Pub. L. 88–272, title II, § 201(d)(7), 78 Stat. 32.)

AMENDMENTS

1964—Subsec. (a)(5). Pub. L. 88–272 deleted "a credit under section 34," preceding "an exclusion."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

CROSS REFERENCES

Computation of partnership income, see section 703 of this title.

Partner's distributive share, see section 704 of this title.

Self-employment income, see section 1402 of this title.

Taxable years of partner and partnership, see section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 703, 704, 706, 1402 of this title; title 42 sections 403, 411.

§ 703. Partnership computations.

(a) Income and deductions.

The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that—

(1) the items described in section 702 (a) shall be separately stated, and

(2) the following deductions shall not be allowed to the partnership:

(A) the standard deduction provided in section 141,

(B) the deductions for personal exemptions provided in section 151,

(C) the deduction for taxes provided in section 164 (a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(D) the deduction for charitable contributions provided in section 170,

(E) the net operating loss deduction provided in section 172, and

(F) the additional itemized deductions for individuals provided in part VII of subchapter B (sec. 211 and following).

(b) Elections of the partnership.

Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that the election under section 901, relating to taxes of foreign countries and possessions of the United States, and any election under section 615 (relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures), shall be made by each partner separately. (Aug. 16, 1954, ch. 736, 68A Sat. 240; Sept. 12, 1966, Pub. L. 89–570, § 2(b), 80 Stat. 764; Dec. 30, 1969, Pub. L. 91–172, title V, § 504(c)(3), 83 Stat. 633.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 substituted "(relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures)" for "(relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining)."

1966—Subsec. (b). Pub. L. 89–570 provided for election under section 615 (relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as a note under section 617 of this title.

CROSS REFERENCES

Determination of basis of partner's interest, see section 705 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 705 of this title.

§ 704. Partner's distributive share.

(a) Effect of partnership agreement.

A partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this section, be determined by the partnership agreement.

(b) Distributive share determined by income or loss ratio.

A partner's distributive share of any item of income, gain, loss, deduction, or credit shall be determined in accordance with his distributive share of taxable income or loss of the partnership, as described in section 702 (a) (9), for the taxable year, if—

(1) the partnership agreement does not provide as to the partner's distributive share of such item, or

(2) the principal purpose of any provision in the partnership agreement with respect to the partner's distributive share of such item is the avoidance or evasion of any tax imposed by this subtitle.

(c) Contributed property.

(1) General rule.

In determining a partner's distributive share of items described in section 702 (a), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner shall, except to the extent otherwise provided in paragraph (2) or (3), be allocated among the partners in the same manner as if such property had been purchased by the partnership.

(2) Effect of partnership agreement.

If the partnership agreement so provides, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner shall, under regulations prescribed by the Secretary or his delegate, be shared among the partners so as to take account of the variation

between the basis of the property to the partnership and its fair market value at the time of contribution.

(3) Undivided interests.

If the partnership agreement does not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership shall be determined as though such undivided interests had not been contributed to the partnership. This paragraph shall apply only if all the partners had undivided interests in such property prior to contribution and their interests in the capital and profits of the partnership correspond with such undivided interests.

(d) Limitation on allowance of losses.

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(e) Family partnerships.

(1) Recognition of interest created by purchase or gift.

A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(2) Distributive share of donee includible in gross income.

In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(3) Purchase of interest by member of family.

For purposes of this section, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The "family" of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

(Aug. 16, 1954, ch. 736, 68A Stat. 240.)

CROSS REFERENCES

Optional adjustment to basis of partnership property, see section 743 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 743, 1251, 1375 of this title.

§ 705. Determination of basis of partner's interest.

(a) General rule.

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b) be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests)—

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of—

(A) taxable income of the partnership as determined under section 703 (a),

(B) income of the partnership exempt from tax under this title, and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion; and

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 and by the sum of his distributive share for the taxable year and prior taxable years of—

(A) losses of the partnership, and

(B) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account.

(b) Alternative rule.

The Secretary or his delegate shall prescribe by regulations the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership. (Aug. 16, 1954, ch. 736, 68A Stat. 242.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 771 of this title.

§ 706. Taxable years of partner and partnership.

(a) Year in which partnership income is includible.

In computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707 (c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

(b) Adoption of taxable year.

(1) Partnership's taxable year.

The taxable year of a partnership shall be determined as though the partnership were a taxpayer. A partnership may not change to, or adopt, a taxable year other than that of all its principal partners unless it establishes, to the satisfaction of the Secretary or his delegate, a business purpose therefor.

(2) Partner's taxable year.

A partner may not change to a taxable year other than that of a partnership in which he is a principal partner unless he establishes, to the satisfaction of the Secretary or his delegate, a business purpose therefor.

(3) Principal partner.

For the purpose of this subsection, a principal partner is a partner having an interest of 5 percent or more in partnership profits or capital.

(c) Closing of partnership year.

(1) General rule.

Except in the case of a termination of a partnership and except as provided in paragraph (2) of this subsection, the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership.

(2) Partner who retires or sells interest in partnership.

(A) Disposition of entire interest.

The taxable year of a partnership shall close—

(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

(ii) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year.

Such partner's distributive share of items described in section 702 (a) for such year shall be determined, under regulations prescribed by the Secretary or his delegate, for the period ending with such sale, exchange, or liquidation.

(B) Disposition of less than entire interest.

The taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under subsection (b) (1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced, but such partner's distributive share of items described in section 702 (a) shall be determined by taking into account his varying interests in the partnership during the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 242.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 771 of this title.

§ 707. Transactions between partner and partnership.

(a) Partner not acting in capacity as partner.

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(b) Certain sales or exchanges of property with respect to controlled partnerships.

(1) Losses disallowed.

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a partner owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267 (d) shall be applicable as if the loss were disallowed under section 267 (a) (1).

(2) Gains treated as ordinary income.

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221—

(A) between a partnership and a partner owning, directly or indirectly, more than 80 percent of the capital interest, or profits interest, in such partnership, or

(B) between two partnerships in which the same persons own, directly or indirectly, more than 80 percent of the capital interest or profits interests,

any gain recognized shall be considered as gain from the sale or exchange of property other than a capital asset.

(3) Ownership of a capital or profits interest.

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) other than paragraph (3) of such section.

(c) Guaranteed payments.

To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61 (a) (relating to gross income) and section 162 (a) (relating to trade or business expenses). (Aug. 16, 1954, ch. 736, 68A Stat. 243.)

CROSS REFERENCES

Payments to retiring partner or deceased partner's successor in interest, see section 736 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 179, 631, 706, 736, 1402 of this title and in title 42 section 411.

§ 708. Continuation of partnership.

(a) General rule.

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination.

(1) General rule.

For purposes of subsection (a), a partnership shall be considered as terminated only if—

(A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

(2) Special rules.

(A) Merger or consolidation.

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership.

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 771, 4383 of this title.

PART II.—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart

A. Contributions to a partnership.
B. Distributions by a partnership.
C. Transfers of interests in a partnership.
D. Provisions common to other subparts.

SUBPART A.—CONTRIBUTIONS TO A PARTNERSHIP

Sec.

721. Nonrecognition of gain or loss on contribution.
722. Basis of contributing partner's interest.
723. Basis of property contributed to partnership.

§ 721. Nonrecognition of gain or loss on contribution.

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership. (Aug. 16, 1954, ch. 736, 68A Stat. 245.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 1245, 1250, 1251 of this title.

§ 722. Basis of contributing partner's interest.

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution. (Aug. 16, 1954, ch. 736, 68A Stat. 245.)

CROSS REFERENCES

Determination of basis of partner's interest, see section 705 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 705 of this title.

§ 723. Basis of property contributed to partnership.

The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution. (Aug. 16, 1954, ch. 736, 68A Stat. 245.)

CROSS REFERENCES

Exploration expenditures, see section 615 of this title.

SUBPART B.—DISTRIBUTIONS BY A PARTNERSHIP

Sec.

731. Extent of recognition of gain or loss on distribution.
732. Basis of distributed property other than money.
733. Basis of distributee partner's interest.
734. Optional adjustment to basis of undistributed partnership property.
735. Character of gain or loss on disposition of distributed property.
736. Payments to a retiring partner or a deceased partner's successor in interest.

§ 731. Extent of recognition of gain or loss on distribution.

(a) Partners.

In the case of a distribution by a partnership to a partner—

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of—

(A) any money distributed, and

(B) the basis to the distributee, as determined under section 732, of any unrealized receivables (as defined in section 751 (c)) and inventory (as defined in section 751 (d) (2)).

Any gain or loss recognized under this subsection shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

(b) Partnerships.

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

(c) Exceptions.

This section shall not apply to the extent otherwise provided by section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest) and section 751 (relating to unrealized receivables and inventory items). (Aug. 16, 1954, ch. 736, 68A Stat. 245.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 734, 751, 771, 1245, 1250 of this title.

§ 732. Basis of distributed property other than money.

(a) Distributions other than in liquidation of a partner's interest.

(1) General rule.

The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, ex-

cept as provided in paragraph (2), be its adjusted basis to the partnership immediately before such distribution.

(2) Limitation.

The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(b) Distributions in liquidation.

The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(c) Allocation of basis.

The basis of distributed properties to which subsection (a) (2) or subsection (b) is applicable shall be allocated—

(1) first to any unrealized receivables (as defined in section 751 (c)) and inventory items (as defined in section 751 (d) (2)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

(2) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership.

(d) Special partnership basis to transferee.

For purposes of subsections (a), (b), and (c), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in section 754 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within 2 years after such transfer, may elect, under regulations prescribed by the Secretary or his delegate, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in section 743 (b) were in effect with respect to the partnership property. The Secretary or his delegate may by regulations require the application of this subsection in the case of a distribution to a transferee partner, whether or not made within 2 years after the transfer, if at the time of the transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

(e) Exception.

This section shall not apply to the extent that a distribution is treated as a sale or exchange of property under section 751 (b) (relating to unrealized receivables and inventory items). (Aug. 16, 1954, ch. 736, 68A Stat. 246.)

CROSS REFERENCES

Effective date, see section 771 of this title.

Exploration expenditures, see section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 731, 733, 734, 771 of this title.

§ 733. Basis of distributee partner's interest.

In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by—

(1) the amount of any money distributed to such partner, and

(2) the amount of the basis to such partner of distributed property other than money, as determined under section 732.

(Aug. 16, 1954, ch. 736, 68A Stat. 247.)

CROSS REFERENCES

Determination of basis of partner's interest, see section 705 of this title.

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 705, 771 of this title.

§ 734. Optional adjustment to basis of undistributed partnership property.

(a) General rule.

The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in section 754 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership.

(b) Method of adjustment.

In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect, shall—

(1) increase the adjusted basis of partnership property by—

(A) the amount of any gain recognized to the distributee partner with respect to such distribution under section 731 (a) (1), and

(B) in the case of distributed property to which section 732 (a) (2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732 (d)) over the basis of the distributed property to the distributee, as determined under section 732, or

(2) decrease the adjusted basis of partnership property by—

(A) the amount of any loss recognized to the distributee partner with respect to such distribution under section 731 (a) (2), and

(B) in the case of distributed property to which section 732 (b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by section 732 (d)).

(c) Allocation of basis.

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755. (Aug. 16, 1954, ch. 736, 68A Stat. 247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 754, 755 of this title.

§ 735. Character of gain or loss on disposition of distributed property.

(a) Sale or exchange of certain distributed property.

(1) Unrealized receivables.

Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in section 751 (c)) distributed by a partnership, shall be considered gain or loss from the sale or exchange of property other than a capital asset.

(2) Inventory items.

Gain or loss on the sale or exchange by a distributee partner of inventory items (as defined in section 751 (d) (2)) distributed by a partnership shall, if sold or exchanged within 5 years from the date of the distribution, be considered gain or loss from the sale or exchange of property other than a capital asset.

(b) Holding period for distributed property.

In determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of subsection (a) (2)), there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property. (Aug. 16, 1954, ch. 763, 68A Stat. 247.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 771 of this title.

§ 736. Payments to a retiring partner or a deceased partner's successor in interest.

(a) Payments considered as distributive share or guaranteed payment.

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707 (c) if the amount thereof is determined without regard to the income of the partnership.

(b) Payments for interest in partnership.

(1) General rule.

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under regulations prescribed by the Secretary or his delegate, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

(2) Special rules.

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751 (c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

(Aug. 16, 1594, ch. 736, 68A Stat. 248.)

CROSS REFERENCES

Extent of recognition of gain or loss on distribution, see section 731 of this title.

Partner receiving income in respect of decedent, see section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 731, 751, 753 of this title.

SUBPART C.—TRANSFERS OF INTEREST IN A PARTNERSHIP

Sec.
741. Recognition and character of gain or loss on sale or exchange.
742. Basis of transferee partner's interest.
743. Optional adjustment to basis of partnership property.

§ 741. Recognition and character of gain or loss on sale or exchange.

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items which have appreciated substantially in value). (Aug. 16, 1954, ch. 736, 68A Stat. 248.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 751 of this title.

§ 742. Basis of transferee partner's interest.

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following). (Aug. 16, 1954, ch. 736, 68A Stat. 249.)

CROSS REFERENCES

Determination of basis of partner's interest, see section 705 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 705 of this title.

§ 743. Optional adjustment to basis of partnership property.

(a) General rule.

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership.

(b) Adjustment to basis of partnership property.

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect shall—

(1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary or his delegate, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of an agreement described in section 704 (c) (2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

(c) Allocation of basis.

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755. (Aug. 16, 1954, ch. 736, 68A Stat. 249.)

CROSS REFERENCES

Manner of electing optional adjustment to basis of partnership property, see section 754 of this title.

Rules for allocation of basis, see section 755 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 732, 754, 755 of this title.

SUBPART D.—PROVISIONS COMMON TO OTHER SUBPARTS

Sec.
751. Unrealized receivables and inventory items.
752. Treatment of certain liabilities.
753. Partner receiving income in respect of decedent.
754. Manner of electing optional adjustment to basis of partnership property.
755. Rules for allocation of basis.

§ 751. Unrealized receivables and inventory items.

(a) Sale or exchange of interest in partnership.

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

(1) unrealized receivables of the partnership, or

(2) inventory items of the partnership which have appreciated substantially in value,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(b) Certain distributions treated as sales or exchanges.

(1) General rule.

To the extent a partner receives in a distribution—

(A) partnership property described in subsection (a) (1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

(B) partnership property (including money) other than property described in subsection (a) (1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a) (1) or (2),

such transactions shall, under regulations prescribed by the Secretary or his delegate, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(2) Exceptions.

Paragraph (1) shall not apply to—

(A) a distribution of property which the distributee contributed to the partnership, or

(B) payments, described in section 736 (a), to a retiring partner or successor in interest of a deceased partner.

(c) Unrealized receivables.

For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and sections 731, 736, and 741, such term also includes mining property (as defined in section 617(f)(2)), section 1245 property (as defined in section 1245(a)(3)), section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a)), but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 1245(a), or 1250(a), 1251(c), or 1252(a) would apply if (at the time of the transaction described in this section or sections 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

(d) Inventory items which have appreciated substantially in value.

(1) Substantial appreciation.

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

(A) 120 percent of the adjusted basis to the partnership of such property, and

(B) 10 percent of the fair market value of all partnership property, other than money.

(2) Inventory items.

For purposes of this subchapter the term "inventory items" means—

(A) property of the partnership of the kind described in section 1221(1),

(B) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231,

(C) any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and

(D) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in subparagraph (A), (B), or (C).

(Aug. 16, 1954, ch. 736, 68A Stat. 250; Oct. 16, 1962, Pub. L. 87–834, §§ 13(f)(1), 14(b)(2), 76 Stat. 1035, 1041; Feb. 26, 1964, Pub. L. 88–272, title II, § 231(b)(6), 78 Stat. 105; Sept. 12, 1966, Pub. L. 89–570, § 1(c), 80 Stat. 762; Dec. 30, 1969, Pub. L. 91–172, title II, § 211(b)(6), 83 Stat. 570.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–172 substituted "section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a))", and "1250(a), 1251(c), or 1252(a)", for "and section 1250 property (as defined in section 1250(c))" and "1250(a)", respectively.

1966—Subsec. (c). Pub. L. 89–570 included reference to mining property (as defined in section 617(f)(2)) and to section 617(d)(1) in the last sentence.

1964—Subsec. (c). Pub. L. 88–272 inserted the reference to section 1250.

1962—Subsec. (c). Pub. L. 87–834, § 13(f)(1), defined "unrealized receivables" for purposes of this section and section 731, 736, and 741, as including section 1245 property, but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

Subsec. (d)(2). Pub. L. 87–834, § 14(b)(2), added subpar. (C), and redesignated former subpar. (C) as (D) and substituted therein "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 1251 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89–570, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (c) of this section by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as a note under section 1245 of this title.

Amendment of subsec. (d)(2) of this section by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 1246 of this title.

CROSS REFERENCES

Effective date, see section 771 of this title.

Extent of recognition of gain or loss on distribution, see section 731 of this title.

Recognition and character of gain or loss on sale or exchange, see section 741 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 617, 731, 732, 735, 736, 741, 771, 1245, 1250 of this title.

§ 752. Treatment of certain liabilities.

(a) Increase in partner's liabilities.

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(b) Decrease in partner's liabilities.

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(c) Liability to which property is subject.

For purposes of this section, a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

(d) Sale or exchange of an interest.

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships. (Aug. 16, 1954, ch. 736, 68A Stat. 251.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 771 of this title.

§ 753. Partner receiving income in respect of decedent.

The amount includible in the gross income of a successor in interest of a deceased partner under section 736 (a) shall be considered income in respect of a decedent under section 691. (Aug. 16, 1954, ch. 736, 68A Stat. 251.)

CROSS REFERENCES

Effective date, see section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 771 of this title.

§ 754. Manner of electing optional adjustment to basis of partnership property.

If a partnership files an election, in accordance with regulations prescribed by the Secretary or his delegate, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 251.)

CROSS REFERENCES

Optional adjustment to basis of—

Partnership property, see section 743 of this title.

Undistributed partnership property, see section 734 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section referred to in sections 732, 734, 743 of this title.

§ 755. Rules for allocation of basis.

(a) General rule.

Any increase or decrease in the adjusted basis of partnership property under section 734 (b) (relating to the optional adjustment to the basis of undis-

tributed partnership property) or section 743 (b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary or his delegate.

(b) Special rule.

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231 (b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 734, 743 of this title.

PART III.—DEFINITIONS

Sec.
761. Terms defined.

§ 761. Terms defined.

(a) Partnership.

For purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary or his delegate may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business, or

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner.

For purposes of this subtitle, the term "partner" means a member of a partnership.

(c) Partnership agreement.

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(d) Liquidation of a partner's interest.

For purposes of this subchapter, the term "liquidation of a partner's interest" means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership. (Aug. 16, 1954, ch. 736, 68A Stat. 252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 771 of this title.

PART IV.—EFFECTIVE DATE FOR SUBCHAPTER

Sec.
771. Effective date.

§ 771. Effective date.

(a) General rule.

(1) Taxable years beginning after December 31, 1954.

Except as provided in subsection (b), this subchapter shall apply with respect to—

(A) any partnership taxable year beginning after December 31, 1954, and

(B) any part of a partner's taxable year falling within such partnership taxable year.

(2) Application of prior provisions.

Except as provided in subsection (b), sections 113 (a) (13), 181 to 191 (inclusive), and 3797 (a) (2) of the Internal Revenue Code of 1939 shall apply with respect to—

(A) any partnership taxable year beginning before January 1, 1955, and

(B) any part of a partner's taxable year falling within such partnership taxable year.

(b) Special rules.

(1) Adoption of taxable year.

Section 706 (b) (relating to the adoption of a taxable year by a partnership or partner) shall apply to—

(A) any partnership which adopts, or changes to, a taxable year beginning after April 1, 1954, and

(B) any partner who changes to a taxable year beginning after April 1, 1954.

For the purpose of applying this paragraph, section 708 (relating to the continuation of a partnership) shall be effective for taxable years beginning after April 1, 1954.

(2) Property distributed by a partnership.

Section 735 (a) (relating to the character of gain or loss on the disposition of property distributed by a partnership) shall apply only to property distributed by a partnership after March 9, 1954.

(3) Unrealized receivables and inventory items.

Section 751 (relating to unrealized receivables and inventory items) shall apply with respect to gain or loss to a seller, distributee, or partnership in the case of a sale, exchange, or distribution occurring after March 9, 1954. For the purpose

of applying this paragraph in the case of a taxable year beginning before January 1, 1955, the other sections of this subchapter shall be applicable to the extent provided by regulations prescribed by the Secretary or his delegate.

(4) Partner receiving income in respect of decedent.

Section 753 (relating to income in respect of a decedent) shall apply only in the case of payments made with respect to decedents dying after December 31, 1954.

(c) Optional treatment of certain distributions.

In the case of a partnership taxable year beginning after December 31, 1953, and before January 1, 1955, a partnership may elect, under regulations prescribed by the Secretary or his delegate, with respect to distributions made during such year to any partner, other than in liquidation of the partner's interest, to apply the rules in sections 731, 732 (a), (c), and (e), 733, 735, and 751 (b), (c), and (d) (and, to the extent applicable, the rules provided in sections 705, 752, and 761 (d)). If a partnership so elects, such rules shall be effective for the partnership and all members of such partnership with respect to such distributions. (Aug. 16, 1954, ch. 736, 68A Stat. 253.)

Subchapter L.—Insurance Companies

Part
I. Life insurance companies.
II. Mutual insurance companies (other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits).
III. Other insurance companies.
IV. Provisions of general application.

AMENDMENTS

1962—Pub. L. 87-834, § 8(g)(4)(A), Oct. 16, 1962, 76 Stat. 999, substituted "and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits" for "or marine or fire insurance companies issuing perpetual policies" in the heading of Part II.

PART I.—LIFE INSURANCE COMPANIES

Subpart
A. Definition; tax imposed.
B. Investment income.
C. Gain and loss from operations.
D. Distributions to shareholders.
E. Miscellaneous provisions.

AMENDMENTS

1959—Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112, amended analysis of Part I and subparts generally.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 361, 6154, 6425, 6655 of this title.

SUBPART A.—DEFINITION; TAX IMPOSED

Sec.
801. Definition of life insurance company.
802. Tax imposed.

AMENDMENTS

1959—Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112, amended analysis generally.

1958—Pub. L. 85-345, § 2(b), Mar. 17, 1958, 72 Stat. 37, eliminated "for 1955 and 1956" following the words "Tax imposed" in item 802.

1956—Act July 24, 1956, ch. 696, § 2(a), 70 Stat. 633, inserted "and 1956" in item 802.

Act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36, amended analysis generally.

§ 801. Definition of life insurance company.

(a) Life insurance company defined.

For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)).

(b) Life insurance reserves defined.

(1) In general.

For purposes of this part, the term "life insurance reserves" means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interests, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies.

(2) Reserves must be required by law.

Except—

(A) in the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies.

In the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(A) sums actually deposited by such company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

For purposes of this part, the rate of interest assumed in calculating the reserves described in subparagraphs (A) and (B) shall be 3 percent.

(4) Deficiency reserves excluded.

The term "life insurance reserves" does not include deficiency reserves. For purposes of this subsection and subsection (c), the deficiency reserve for any contract is that portion of the reserve for such contract equal to the amount (if any) by which—

(A) the present value of the future net premiums required for such contract, exceeds

(B) the present value of the future actual premiums and consideration charged for such contract.

(5) Amount of reserves.

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined.

For purposes of subsection (a), the term "total reserves" means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

The term "total reserves" does not include deficiency reserves (within the meaning of subsection (b)(4)).

(d) Adjustments in reserves for policy loans.

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts.

For purposes of this part, guaranteed renewable life, health, and accident insurance shall be treated in the same manner as noncancellable life, health, and accident insurance.

(f) Burial and funeral benefit insurance companies.

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

(g) Contracts with reserves based on segregated asset accounts.

(1) Definitions.

(A) Annuity contracts include variable annuity contracts.

For purposes of this part, an "annuity contract" includes a contract which provides for the payment of a variable annuity computed on the basis of recognized mortality tables and the investment experience of the company issuing the contract.

(B) Contracts with reserves based on a segregated asset account.

For purposes of this part, a "contract with reserves based on a segregated asset account" is a contract—

(i) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(ii) which provides for the payment of annuities, and

(iii) under which the amounts paid in, or the amount paid as annuities, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of clause (iii) after such cessation.

(2) Life insurance reserves.

For purposes of subsection (b)(1)(A) of this section, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(3) Separate accounting.

For purposes of this part, a life insurance company which issues contracts with reserves based on segregated asset accounts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such segregated asset accounts. For such items as are not accounted for directly, separate accounting shall be made—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

(4) Investment yield.

(A) In general.

For purposes of this part, the policy and other contract liability requirements, and the life insurance company's share of investment yield, shall be separately computed—

(i) with respect to the items separately accounted for in accordance with paragraph (3), and

(ii) excluding the items taken into account under clause (i).

(B) Capital gains and losses.

If, without regard to subparagraph (A), the net short-term capital gain exceeds the net long-term capital loss, such excess shall be allocated between clauses (i) and (ii) of subparagraph (A) in proportion to the respective contributions to such excess of the items taken into account under each such clause.

(5) Policy and other contract liability requirements.

For purposes of this part—

(A) with respect to life insurance reserves based on segregated asset accounts, the adjusted reserves rate and the current earnings rate for

purposes of section 805(b), and the rate of interest assumed by the taxpayer for purposes of sections 805(c) and 809(a)(2), shall be a rate equal to the current earnings rate determined under section 805(b)(2) with respect to the items separately accounted for in accordance with paragraph (3) reduced by the percentage obtained by dividing—

(i) any amount retained with respect to such reserves by the life insurance company from gross investment income (as defined in section 804(b) on segregated assets, to the extent such retained amount exceeds the deductions allowable under section 804(c) which are attributable to such reserves, by

(ii) the means of such reserves; and

(B) with respect to reserves based on segregated asset accounts other than life insurance reserves, an amount equal to the product of—

(i) the rate of interest assumed as defined in subparagraph (A), and

(ii) the means of such reserves,

shall be included as interest paid within the meaning of section 805(e)(1).

(6) Increases and decreases in reserves.

For purposes of subsections (a) and (b) of section 810, the sum of the items described in section 810(c) taken into account as of the close of the taxable year shall, under regulations prescribed by the Secretary or his delegate, be adjusted—

(A) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with paragraph (3) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(B) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (7) of section 809(d) with respect to segregated asset accounts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(7) Basis of assets held for qualified pension plan contracts.

In the case of contracts described in subparagraph (A), (B), (C), or (D) of section 805(d)(1), the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(A) increased by the amount of any appreciation in value, and

(B) decreased by the amount of any depreciation in value, to the extent that such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items in paragraph (6) with respect to such contracts.

(8) Additional separate computations.

Under regulations prescribed by the Secretary or his delegate, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with paragraph (3), as may be necessary to carry out the purposes of this subsection and this part.

(Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112, and amended Pub. L. 87-858, § 3(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 91-172, title I, § 121(b)(5)(B), Dec. 30, 1969, 83 Stat. 541.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 801, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36, prior to the general revision of this part by Pub. L. 86-69.

AMENDMENTS

1969—Subsec. (b)(2). Pub. L. 91-172 redesignated former subpar. (C) as (B). Former subpar. (B), dealing with policies issued by organizations that substantially met the requirements of section 501(c)(9) of this title, was stricken.

1962—Subsec. (g). Pub. L. 87-858 substituted as the subsec. catchline "contracts with reserves based on segregated asset accounts" for "Variable annuities."

Subsec. (g)(1). Pub. L. 87-858 substituted as par. (1) catchline "Definitions" for "In general", designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(2). Pub. L. 87-858 substituted provisions respecting life insurance reserves for provisions relating to adjusted reserves rate and assumed rate.

Subsec. (g)(3). Pub. L. 87-858 substituted provisions respecting separate accounting for provisions relating to current earnings rate.

Subsec. (g)(4). Pub. L. 87-858 substituted provisions respecting investment yield for provisions relating to increases and decreases in reserves, incorporated in par. (6)(A) and (B).

Subsec. (g)(5). Pub. L. 87-858 substituted provisions respecting policy and other contract liability requirements for provisions relating to companies issuing variable annuities and other contracts.

Subsec. (g)(6). Pub. L. 87-858 redesignated former par. (4) as (6) and added provision relating to reduction of deduction allowed for certain items with respect to segregated asset accounts. Former par. (6) had provided that former pars. (1)—(5) would not apply with respect to any taxable year beginning after Dec. 31, 1962.

Subsec. (g)(7). Pub. L. 87-858 added par. (7).

Subsec. (g)(8). Pub. L. 87-858 redesignated subpar. (B) of former par. (5) as par. (8), substituting "with respect to the items separately accounted for in accordance with paragraph (3)" for "with respect to such annuity contracts and such other contracts."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginnnig after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(f) of Pub. L. 87-858 provided that: "Except as provided in subsection (d)(2) [set out as a note under section 812 of this title], the amendments made by this section [to this section and sections 802, 804, 809, 815, and 6501 of this title] shall apply with respect to taxable years beginning after December 31, 1961."

EFFECTIVE DATE

Section 4 of Pub. L. 86-69 provided that: "Except as otherwise provided in this Act, the amendments made by this Act [to this part and sections 381(c), (d), 841, 842, 891, 1016(a), 1201(a), (c), 1232(a), 1504(b), 4371(2) and 6501(c) of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

SHORT TITLE

Section 1 of Pub. L. 86-69 provided that Pub. L. 86-69, which amended this part and sections 34(c), 116(b), 381 (c), (d), 841, 842, 891, 1016(a), 1201(a), (c), 1232(a), 1504(b), 4371(2) and 6501(c) of this title, and enacted notes set out under this section and sections 6072 and 6655 of this title, may be cited as the "Life Insurance Company Income Tax Act of 1959."

CROSS REFERENCES

Certain exchanges of insurance policies, see section 1035 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 453, 805, 810, 818, 819, 820, 832, 1035, 4914 of this title.

§ 802. Tax imposed.

(a) Tax imposed.

(1) In general.

A tax is hereby imposed for each taxable year beginning after December 31, 1957, on the life insurance company taxable income of every life insurance company. Such tax shall consist of a normal tax and surtax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) Alternative tax in case of capital gains.

If for any taxable year beginining after December 31, 1961, the net long-term capital gain of any life insurance company exceeds the net short-term capital loss, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such tax is less than the tax imposed by such paragraph) which shall consist of the sum of—

(A) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income determined by reducing the taxable investment income, and the gain from operations, by the amount of such excess, and

(B) an amount determined as provided in section 1201(a) on such excess.

(3) Special rule for 1959 and 1960.

If any amount is subtracted from the policyholders surplus account under section 815(c)(3) for a taxable year beginning in 1959 or 1960 on account of a distribution in 1959 or 1960 (not including any distribution treated under section 815(d)(2)(B) as made in 1959 or 1960), the tax imposed for such taxable year on the life insurance company taxable income shall be the amount determined under paragraph (1) reduced by the following percentage of the amount by which the tax imposed by paragraph (1) is (without regard to this paragraph) increased, on account of the amount so subtracted, by reason of section 802(b)(3)—

(A) in the case of a taxable year beginning in 1959, 66⅔ percent; and

(B) in the case of a taxable year beginning in 1960, 33⅓ percent.

The preceding sentence shall not apply with respect to any payment treated as a distribution under section 815(d)(3).

(b) Life insurance company taxable income defined.

For purposes of this part, the term "life insurance company taxable income" means the sum of—

(1) the taxable investment income (as defined in section 804) or, if smaller, the gain from operations (as defined in section 809),

(2) if the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) the amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

(Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 115, and amended Pub. L. 87-858, § 3(b)(1), Oct. 23, 1962, 76 Stat. 1136; Pub. L. 88-272, title II, § 235(c)(1), Feb. 26, 1964, 78 Stat. 126; Pub. L. 91-172, title V, § 511(c)(1), Dec. 30, 1969, 83 Stat. 637.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 802, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 38; July 24, 1956, ch. 696, §§ 1, 2(b), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85-345, §§ 1, 2(a), 72 Stat. 36.

Former section 803, acts Aug. 16, 1954, ch. 736, 68A Stat. 256; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 39, which related to income and deductions in the case of life insurance companies, was omitted from this part by Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112, which amended this part in its entirety. See section 804 of this title.

AMENDMENTS

1969—Subsec. (a)(2)(B). Pub. L. 91-172 substituted "(B) an amount determined as provided in section 1201(a) on such excess" for "(B) an amount equal to 25 percent of such excess."

1964—Subsec. (a)(1). Pub. L. 88-272 substituted provisions that the tax shall consist of a normal tax and surtax computed as provided in section 11 as though the life insurance company taxable income were the income referred to in section 11, for provisions that it consist of a normal tax computed at the rate provided by section 11(b) and a surtax on the income which exceeds $25,000 computed at the rate provided by section 11(c).

1962—Subsec. (a)(2). Pub. L. 87-858 added "Alternative tax" to the heading of par. (2) and substituted in such par. (2) "1961" for "1958" and provisions imposing a tax consisting of the sum of "(A) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income determined by reducing the taxable investment income, and the gain from operations, by the amount of such excess, and (B) an amount equal to 25 percent of such excess" for "there is hereby imposed a tax equal to 25 percent of such excess."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91-172, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88-272 set out as a note under section 1551 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of this section by Pub. L. 87-858 applicable with respect to taxable years beginning after Dec. 31, 1961, see section 3(f) of Pub. L. 87-858, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 6072 of this title.

FILING OF INCOME TAX RETURNS FOR 1958

Every life insurance company subject to the tax imposed by this section required to make a return after June 25, 1959, and on or before Sept. 15, 1959 for its taxable year beginning in 1958, see section 3(i) of Pub. L. 86-69, set out as a note under section 6072 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80, 243, 809, 812, 815, 818, 819, 841, 891, 1351, 1504, 1562, 1563, 4914, 6501 of this title.

SUBPART B.—INVESTMENT INCOME

Sec.
804. Taxable investment income.
805. Policy and other contract liability requirements.
806. Certain changes in reserves and assets.

§ 804. Taxable investment income.

(a) In general.

(1) Exclusion of policyholders' share of investment yield.

The policyholders' share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company shall not be included in taxable investment income. For purposes of the preceding sentence, the policyholders' share of any item shall be that percentage obtained by dividing the policy and other contract liability requirements by the investment yield; except that if the policy and other contract liability requirements exceed the investment yield, then the policyholders' share of any item shall be 100 percent.

(2) Taxable investment income defined.

For purposes of this part, the taxable investment income for any taxable year shall be an amount (not less than zero) equal to the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss plus the sum of the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), reduced by—

(A) the sum of—

(i) the life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) the deduction for partially tax-exempt interest provided by section 242 (as modified by paragraph (3)) computed with respect to the life insurance company's share of such interest, and

(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by paragraph (5)) computed with respect to the life insurance company's share of the dividends received; and

(B) the small business deduction provided by paragraph (4).

For purposes of the preceding sentence, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of paragraph (1), equals 100 percent.

(3) Partially tax-exempt interest.

For purposes of this part, the deduction allowed by section 242 shall be an amount which bears the same ratio to the amount determined under such section without regard to this paragraph as (A) the normal tax rate for the taxable year prescribed by section 11, bears to (B) the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

(4) Small business deduction.

For purposes of this part, the small business deduction is an amount equal to 10 percent of the investment yield for the taxable year. The deduction under this paragraph shall not exceed $25,000.

(5) Application of section 246(b).

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this subsection, the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the taxable investment income computed without regard to the deductions allowed by such sections.

(6) Exception.

If it is established in any case that the application of the definition of taxable investment income contained in paragraph (2) results in the imposition of tax on—

(A) any interest which under section 103 is excluded from gross income,

(B) any amount of interest which under section 242 (as modified by paragraph (3)) is allowable as a deduction, or

(C) any amount of dividends received which under sections 243, 244, and 245 (as modified by paragraph (5)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(b) Gross investment income.

For purposes of this part, the term "gross investment income" means the sum of the following:

(1) Interest, etc.

The gross amount of income from—

(A) interest, dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

(C) the alteration or termination of any instrument or agreement described in subparagraph (B).

(2) Short-term capital gain.

In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) Trade or business income.

The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(c) Investment yield defined.

For purposes of this part, the term "investment yield" means the gross investment income less the following deductions—

(1) Investment expenses.

Investment expenses for the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed the sum of—

(A) one-fourth of one percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year,

(B) the amount of the mortgage service fees for the taxable year, plus

(C) whichever of the following is the greater:

(i) one-fourth of the amount by which the investment yield (computed without any deduction for investment expenses allowed by this paragraph) exceeds 3¾ percent of the mean of the assets (as defined in section 805 (b)(4)) held at the beginning and end of the taxable year, reduced by the amount described in subparagraph (B), or

(ii) one-fourth of one percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees for the taxable year.

(2) Real estate expenses.

The amount of taxes (as provided in section 164), and other expenses, for the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(3) Depreciation.

The deduction allowed by section 167. The deduction under this paragraph and paragraph (2) on account of any real estate owned and occupied for insurance purposes in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this sentence) as the rental value of the space not so occupied bears to the rental value of the entire property.

(4) Depletion.

The deduction allowed by section 611 (relating to depletion).

(5) Trade or business deductions.

The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner; except that in computing the deduction under this paragraph—

(A) There shall be excluded losses—

(i) from (or considered as from) sales or exchanges of capital assets,

(ii) from sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

(iii) from the compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(B) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account.

(C) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII of subchapter B, shall not be allowed.

(d) Cross reference.

For reduction of the $25,000 amount provided in subsection (a)(4) in the case of certain controlled corporations, see sections 1561 and 1564.

(Added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 115, and amended Pub. L. 87–858, § 3(b)(2), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, § 214 (b)(3), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, § 401(b)(2)(D), Dec. 30, 1969, 83 Stat. 602.)

CODIFICATION

Provisions similar to those comprising this section were contained in former section 803 of this title.

PRIOR PROVISIONS

A prior section 804, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 41, related to reserve and other policy liability deductions.

AMENDMENTS

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d).

1964—Subsec. (a)(5). Pub. L. 88–272 substituted "243(a)(1), 244(a)" for "243(a), 244."

1962—Subsec. (a)(2). Pub. L. 87–858 substituted "equal to the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss plus the sum" for "equal to the sum."

EFFECTIVE DATE OF 1969 AMENDMENT

Subsec. (d) of this section applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of this section by Pub. L. 87–858 applicable with respect to taxable years beginning after Dec. 31, 1961, see section 3(f) of Pub. L. 87–858, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 801, 802, 809, 815, 818, 1562, 1564 of this title.

§ 805. Policy and other contract liability requirements.

(a) In general.

For purposes of this part, the term "policy and other contract liability requirements" means, for any taxable year, the sum of—

(1) the adjusted life insurance reserves, multiplied by the adjusted reserves rate,

(2) the mean of the pension plan reserves at the beginning and end of the taxable year, multiplied by the current earnings rate, and

(3) the interest paid.

(b) Adjusted reserves rate and earnings rates.

(1) Adjusted reserves rate.

For purposes of this part, the adjusted reserves rate for any taxable year is the average earnings rate or, if lower, the current earnings rate.

(2) Current earnings rate.

For purposes of this part, the current earnings rate for any taxable year is the amount determined by dividing—

(A) the taxpayer's investment yield for such taxable year, by

(B) the mean of the taxpayer's assets at the beginning and end of the taxable year.

(3) Average earnings rate.

(A) In general.

For purposes of this part, the average earnings rate for any taxable year is the average of the current earnings rates for such taxable year and for each of the 4 taxable years immediately preceding such taxable year (excluding any of such 4 taxable years for which the taxpayer was not an insurance company).

(B) Special rules.

For purposes of subparagraph (A)—

(i) the current earnings rate for any taxable year beginning before January 1, 1958, shall be determined as if this part (as in effect for 1958) and section 381(c)(22) applied to such taxable year, and

(ii) the current earnings rate for any taxable year of any company which, for such year, is an insurance company (but not a life insurance company) shall be determined as if this part applied to such company for such year.

(4) Assets.

For purposes of this part, the term "assets" means all assets of the company (including nonadmitted assets), other than real and personal property (excluding money) used by it in carrying on an insurance trade or business. For purposes of this paragraph, the amount attributable to—

(A) real property and stock shall be the fair market value thereof, and

(B) any other asset shall be the adjusted basis (determined without regard to fair market value on December 31, 1958) of such asset for purposes of determining gain on sale or other disposition.

(c) Adjusted life insurance reserves.

(1) Adjusted life insurance reserves defined.

For purposes of this part, the term "adjusted life insurance reserves" means—

(A) the mean of the life insurance reserves (as defined in section 801(b)), other than pension plan reserves, at the beginning and end of the taxable year, multiplied by

(B) that percentage which equals 100 percent—

(i) increased by that percentage which is 10 times the average rate of interest assumed by the taxpayer in calculating such reserves, and

(ii) reduced by that percentage which is 10 times the adjusted reserves rate.

(2) Average interest rate assumed.

For purposes of this part, the average rate of interest assumed in calculating reserves shall be computed—

(A) by multiplying each assumed rate of interest by the means of the amounts of such reserves computed at that rate at the beginning and end of the taxable year, and

(B) by dividing (i) the sum of the products ascertained under subparagraph (A), by (ii) the mean of the total of such reserves at the beginning and end of the taxable year.

(d) Pension plan reserves.

(1) Pension plan reserves defined.

For purposes of this part, the term "pension plan reserves" means that portion of the life insurance reserves which is allocable to contracts—

(A) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be (i) trusts described in section 401(a) and exempt from tax under section 501(a), or (ii) trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws;

(B) purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939;

(C) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of section 401(a) (3), (4), (5), (6), (7), and (8); or

(D) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501 (c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws, or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing.

(2) Special transitional rule.

For purposes of this part, the amount taken into account as pension plan reserves shall be—

(A) in the case of a taxable year beginning after December 31, 1957, and before January 1, 1959, zero;

(B) in the case of a taxable year beginning after December 31, 1958, and before January 1, 1960, 33⅓ percent of the amount thereof (determined without regard to this paragraph);

(C) in the case of a taxable year beginning after December 31, 1959, and before January 1, 1961, 66⅔ percent of the amount thereof (determined without regard to this paragraph); and

(D) in the case of a taxable year beginning after December 31, 1960, 100 percent of the amount thereof.

(e) Interest paid.

For purposes of this part, the interest paid for any taxable year is the sum of—

(1) Interest on indebtedness.

All interest for the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this chapter.

(2) Amounts in the nature of interest.

All amounts in the nature of interest, whether or not guaranteed, for the taxable year on insurance or annuity contracts (including contracts supplementary thereto) which do not involve, at the time of accrual, life, health, or accident contingencies.

(3) Discount on prepaid premiums.

All amounts accrued for the taxable year for discounts in the nature of interest, whether or not guaranteed, on premiums or other consideration paid in advance on insurance or annuity contracts.

(4) Interest on certain special contingency reserves.

Interest for the taxable year on special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

(Added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 118, and amended Pub. L. 87–792, § 7(g), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–571, § 5(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title IX, § 907(a)(1), Dec. 30, 1969, 83 Stat. 715.)

PRIOR PROVISIONS

A prior section 805, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 43, authorized a special interest deduction.

AMENDMENTS

1969—Subsec. (e)(4). Pub. L. 91–172 made express reference to interest on special contingency reserves under specific insurance contracts established and maintained for the provision of insurance on retired lives and premium stabilization.

1964—Subsec. (d)(1)(D). Pub. L. 88–571 inserted ", or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing."

1962—Subsec. (d)(1). Pub. L. 87–792 substituted "described in section 403(a), or plans meeting" for "meeting the requirements of section 401(a) (3), (4), (5), and (6) or" in subpar. (B), and "(5), (6), (7), and (8)" for "(5), and (6)" in subpar. (C).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 907(d) of Pub. L. 91–172 provided that: "The amendments made by subsection (a) [amending this section and section 810(c) of this title] shall apply to taxable years beginning after December 31, 1957. The amendments made by subsection (b) [amending section 815 of this title] shall apply to taxable years beginning after December 31, 1968. The amendments made by subsection (c) [adding section 844 and amending sections 809, 823, and 825 of this title] shall apply with respect to losses occurred in taxable years beginnnig after December 31, 1962, but shall not affect any tax liability for any taxable year beginning before January 1, 1967."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(b) of Pub. L. 88–571 provided that: "The amendment made by subsection (a) [to this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 801, 804, 811, 818 of this title.

§ 806. Certain changes in reserves and assets.

(a) Adjustments to means for certain transfers of liabilities.

For purposes of this part, if, during the taxable year, there is a change in life insurance reserves attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such reserves, then, under regulations prescribed by the Secretary or his delegate, the means of such reserves, and the mean of the assets, shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in such transfer. This subsection shall not apply to reinsurance ceded to the taxpayer or to another person.

(b) Change of basis in computing reserves.

If the basis for determining the amount of any item referred to in section 810(c) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then for purposes of this subpart the amount of such item—

(1) as of the close of the taxable year shall be computed on the old basis, and

(2) as of the beginning of the next taxable year shall be computed on the new basis.

(Added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 120.)

PRIOR PROVISIONS

A prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

CODIFICATION

Former section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, was omitted from this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36, which amended this part in its entirely.

SUBPART C.—GAIN AND LOSS FROM OPERATIONS

Sec.
809. In general.
810. Rules for certain reserves.
811. Dividends to policyholders.
812. Operations loss deduction.

§ 809. In general.

(a) Exclusion of share of investment yield set aside for policyholders.

(1) Amount.

The share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For purposes of the preceding sentence, the share of any item set aside for policyholders shall be that percentage obtained by dividing the required interest by the investment yield; except that if the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(2) Required interest.

For purposes of this part, the required interest for any taxable year is the sum of the products obtained by multiplying—

(A) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by

(B) the means of the amount of such reserves computed at that rate at the beginning and end of the taxable year.

(b) Gain and loss from operations.

(1) Gain from operations defined.

For purposes of this part, the term "gain from operations" means the amount by which the sum of the following exceeds the deductions provided by subsection (d):

(A) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received);

(B) the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss; and

(C) the sum of the items referred to in subsection (c).

(2) Loss from operations defined.

For purposes of this part, the term "loss from operations" means the amount by which the sum of the deductions provided by subsection (d) exceeds the sum of—

(A) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received);

(B) the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss; and

(C) the sum of the items referred to in subsection (c).

(3) Life insurance company's share.

For purposes of this subpart, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of subsection (a)(1), equals 100 percent.

(4) Exception.

If it is established in any case that the application of the definition of gain from operations contained in paragraph (1) results in the imposition of tax on—

(A) any interest which under section 103 is excluded from gross income,

(B) any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(C) any amount of dividends received which under sections 243, 244, and 245 (as modified by subsection (d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(c) Gross amount.

For purposes of subsections (b) (1) and (2), the following items shall be taken into account:

(1) Premiums.

The gross amount of premiums and other consideration (including advance premiums, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer) on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. Except in the case of amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded, amounts returned where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums.

(2) Decreases in certain reserves.

Each net decrease in reserves which is required by section 810 or 811(b)(2) to be taken into account for purposes of this paragraph.

(3) Other amounts.

All amounts, not included in computing investment yield and not includible under paragraph (1) or (2), which under this subtitle are includible in gross income.

Except as included in computing investment yield, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(d) Deductions.

For purposes of subsections (b) (1) and (2), there shall be allowed the following deductions:

(1) Death benefits, etc.

All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto).

(2) Increases in certain reserves.

The net increase in reserves which is required by section 810 to be taken into account for purposes of this paragraph.

(3) Dividends to policyholders.

The deduction for dividends to policyholders (determined under section 811(b)).

(4) Operations loss deduction.

The operations loss deduction (determined under section 812).

(5) Certain nonparticipating contracts.

An amount equal to 10 percent of the increase for the taxable year in the reserves for nonparticipating contracts or (if greater) an amount equal to 3 percent of the premiums for the taxable year (excluding that portion of the premiums which is allocable to annuity features) attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more. For purposes of this paragraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (excluding that portion of the reserves which is allocable to annuity features) as relates to nonparticipating contracts (other than group contracts). For purposes of this paragraph and paragraph (6), the term "premiums" means the net amount of the premiums and other consideration taken into account under subsection (c)(1).

(6) Certain accident and health insurance and group life insurance.

An amount equal to 2 percent of the premiums for the taxable year attributable to accident and health insurance contracts (other than those to which paragraph (5) applies) and group life insurance contracts. The deduction under this paragraph for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums for the taxable year attributable to such contracts.

(7) Assumption by another person of liabilities under insurance, etc., contracts.

The consideration (other than consideration arising out of reinsurance ceded) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto).

(8) Tax-exempt interest, dividends, etc.

(A) Life insurance company's share.

Each of the following items:

(i) the life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) the deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)) computed with respect to the life insurance company's share of such interest, and

(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by subparagraph (B)) computed with respect to the life insurance company's share of the dividends received.

(B) Application of section 246(b).

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A)(iii), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the gain from operations computed without regard to—

(i) the deductions provided by paragraphs (3), (5), and (6) of this subsection,

(ii) the operations loss deduction provided by section 812, and

(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245,

but such limit shall not apply for any taxable year for which there is a loss from operations.

(9) Investment expenses, etc.

Investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield, and the amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income.

(10) Small business deduction.

A small business deduction in an amount equal to the amount determined under section 804(a)(4).

(11) Certain mutualization distributions.

The amount of distributions to shareholders made in 1958, 1959, 1960, 1961, and 1962 in acquisition of stock pursuant to a plan of mutualization adopted before January 1, 1958.

(12) Other deductions.

Subject to the modifications provided by subsection (e), all other deductions allowed under this subtitle for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this subsection in respect of dividends to policyholders.

(e) Modifications.

The modifications referred to in subsection (d)(12) are as follows:

(1) Interest.

In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 810(c).

(2) Bad debts.

Section 166(c) (relating to reserve for bad debts) shall not apply.

(3) Charitable, etc., contributions and gifts.

In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 5 percent of the gain from operations computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

(iii) any operations loss carryback to the taxable year under section 812; and

(B) under regulations prescribed by the Secretary or his delegate, a rule similar to the rule contained in section 170(d)(2)(B) shall be applied.

(4) Amortizable bond premium.

Section 171 shall not apply.

(5) Net operating loss deduction.

Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(6) Partially tax-exempt interest.

The deduction for partially tax-exempt interest provided by section 242 shall not be allowed.

(7) Dividends received.

The deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(f) Limitation on certain deductions.

(1) In general.

The amount of the deductions under paragraphs (3), (5), and (6) of subsection (d) shall not exceed $250,000 plus the amount (if any) by which—

(A) the gain from operations for the taxable year, computed without regard to such deductions, exceeds

(B) the taxable investment income for the taxable year.

(2) Application of limitation.

The limitation provided by paragraph (1) shall apply first to the amount of the deduction under subsection (d)(3), then to the amount of the deduction under subsection (d)(6), and finally to the amount of the deduction under subsection (d)(5).

(g) Limitations on deduction for certain mutualization distributions.

(1) Deduction not to reduce taxable investment income.

The amount of the deduction under subsection (d)(11) shall not exceed the amount (if any) by which—

(A) the gain from operations for the taxable year, computed without regard to such deduction (but after the application of subsection (f)), exceeds

(B) the taxable investment income for the taxable year.

(2) Deduction not to reduce tax below 1957 law.

The deduction under subsection (d)(11) for the taxable year shall be allowed only to the extent that such deduction (after the application of all other deductions provided by subsection (d)) does not reduce the amount of the tax imposed by section 802(a)(1) for such taxable year below the amount of tax which would have been imposed by section 802(a) as in effect for 1957, if this part, as in effect for 1957, applied for such taxable year.

(3) Application of section 815.

That portion of any distribution with respect to which a deduction is allowed under subsection (d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distribution made in 1959, 1960, 1961, or 1962, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B).

(Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 121, and amended Pub. L. 87-59, § 2 (a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87-790, § 3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, § 3 (b)(3), (c), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-272, title II, §§ 214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91-172, title II, § 201(a)(2)(C), title IX, § 907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717.)

AMENDMENTS

1969—Subsec. (e)(3). Pub. L. 91-172, § 201(a)(2)(C), struck out "the first sentence of" in subparagraph (A) and, in subparagraph (B), substituted "section 170(d)(2)(B)" for "section 170(b)(3)".

Subsec. (e)(5). Pub. L. 91-172, § 907(c)(2)(B), provided that section 844 of this title be excepted from the nondeduction operating loss provisions of section 172 of this title.

1964—Subsec. (d)(8)(B). Pub. L. 88-272, § 214(b)(4), substituted "243(a)(1), 244(a)" for "243(a), 244" wherever appearing.

Subsec. (d)(11). Pub. L. 88-272, § 228(a)(1), included the year 1962.

Subsec. (g)(3). Pub. L. 88-272, § 228(a)(2), included the year 1962.

1962—Subsec. (b) (1), (2). Pub L. 87-858, § 3(b)(3), added subpar. (B) to pars. (1) and (2) and redesignated former subpar. (B) as (C) in such pars. (1) and (2).

Subsec. (d)(6). Pub. L. 87-790 substituted "Certain accident and health insurance and group life insurance" for "Group life, accident, and health insurance" in the subsection catchline, and "accident and health insurance contracts (other than those to which paragraph (5) applies) and group life insurance contracts" for "group life insurance and group accident and health insurance contracts" in the text.

Subsec. (f)(2). Pub. L. 87-858, § 3(c), substituted "(d)(3)", "(d)(6)" and "(d)(5)" for "(d)(6)", "(d)(5)" and "(d)(3)", respectively.

1961—Subsec. (d)(11). Pub. L. 87-59, § 2(a), authorized the deduction of certain mutualization distributions made in 1960 and 1961.

Subsec. (g)(3). Pub. L. 87-59, § 2(b), included within its provisions certain mutualization distributions made in 1960 and 1961.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (e)(3) by section 201(a)(2)(C) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment of subsec. (e)(5) by section 907(c)(2)(B) of Pub. L. 91-172 applicable with respect to losses incurred in taxable year beginning after Dec. 31, 1962, but not affecting any tax liability for any taxable year beginning before Jan. 1, 1967, see section 907(d) of Pub. L. 91-172, set out as a note under section 805 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88-272, set out as a note under section 243 of this title.

Section 228(d) of Pub. L. 88-272 provided that: "The amendment made by subsection (a) [to this section] shall apply to taxable years beginning after December 31, 1961. The amendment made by subsection (c) [to section 832 of this title] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of this section by Pub. L. 87-858 applicable with respect to taxable years beginning after Dec. 31, 1961, see section 3(f) of Pub. L. 87-858, set out as a note under section 801 of this title.

Section 3(c) of Pub. L. 87-790 provided that: "The amendments made by this section [to subsec. (d)(6) of this section and to section 815(c)(2)(C) of this title] shall apply to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2(c) of Pub. L. 87-59 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (d)(11) and (g)(3) of this section] shall apply to taxable years beginning after December 31, 1959."

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 801, 802, 810, 811, 812, 815, 819, 820, 953, 1564 of this title.

§ 810. Rules for certain reserves.

(a) Adjustment for decrease.

If the sum of the items described in subsection (c) as of the beginning of the taxable year exceeds the sum of such items as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the excess shall be taken into account as a net decrease referred to in section 809(c)(2).

(b) Adjustment for increase.

If the sum of the items described in subsection (c) as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items as of the beginning of the taxable year, the excess shall be taken into account as a net increase referred to in section 809(d)(2).

(c) Items taken into account.

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 801(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2).

(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, health, or accident contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto).

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Special contingency reserves under contracts of group term life insurance or group health and accident insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

In applying this subsection, the same item shall be counted only once.

(d) Adjustment for change in computing reserves.

(1) In general.

If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(A) the amount of the item at the close of the taxable year, computed on the new basis, and

(B) the amount of the item at the close of the taxable year, computed on the old basis, as is attributable to contracts issued before the taxable year shall be taken into account for purposes of this subpart as follows:

(i) if the amount determined under subparagraph (A) exceeds the amount determined under subparagraph (B), 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d)(2) applies; or

(ii) if the amount determined under subparagraph (B) exceeds the amount determined under subparagraph (A), 1/10 of such excess shall be taken into account for each of the 10 succeeding taxable years, as a net decrease to which section 809(c)(2) applies.

(2) Termination as life insurance company.

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this paragraph shall be taken into account for the preceding taxable year.

(3) Effect of preliminary term election.

An election under section 818(c) shall not be treated as a change in the basis for determining an item referred to in subsection (c) to which this subsection applies. If an election under section 818(c) applies for the taxable year, the amounts of the items referred to in subparagraphs (A) and (B) of paragraph (1) shall be determined without regard to such election. If such an election would apply in respect of such item for the taxable year but for the new basis, the amount of the item referred to in subparagraph (B) shall be determined on the basis which would have been applicable under section 818(c) if the election applied in respect of the item for the taxable year.

(Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 125, and amended Pub. L. 91-172, title I, § 121(b)(5)(B), title IX, § 907(a)(2), Dec. 30, 1969, 83 Stat. 541, 715.)

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-172, § 907(a)(2), added par. (6).

Subsec. (e). Pub. L. 91-172, § 121(b)(5)(B), struck out subsec. (e), which dealt with certain decreases in reserves of voluntary employees' beneficiary associations.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (c) by section 907(a)(2) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1957, see section 907(d) of Pub. L. 91-172, set out as a note under section 805 of this title.

Repeal of subsec. (e) applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 801, 806, 809, 819, 1351, 4914 of this title.

§ 811. Dividends to policyholders.

(a) Dividends to policyholders defined.

For purposes of this part, the term "dividends to policyholders" means dividends and similar distributions to policyholders in their capacity as such. Such term does not include interest paid (as defined in section 805(e)).

(b) Amount of deduction.

(1) In general.

Except as limited by section 809(f), the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(A) increased by the excess of (i) the amounts held at the end of the taxable year as reserves for dividends to policyholders (as defined in subsection (a)) payable during the year following the taxable year, over (ii) such amounts held at the end of the preceding taxable year, or

(B) decreased by the excess of (i) such amounts held at the end of the preceding taxable year, over (ii) such amounts held at the end of the taxable year.

For purposes of subparagraphs (A) and (B), there shall be included as amounts held at the end of any taxable year amounts set aside, before the 16th day of the third month of the year following such taxable year (or, in the case of a mutual savings bank subject to the tax imposed by section 594, before the 16th day of the fourth month of the year following such taxable year), for payment during the year following such taxable year.

(2) Certain amounts to be treated as net decreases.

If the amount determined under paragraph (1)(B) exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c)(2).

(Added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 126.)

PRIOR PROVISIONS

A prior section 811, act Aug. 16, 1954, ch. 736, § 811, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 44, and amended July 24, 1956, ch. 696, § 2(c), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, § 2(c), 72 Stat. 37, imposed a tax on the life insurance company taxable income of all life insurance companies for taxable years beginning after Dec. 31, 1957.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 809 of this title.

§ 812. Operations loss deduction.

(a) Deduction allowed.

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) the operations loss carryovers to such year, plus

(2) the operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) Operations loss carrybacks and carryovers.

(1) Years to which loss may be carried.

(A) In general.

The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") beginning after December 31, 1954, shall be—

(i) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(ii) an operations loss carryover to each of the 5 taxable years following the loss year, and

(iii) subject to subsection (e), if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 5 taxable years described in clause (ii).

(B) Special transitional rules for carrybacks.

A loss from operations for any taxable year beginning before January 1, 1958, shall not be an operations loss carryback to any taxable year beginning before January 1, 1955. A loss from operations for any taxable year beginning after December 31, 1957, shall not be an operations loss carryback to any taxable year beginning before January 1, 1958.

(C) Application for years prior to 1958.

For purposes of this section, this part (as in effect for 1958) and section 381(c)(22) shall be treated as applying to all taxable years beginning after December 31, 1954, and before January 1, 1958.

(2) Amount of carrybacks and carryovers.

The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(c) Computation of loss from operations.

In computing the loss from operations for purposes of this section—

(1) The operations loss deduction shall not be allowed.

(2) The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 809(d)(8)(B).

(d) Offset defined.

(1) In general.

For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero.

(2) Operations loss deduction.

For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) New company defined.

For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have applied if in effect) was authorized to do business as an insurance company.

(f) Application of subtitle A and subtitle F.

Except as provided in section 809(e), subtitle A and subtitle F shall apply in respect of operations loss carrybacks, operations loss carryovers, and the operations loss deduction under this part in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction. (Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 127, and amended Pub. L. 87-858, § 3(d)(1), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, §1(a), Sept. 2, 1964, 78 Stat. 857.)

PRIOR PROVISIONS

A prior section 812, act Aug. 16, 1954, ch. 736, § 812, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 45, related to reserve and other policy liability deduction.

CODIFICATION

Former section 813, act Aug. 16, 1954, ch. 736, § 813, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, which related to adjustment for certain reserves, was omitted from this part by Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112, which amended this part in its entirety.

AMENDMENTS

1964—Subsec. (e). Pub. L. 88-571 eliminated provisions which imposed limitations on the eight year carryover by the exclusion of nonqualified corporations.

1962—Subsec. (e)(2)(B). Pub. L. 87-858 inserted in the first sentence "(except a corporation taxable under part II or part III of this subchapter)" following "with any other corporation."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 1(b) of Pub. L. 88-571 provided that:

"The amendment made by subsection (a) [to subsec. (e) of this section] shall apply to a loss from operations for taxable years beginning after December 31, 1955; except that, in the case of a nonqualified corporation as defined in section 812(e)(2)(B) of the Internal Revenue Code of 1954 [subsec. (e)(2)(B) of this section] as in effect before such amendment—

"(1) a loss from operations for a taxable year beginning in 1956 shall not be an operating loss carryover to the years 1962 and 1963, and there shall be no reduction in the portion of such loss from operations which may be carried to 1964 by reason of an offset with respect to the year 1962 or 1963, and

"(2) a loss from operations for a taxable year beginning in 1957 shall not be an operating loss carryover to the year 1963, and there shall be no reduction in the portion of such loss from operations which may be carried to 1964 and 1965 by reason of an offset with respect to the year 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(d)(2) of Pub. L. 87-858 provided that: "The amendment made by paragraph (1) [to subsec. (e)(2)(B) of this section] shall apply with respect to all taxable years beginning after December 31, 1954, except that in the case of a nonqualified corporation, as defined in section 812(e)(2)(B) of the Internal Revenue Code of 1954 as in effect prior to the amendment made by paragraph (1), a loss from operations for a taxable year beginning in 1955 shall not be an operations loss carryover to the year 1961, and there shall be no reduction in the portion of such loss from operations which may be carried to 1962 or 1963 by reason of an offset with respect to the year 1961."

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 809, 844, 1351, 6511, 6601, 6611 of this title.

SUBPART D.—DISTRIBUTIONS TO SHAREHOLDERS

Sec.
815. Distributions to shareholders

§ 815. Distributions to shareholders.

(a) General rule.

For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, shall be treated as made—

(1) first out of the shareholders surplus account, to the extent thereof,

(2) then out of the policyholders surplus account, to the extent thereof, and

(3) finally out of other accounts.

(b) Shareholders surplus account.

(1) In general.

Each stock life insurance company shall, for purposes of this part, establish and maintain a shareholders surplus account. The amount in such account on January 1, 1958, shall be zero.

(2) Additions to account.

The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1957, shall be the amount by which—

(A) the sum of—

(i) the life insurance company taxable income (computed without regard to section 802(b)(3)),

(ii) in the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss, reduced (in the case of a taxable year beginning after December 31, 1961) by the amount referred to in clause (i),

(iii) the deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section

809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and

(iv) the small business deduction provided by section 809(d)(10), exceeds

(B) the taxes imposed for the taxable year by section 802(a), determined without regard to section 802(b)(3).

(3) Subtractions from account.

(A) In general.

There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(B) Commodities.

There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of distributions to shareholders made during 1958.

(c) Policyholders surplus account.

(1) In general.

Each stock life insurance company shall, for purposes of this part, establish and maintain a policyholders surplus account. The amount in such account on January 1, 1959, shall be zero.

(2) Additions to account.

The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(A) an amount equal to 50 percent of the amount by which the gain from operations exceeds the taxable investment income,

(B) the deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(C) the deduction for accident and health insurance and group life insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

(3) Subtractions from account.

There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) the amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a) is increased by reason of section 802(b)(3).

(d) Special rules.

(1) Election to transfer amounts from policyholders surplus account to shareholders surplus account.

(A) In general.

A taxpayer may elect for any taxable year for which it is a life insurance company to subtract from its policyholders surplus account any amount in such account as of the close of such taxable year. The amount so subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(B) Manner and effect of election.

The election provided by subparagraph (A) shall be made (in such manner and in such form as the Secretary or his delegate may by regulations prescribe) after the close of the taxable year and not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year. Such an election, once made, may not be revoked.

(2) Termination as life insurance company.

(A) Effect of termination.

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if—

(i) for any taxable year the taxpayer is not an insurance company, or

(ii) for any two successive taxable years the taxpayer is not a life insurance company,

then the amount taken into account under section 802(b)(3) for the last preceding taxable year for which it was a life insurance company shall be increased (after the application of subparagraph (B)) by the amount remaining in its policyholders surplus account at the close of such last preceding taxable year.

(B) Effect of certain distributions.

If for any taxable year the taxpayer is an insurance company but not a life insurance company, then any distribution to shareholders during such taxable year shall be treated as made on the last day of the last preceding taxable year for which the taxpayer was a life insurance company.

(3) Treatment of certain indebtedness.

If—

(A) the taxpayer makes any payment in discharge of its indebtedness, and

(B) such indebtedness is attributable to a distribution by the taxpayer to its shareholders after February 9, 1959,

then the amount of such payment shall, for purposes of this section and section 802(b)(3), be treated as a distribution in cash to shareholders, but only to the extent that the distribution referred to in subparagraph (B) was treated as made out of accounts other than the shareholders and policyholders surplus accounts.

(4) Limitation or amount in policyholders surplus account.

There shall be treated as a subtraction from the policyholders surplus account for a taxable year for which the taxpayer is a life insurance company the amount by which the policyholders surplus account (computed at the end of the taxable year without regard to this paragraph) exceeds whichever of the following is the greatest—

(A) 15 percent of life insurance reserves at the end of the taxable year,

(B) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(C) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809 (c)(1).

The amount so treated as subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(5) Reduction of policyholders surplus account for certain unused deductions.

If—

(A) an amount added to the policyholders surplus account for any taxable year increased (or created) a loss from operations for such year, and

(B) any portion of the increase (or amount created) in the loss from operations referred to in subparagraph (A) did not reduce the life insurance company taxable income for any taxable year to which such loss was carried,

the policyholders surplus account for the taxable year referred to in subparagraph (A) shall be reduced by the amount described in subparagraph (B).

(e) Special rule for certain mutualizations.

(1) In general.

For purposes of this section and section 802 (b)(3), any distribution to shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization shall be treated—

(A) first, as made out of paid-in capital and paid-in surplus, to the extent thereof,

(B) thereafter, as made in two allocable parts—

(i) one part of which is made out of the other accounts referred to in subsection (a)(3), and

(ii) the remainder of which is a distribution to which subsection (a) applies.

(2) Special rules.

(A) Allocation ratio.

The part referred to in paragraph (1)(B)(i) is the amount which bears the same ratio to the amount to which paragraph (1)(B) applies as—

(i) the excess (determined as of December 31, 1958, and adjusted to the beginning of the year of the distribution as provided in subparagraph (B)) of the assets over the total liabilities, bears to

(ii) the sum (determined as of the beginning of the year of the distribution) of the excess described in clause (i), the amount in the shareholders surplus account, plus the amount in the policyholders surplus account.

(B) Adjustment for certain distributions.

The excess described in subparagraph (A)(i) shall be reduced by the aggregate of the prior distributions which have been treated under subsection (a)(3) as made out of accounts other than the shareholders surplus account and the policyholders surplus account.

(f) Distribution defined.

For purposes of this section, the term "distribution" includes any distribution in redemption of stock or in partial or complete liquidation of the corporation, but does not include—

(1) any distribution made by the corporation in its stock or in rights to acquire its stock;

(2) except for purposes of subsection (a)(3) and subsection (e)(2)(B), any distribution in redemption of stock issued before 1958 which at all times on and after the date of issuance and on and before the date of redemption is limited as to dividends and is callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of the issue price and the amount of any contribution to surplus made by the original purchaser at the time of his purchase;

(3) any distribution after December 31, 1963, of the stock of a controlled corporation to which section 355 applies, if such controlled corporation is an insurance company subject to the tax imposed by section 831 and if—

(A) control was acquired prior to January 1, 1958, or

(B) control has been acquired after December 31, 1957—

(i) in a transaction qualifying as a reorganization under section 368(a)(1)(B), if the distributing corporation has at all times since December 31, 1957, owned stock representing not less than 50 percent of the total combined voting power of all classes of stock entitled to vote, and not less than 50 percent of the value of all classes of stock, of the controlled corporation, or

(ii) solely in exchange for stock of the distributing corporation which stock is immediately exchanged by the controlled corporation in a transaction qualifying as a reorganization under section 368(a)(1) (A) or (C), if the controlled corporation has at all times since its organization been wholly owned by the distributing corporation and the distributing corporation has at all times since December 31, 1957, owned stock representing not less than 50 percent of the total combined voting power of all classes of stock entitled to vote, and not less than 50 percent of the value of all classes of stock, of the corporation the assets of which have been transferred to the controlled corporation in the section 368(a)(1) (A) or (C) reorganization;

(4) any distribution after December 31, 1966, of the stock of a controlled corporation to which section 355 applies, if such distribution is made to a corporation which immediately after the distribution is in control (within the meaning of section 368(c)) of both the distributing corporation and such controlled corporation and if such controlled corporation is a life insurance company of which the distributing corporation has been in control at all times since December 31, 1957; or

(5) any distribution after December 31, 1968, of the stock of a controlled corporation to which section 355 applies, if such distribution is made to a corporation which immediately after the distribution is the owner of all the stock of all classes of both the distributing corporation and such controlled corporation and if, immediately before the

distribution, the distributing corporation had been the owner of all of the stock of all classes of such controlled corporation at all times since December 31, 1957.

Paragraphs (3), (4), and (5) shall not apply to that portion of the distribution of stock of the controlled corporation equal to the increase in the aggregate adjusted basis of such stock after December 31, 1957, except to the extent such increase results from an acquisition of stock in the controlled corporation in a transaction described in paragraph (3)(B). If any part of the increase in the aggregate adjusted basis of stock of the controlled corporation after December 31, 1957, results from the transfer (other than as part of a transaction described in paragraph (3)(B)) by the distributing corporation to the controlled corporation of property which has a fair market value in excess of its adjusted basis at the time of the transfer, paragraphs (3), (4), and (5) also shall not apply to that portion of the distribution equal to such excess.

(g) Certain distributions related to former subsidiaries.

If subsection (f)(5) applied to the distribution by a life insurance company of the stock of a corporation which was a controlled corporation—

(1) any distribution by such corporation to its shareholders (after the date of the distribution of its stock by the life insurance company), and

(2) any disposition of the stock of such corporation by the distributee corporation,

shall, for purposes of this section, be treated as a distribution to its shareholders by such life insurance company, until the amounts so treated equal the amount of the distribution of such stock which by reason of subsection (f)(5) was not included as a distribution for purposes of this section. (Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 129, and amended Pub. L. 87-790, § 3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, § 3 (b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, §§ 2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90-225, § 4 (a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91-172, title IX, § 907(b), Dec. 30, 1969, 83 Stat. 715.)

AMENDMENTS

1969—Subsec. (f). Pub. L. 91-172, § 907(b)(1), added par. (5) and inserted references to par. (5) in the material following par. (5).

Subsec. (g). Pub. L. 91-172, § 907(b)(2), added subsec. (g).

1967—Subsec. (f), Pub. L. 90-225 struck-out "or" at the end of par. (2), struck out the period at the end of par. (3)(B)(ii) and inserted in lieu ", or", and added par. (4), and in material following par. (4) added references to par. (4) wherever appearing, and substituted "paragraph (3)(B)." for "subparagraph (B) of such paragraph."

1964—Subsec. (a). Pub. 88-571, § 4(a)(1), eliminated definitions of "distribution." See subsec. (f) of this section.

Subsec. (b)(2)(A)(ii). Pub. L. 88-571, § 2, inserted "reduced (in the case of a taxable year beginning after December 31, 1961) by the amount referred to in clause (i)."

Subsec. (d)(5). Pub. L. 88-571, § 3(a), added par. (5).

Subsec. (f). Pub. L. 88-571, § 4(a)(2), added subsec. (f).

1962—Subsec. (a). Pub. L. 87-858, § 3(e), added provision that "for purposes of this section, the term 'distribution' does not include any distribution before January 1, 1964, of the stock of a controlled corporation to which section 355 applies, if such controlled corporation is an insurance company subject to the tax imposed by section 831 and control has been acquired prior to January 1, 1963, in a transaction qualifying as a reorganization under section 368(a)(1)(B)."

Subsec. (c)(2). Pub. L. 87-790 substituted "accident and health insurance and group life insurance contracts" for "group life and group accident and health insurance contracts" in cl. (C).

Subsec. (c)(3)(B). Pub. L. 87-858, § 3(b)(4), substituted "802(a)" for "802(a)(1)."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 907(b) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1968, see section 907(d) of Pub. L. 91-172, set out as a note under section 805 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4(c) of Pub. L. 90-225 provided that: "The amendments made by this section [amending subsec. (f) of this section] shall apply to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 3(f) of Pub. L. 88-571 provided that: "The amendments made by this section [to subsec. (d) of this section, and sections 6501, 6511, 6601 and 6611 of this title] shall apply with respect to amounts added to policyholders surplus accounts (within the meaning of section 815(c) of the Internal Revenue Code of 1954) for taxable years beginning after December 31, 1958."

Section 4(b) of Pub. L. 88-571 provided that: "The amendments made by subsection (a) [adding subsec. (f) and amending subsec. (a) of this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of this section by Pub. L. 87-858 applicable with respect to taxable years beginning after Dec. 31, 1961, see section 3(f) of Pub. L. 87-858, set out as a note under section 801 of this title.

Amendment of subsec. (c)(2)(C) of this section by Pub. L. 87-790 applicable to taxable years beginning after Dec. 31, 1962, see section 3(c) of Pub. L. 87-790, set out as a note under section 809 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after December 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 809, 819 6501, 6511, 6601, 6611 of this title.

CODIFICATION

Former section 816, act. Aug. 16, 1954, ch. 736, § 816, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, which related to taxation of foreign life insurance companies, was omitted from this part by Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112, which amended this part in its entirety. See section 819(a), (d) of this title.

SUBPART E.—MISCELLANEOUS PROVISIONS

Sec.
817. Rules relating to certain gains and losses.
818. Accounting provisions.
819. Foreign life insurance companies.
820. Optional treatment of policies reinsured under modified coinsurance contracts.

§ 817. Rules relating to certain gains and losses.

(a) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in

section 167, held for more than 6 months, and real property used in carrying on an insurance business, held for more than 6 months, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(b) Gain on property held on December 31, 1958, and certain substituted property acquired after 1958.

(1) Property held on December 31, 1958.

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958.

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain that was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined.

For purposes of paragraphs (1) and (2), the term "property" does not include insurance and annuity contracts (and contracts supplementary thereto) and property described in paragraph (1) of section 1221.

(c) Limitation on capital loss carryovers.

A net capital loss for any taxable year beginning before January 1, 1959, shall not be taken into account.

(d) Gain on transactions occurring prior to January 1, 1959.

For purposes of this part, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset, resulting from sales or other dispositions of property prior to January 1, 1959. Any gain after December 31, 1958, resulting from the sale or other disposition of property prior to January 1, 1959, which, but for this sentence, would be taken into account under section 1231, shall not be taken into account under section 1231 for purposes of this part.

(e) Certain reinsurance transactions in 1958.

For purposes of this part, the reinsurance in a single transaction, or in a series of related transactions, occurring in 1958, by a life insurance company of all of its insurance contracts of a particular type, through the assumption by another company or companies of all liabilities under such contracts, shall be treated as a sale of a capital asset. (Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 132.)

PRIOR PROVISIONS

A prior section 817, act Aug. 16, 1954, ch. 736, § 817, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to denial of double deductions. See section 818(f) of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 953 of this title.

§ 818. Accounting provisions.

(a) Method of accounting.

All computations entering into the determination of the taxes imposed by this part shall be made—

(1) under an accrual method of accounting, or

(2) to the extent permitted under regulations prescribed by the Secretary or his delegate, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

Except as provided in the preceding sentence, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) Amortization of premium and accrual of discount.

(1) In general.

The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness

held by a life insurance company. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

(2) Special rules.

(A) Amortization of bond premium.

In the case of any bond (as defined in section 171(d)) acquired after December 31, 1957, the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) Convertible evidences of indebtedness.

In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) Exception.

For taxable years beginning after December 31, 1962, no accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

(A) interest to which section 103 applies, or

(B) original issue discount (as defined in section 1232(b)).

For purposes of section 805(b)(3)(A), the current earnings rate for any taxable year beginning before January 1, 1963, shall be determined as if the preceding sentence applied to such taxable year.

(c) Life insurance reserves computed on preliminary term basis.

For purposes of this part (other than section 801), at the election of the taxpayer the amount taken into account as life insurance reserves with respect to contracts for which such reserves are computed on a preliminary term basis may be determined on either of the following bases:

(1) Exact revaluation.

As if the reserves for all such contracts had been computed on a net level premium basis (using the same mortality assumptions and interest rates for both the preliminary term basis and the net level premium basis).

(2) Approximate revaluation.

The amount computed without regard to this subsection—

(A) increased by $21 per $1,000 of insurance in force (other than term insurance) under such contracts, less 2.1 percent of reserves under such contracts, and

(B) increased by $5 per $1,000 of term insurance in force under such contracts which at the time of issuance cover a period of more than 15 years, less 0.5 percent of reserves under such contracts.

If the taxpayer makes an election under either paragraph (1) or (2) for any taxable year, the basis adopted shall be adhered to in making the computations under this part (other than section 801) for the taxable year and all subsequent taxable years unless a change in the basis of computing such reserves is approved by the Secretary or his delegate, except that if, pursuant to an election made for a taxable year beginning in 1958, the basis adopted is the basis provided in paragraph (2), the taxpayer may adopt the basis provided by paragraph (1) for its first taxable year beginning after 1958.

(d) Short taxable years.

If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect of such period, but—

(1) the taxable investment income and the gain or loss from operations shall be determined, under regulations prescribed by the Secretary or his delegate, on an annual basis by a ratable daily projection of the appropriate figures for the short period,

(2) that portion of the life insurance company taxable income described in paragraphs (1) and (2) of section 802(b) shall be determined on an annual basis by treating the amounts ascertained under paragraph (1) as the taxable investment income and the gain or loss from operations for the taxable year, and

(3) that portion of the life insurance company taxable income described in paragraphs (1) and (2) of section 802(b) for the short period shall be the amount which bears the same ratio to the amount ascertained under paragraph (2) as the number of days in the short period bears to the number of days in the entire calendar year.

(e) Transitional rule for changes in method of accounting.

(1) In general.

If the method of accounting required to be used in computing the taxpayer's taxes under this part for the taxable year 1958 as different from the method used in computing its taxes under this part for 1957, then there shall be ascertained the net amount of those adjustments which are determined (as of the close of 1957) to be necessary solely by reason of the change to the method required by subsection (a) in order to prevent amounts from being duplicated or omitted. The amount of the taxpayer's tax for 1957 shall be recomputed (under the law applicable to 1957, modified as provided in paragraph (4)) taking into account an amount equal to $\frac{1}{10}$ of the net amount of the adjustments determined under the preceding sentence. The amount of increase or decrease (as the case may be) referred to in paragraph (2) or (3) shall be the amount of the increase or decrease ascertained under the preceding sentence, multiplied by 10.

(2) Treatment of decrease.

For purposes of subtitle F, if the recomputation under paragraph (1) results in a decrease, the amount thereof shall be a decrease in the tax imposed for 1957; except that for purposes of computing the period of limitation on the making of refunds or the allowance of credits with respect to such overpayment, the amount of such decrease

shall be treated as an overpayment of tax for 1959. No interest shall be paid, for any period before March 16, 1960, on any overpayment of the tax imposed for 1957 which is attributable to such decrease.

(3) Treatment of increase.

(A) In general.

For purposes of subtitle F (other than sections 6016 and 6655), if the recomputation under paragraph (1) results in an increase, the amount thereof shall be treated as a tax imposed by this subsection for 1959. Such tax shall be payable in 10 equal annual installments, beginning with March 15, 1960.

(B) Special rules.

For purposes of subparagraph (A)—

(i) No interest shall be paid on any installment described in subparagraph (A) for any period before the time prescribed in such subparagraph for the payment of such installment.

(ii) Section 6152(c) (relating to proration of deficiencies to installments) shall apply.

(iii) In applying section 6502(a)(1) (relating to collection after assessment), the assessment of any installment described in subparagraph (A) shall be treated as made at the time prescribed by such subparagraph for the payment of such installment.

(iv) Except as provided in section 381(c)(22), if for any taxable year the taxpayer is not a life insurance company, the time for payment of any remaining installments described in subparagraph (A) shall be the date (determined without regard to any extension of time) for filing the return for such taxable year.

(4) Modifications of 1957 tax computation.

In recomputing the taxpayer's tax for 1957 for purposes of paragraph (1)—

(A) section 804(b) (as in effect for 1957) shall not apply with respect to any amount required to be taken into account by such paragraph, and

(B) the amount of the deduction allowed by section 805 (as in effect for 1957) shall not be reduced by reason of any amount required to be taken into account by such paragraph.

(f) Denial of double deductions.

Nothing in this part shall permit the same item to be deducted more than once under subpart B and once under subpart C.

(g) Computation on consolidated returns of policyholders' share of investment yield.

For purposes of this part, in the case of a life insurance company filing or required to file a consolidated return under section 1501 for a taxable year, the computations of the policyholders' share of investment yield under subparts B and C (including all determinations and computations incident thereto) shall be made as if such company were not filing a consolidated return. (Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 133, and amended Pub. L. 88-272, title I, § 228 (b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91-688, § 1(a), Jan. 12, 1971, 84 Stat. 2072.)

PRIOR PROVISIONS

A prior section 818, act Aug. 16, 1954, ch. 736, § 818, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to certain new insurance companies.

AMENDMENTS

1971—Subsec. (g). Pub. L. 91-688 added subsec. (g).
1964—Subsec. (b)(3). Pub. L. 88-272 added par. (3).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(b) of Pub. L. 91-688 provided that: "The amendment made by subsection (a) [enacting subsec. (g) of this section] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

ELECTION TO FILE SEPARATE RETURNS

Section 2 of Pub. L. 91-688 provided that:

"(a) If—

"(1) any insurance company subject to taxation under section 802 of the Internal Revenue Code of 1954 [section 802 of this title] filed a consolidated return under section 1501 of such Code [section 1501 of this title] for any taxable year beginning after December 31, 1957, and ending before March 13, 1969, and

"(2) not later than one year after the date of the enactment of this Act [Jan. 12, 1971]

"(A) such company elects (in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this section apply,

"(B) such company files consents to the application of this section of all companies which at any time during any taxable year beginning after December 31, 1957, and ending before March 13, 1969, were members of the same affiliated group as such company, and

"(C) such company (and each company referred to in subparagraph (B)) files a separate return for the first taxable year beginning after December 31, 1957, for which such company filed a consolidated return and for each taxable year thereafter ending before the date of the enactment of this Act [Jan. 12, 1971], then not withstanding any law or rule of law the requirement of filing a consolidated return shall be replaced by a requirement of separate returns for each company referred to in paragraph (2)(C) for each taxable year to which paragraph (2)(C) applies with respect to such company. Paragraph (2)(C) shall not apply with respect to any company for any taxable year the allowance of a credit for which is barred on the date of the enactment of this Act [Jan. 12, 1971], by res judicata or through the operation of section 7121 or section 7122 of the Internal Revenue Code of 1954 [section 7121 or 7122 of this title].

"(b) If the making or allowance of any refund or credit, or the assessment of any deficiency, of income tax for any taxable year to which subsection (a)(2)(C) applies is prevented before the expiration of 2 years after the date of the enactment of this Act [Jan. 12, 1971] by any law or rule of law (other than sections 7121 and 7122 of such Code and other than res judicata), such refund or credit may nevertheless be made or allowed, and such deficiency may nevertheless be assessed, at any time before the expiration of such 2-year period, but only to the extent that the overpayment or deficiency is attributable to an election made under this section. No interest shall be allowed on any credit or refund described in the preceding sentence, and no interest shall be assessed with respect to any deficiency described in the preceding sentence, for any period before the day which is one year after the date of the enactment of this Act [Jan. 12, 1971]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 810, 1016, 1232 of this title.

§ 819. Foreign life insurance companies.

(a) Adjustment where surplus held in United States is less than specified minimum.

(1) In general.

In the case of any foreign corporation taxable under this part, if the minimum figure determined under paragraph (2) exceeds the surplus held in the United States, then—

(A) the amount of the policy and other contract liability requirements (determined under section 805 without regard to this subsection), and

(B) the amount of the required interest (determined under section 809(a)(2) without regard to this subsection),

shall each be reduced by an amount determined by multiplying such excess by the current earnings rate (as defined in section 805(b)(2)).

(2) Definitions.

For purposes of paragraph (1)—

(A) The minimum figure is the amount determined by multiplying the taxpayer's total insurance liabilities on United States business by—

(i) in the case of a taxable year beginning before January 1, 1959, 9 percent, and

(ii) in the case of a taxable year beginning after December 31, 1958, a percentage for such year to be determined and proclaimed by the Secretary or his delegate.

The percentage determined and proclaimed by the Secretary or his delegate under clause (ii) shall be based on such data with respect to domestic life insurance companies for the preceding taxable year as the Secretary or his delegate considers representative. Such percentage shall be computed on the basis of a ratio the numerator of which is the excess of the assets over the total insurance liabilities, and the denominator of which is the total insurance liabilities.

(B) The surplus held in the United States is the excess of the assets held in the United States over the total insurance liabilities on United States business.

For purposes of this paragraph and subsection (b) the term "total insurance liabilities" means the sum of the total reserves (as defined in section 801(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), and (5) of section 810(c).

(3) Reduction of section 881 tax.

In the case of any foreign corporation taxable under this part, there shall be determined—

(A) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894, and

(B) the amount of the reduction provided by paragraph (1).

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which is the same proportion of such tax as the amount referred to in subparagraph (B) is of the amount referred to in subparagraph (A); but such reduction in tax shall not exceed the increase in tax under this part by reason of the reduction provided by paragraph (1).

(b) Distributions to shareholders.

(1) In general.

In applying sections 802(b)(3) and 815 with respect to a foreign corporation the amount of the distributions to shareholders shall be determined by multiplying the total amount of the distributions to shareholders (within the meaning of section 815) of the foreign corporation by whichever of the following percentages is selected by the taxpayer for the taxable year:

(A) the percentage which the minimum figure for the taxable year (determined under subsection (a)(2)(A)) is of the excess of the assets of the company over the total insurance liabilities; or

(B) the percentage which the total insurance liabilities on United States business for the taxable year is of the company's total insurance liabilities.

(2) Distributions pursuant to certain mutualizations.

In applying section 815(e) with respect to a foreign corporation—

(A) the paid-in capital and paid-in surplus referred to in section 815(e)(1)(A) of a foreign corporation is the portion of such capital and surplus determined by multiplying such capital and surplus by the percentage selected for the taxable year under paragraph (1); and

(B) the excess referred to in section 815(e)(2)(A)(i) (without the adjustment provided by section 815(e)(2)(B)) is whichever of the following is the greater:

(i) the minimum figure for 1958 determined under subsection (a)(2)(A), or

(ii) the surplus described in subsection (a)(2)(B) (determined as of December 31, 1958).

(c) Cross reference.

For taxation of foreign corporations carrying on life insurance business within the United States, see section 842.

(Added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 136, and amended Pub. L. 89–809, title I, § 104(i)(3), Nov. 13, 1966, 80 Stat. 1561.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–809, § 104(i)(3) (A)—(D), struck out former subsec. (a), which rendered taxable the business of a foreign life insurance company carrying on a life insurance business within the United States in the same manner as a domestic life insurance company if, with respect to its United States business, it would qualify as a life insurance company under section 801, redesignated subsec. (b) as subsec. (a), and, in subsec. (a) as so redesignated, substituted "In the case of any foreign corporation taxable under this part" for "In the case of any company described in subsection (a)," in par. (1), "subsection (b)" for "subsection (c)" in par. (2), and added par. (3).

Subsec. (b). Pub. L. 89–809, § 104(i)(3) (A), (E)—(H), redesignated subsec. (c) as subsec. (b), and, in subsec. (b) as so redesignated, substituted "with respect to a foreign corporation" for "for purposes of subsection (a)", "foreign corporation" for "foreign life insurance company", and "subsection (a)(2)(A)" for "subsection

(b)(2)(A)" wherever appearing, and, in par. (2)(B)(ii), substituted "subsection (a)(2)(B)" for "subsection (b)(2)(B)". Former subsec. (b) redesignated as subsec. (a).

Subsec. (c). Pub. L. 89-809, § 104(i)(3)(A), (I), added subsec. (c). Former subsec. (c) redesignated as subsec. (b).

Subsec. (d). Pub. L. 89-809, § 104(i)(3)(A), struck out subsec. (d) which provided that foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under this part but shall be taxable as other foreign corporations.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4371 of this title.

§ 820. Optional treatment of policies reinsured under modified coinsurance contracts.

(a) In general.

(1) Treatment as reinsured under conventional coinsurance contract.

Under regulations prescribed by the Secretary or his delegate, an insurance or annuity policy reinsured under a modified coinsurance contract (as defined in subsection (b)) shall be treated, for purposes of this part (other than for purposes of section 801), as if such policy were reinsured under a conventional coinsurance contract.

(2) Consent of reinsured and reinsurer.

Paragraph (1) shall apply to an insurance or annuity policy reinsured under a modified coinsurance contract only if the reinsured and reinsurer consent, in such manner as the Secretary or his delegate shall prescribe by regulations—

(A) to the application of paragraph (1) to all insurance and annuity policies reinsured under such modified coinsurance contract, and

(B) to the application of the rules provided by subsection (c) and the rules prescribed under such subsection.

Such consent, once given, may not be rescinded except with the approval of the Secretary or his delegate.

(b) Definition of modified coinsurance contract.

For purposes of this section, the term "modified coinsurance contract" means an indemnity reinsurance contract under the terms of which—

(1) a life insurance company (hereinafter referred to as "the reinsurer") agrees to indemnify another life insurance company (hereinafter referred to as "the reinsured") against a risk assumed by the reinsured under the insurance or annuity policy reinsured,

(2) the reinsured retains ownership of the assets in relation to the reserve on the policy reinsured,

(3) all or part of the gross investment income derived from such assets is paid by the reinsured to the reinsurer as a part of the consideration for the reinsurance of such policy, and

(4) the reinsurer is obligated for expenses incurred, and for Federal income taxes imposed, in respect of such gross investment income.

(c) Special rules.

Under regulations prescribed by the Secretary or his delegate, in applying subsection (a)(1) with respect to any insurance or annuity policy the following rules shall (to the extent not improper under the terms of the modified coinsurance contract under which such policy is reinsured) be applied in respect of the amount of such policy reinsured:

(1) Premiums and gross investment income.

The premiums (to the extent allocable to the participation of the reinsurer therein) received for the policy reinsured shall be treated as received by the reinsurer and not by the reinsured. The gross investment income (to the extent allocable to the participation of the reinsurer therein) derived from the assets in relation to the reserve on the policy reinsured shall be treated as gross investment income of the reinsurer and not of the reinsured. The gross investment income so treated shall be considered as derived proportionately from each of the various sources of gross investment income of the reinsured.

(2) Capital gains and losses.

The gains and losses from sales and exchanges of capital assets, and gains and losses considered as gains and losses from sales and exchanges of capital assets, of the reinsured shall (to the extent of the participation therein by the reinsurer under the terms of the modified coinsurance contract) be treated as gains and losses from sales and exchanges of capital assets of the reinsurer and not of the reinsured.

(3) Reserves and assets.

The reserve on the policy reinsured shall be treated as a part of the reserves of the reinsurer and not of the reinsured, and the assets in relation to such reserve shall be treated as owned by the reinsurer and not by the reinsured.

(4) Expenses.

The expenses (to the extent reimbursable by the reinsurer) incurred with respect to the policy reinsured and with respect to the assets referred to in paragraph (3) shall be treated as incurred by the reinsurer and not by the reinsured.

(5) Dividends to policyholders.

The dividends to policyholders paid in respect of the policy reinsured shall be treated as paid by the reinsurer and not by the reinsured. For purposes of the preceding sentence, the amount of dividends to policyholders treated as paid by the reinsurer shall be the amount paid, in respect of the policy reinsured, by the reinsurer to the reinsured as reimbursement for dividends to policyholders paid by the reinsured. This paragraph shall apply also in respect of an insurance or annuity policy reinsured under a conventional coinsurance contract.

(6) Reimbursement for 1957 Federal income tax.

Any amount paid in 1958 or any subsequent year by the reinsurer to the reinsured as reimbursement for Federal income taxes imposed for

a taxable year beginning in 1957 or any preceding taxable year shall not be taken into account by the reinsured as an item under section 809(c) or by the reinsurer as a deduction under section 809(d).

(7) Rules prescribed by the Secretary.

Such other rules as may be prescribed by the Secretary or his delegate.

In applying the rules provided by paragraphs (1), (2), (3), (4), (5), and (6) and the rules prescribed under paragraph (7), an item shall be taken into account as income only once under subpart B and only once under subpart C by both the reinsured and the reinsurer, and an item shall be allowed as a deduction only once under subpart B and only once under subpart C to both the reinsured and the reinsurer. (Added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 137.)

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

PART II.—MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE AND CERTAIN MARINE INSURANCE COMPANIES AND OTHER THAN FIRE OR FLOOD INSURANCE COMPANIES WHICH OPERATE ON BASIS OF PERPETUAL POLICIES OR PREMIUM DEPOSITS)

Sec.
821. Tax on mutual insurance companies to which part II applies.
822. Determination of taxable investment income.
823. Determination of statutory underwriting income or loss.
824. Adjustments to provide protection against losses.
825. Unused loss deduction.
826. Election by reciprocal.

AMENDMENTS

1962—Pub. L. 87-834, § 8(a), Oct. 16, 1962, 76 Stat. 989, substituted "other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits" for "other than life or marine or fire insurance companies issuing perpetual policies" in the heading of Part II, "companies to which part II applies" for "companies (other than life or marine or fire insurance companies issuing perpetual policies)" in item 821, "Determination of taxable investment income" for "Determination of mutual insurance company taxable income" in item 822, and "Determination of statutory underwriting income or loss" for "Other definitions" in item 823, and added items 824-826.

§ 821. Tax on mutual insurance companies to which part II applies.

(a) Imposition of tax.

A tax is hereby imposed for each taxable year beginning after December 31, 1963, on the mutual insurance company taxable income of every mutual insurance company (other than a life insurance company and other than a fire, flood, or marine insurance company subject to the tax imposed by section 831). Such tax shall consist of—

(1) Normal tax.

A normal tax of 22 percent of the mutual insurance company taxable income, or 44 percent of the amount by which such taxable income exceeds $6,000, whichever is the lesser; plus

(2) Surtax.

A surtax on the mutual insurance company taxable income computed as provided in section 11(c) as though the mutual insurance company taxable income were the taxable income referred to in section 11(c).

(b) Mutual insurance company taxable income defined.

For purposes of this part, the term "mutual insurance company taxable income" means, with respect to any taxable year, the amount by which—

(1) the sum of—

(A) the taxable investment income (as defined in section 822(a)(1)),

(B) the statutory underwriting income (as defined in section 823(a)(1)), and

(C) the amounts required by section 824(d) to be subtracted from the protection against loss account, exceeds

(2) the sum of—

(A) the investment loss (as defined in section 822(a)(2)),

(B) the statutory underwriting loss (as defined in section 823(a)(2)), and

(C) the unused loss deduction provided by section 825(a).

(c) Alternative tax for certain small companies.

(1) Imposition of tax.

In the case of taxable years beginning after December 31, 1963, there is hereby imposed for each taxable year on the income of each mutual insurance company to which this subsection applies a tax (which shall be in lieu of the tax imposed by subsection (a)) computed as follows:

(A) Normal tax.

A normal tax of 22 percent of the taxable investment income, or 44 percent of the amount by which such taxable income exceeds $3,000, whichever is the lesser; plus

(B) Surtax.

A surtax on the taxable investment income computed as provided in section 11(c) as though the taxable investment income were the taxable income referred to in section 11(c).

(2) Gross amount received, over $150,000 but less than $250,000.

If the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) is over $150,000 but less than $250,000, the tax imposed by paragraph (1) shall be reduced to an amount which bears the same proportion to the amount of the tax determined under paragraph (1) as the excess over $150,000 of such gross amount received bears to $100,000.

(3) Companies to which subsection applies.

(A) In general.

Except as provided in subparagraph (B), this subsection shall apply to every mutual insurance company (other than a life insurance company and other than a fire, flood, or marine insurance company subject to the tax imposed by section 831) which received during the taxable year

from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) a gross amount in excess of $150,000 but not in excess of $500,000.

(B) Exceptions.

This subsection shall not apply to a mutual insurance company for the taxable year if—

(i) there is in effect an election by such company made under subsection (d) to be taxable under subsection (a); or

(ii) there is any amount in the protection against loss account at the beginning of the taxable year.

(d) Election to include statutory underwriting income or loss.

(1) In general.

Any mutual insurance company which is subject to the tax imposed by subsection (c) may elect, in such manner and at such time as the Secretary or his delegate may by regulations prescribe, to be subject to the tax imposed by subsection (a).

(2) Effect of election.

If an election is made under paragraph (1), the electing company shall be subject to the tax imposed by subsection (a) (and shall not be subject to the tax imposed by subsection (c)) for the first taxable year for which such election is made and for all taxable years thereafter unless the secretary or his delegate consents to a revocation of such election.

(e) Special transitional underwriting loss.

(1) Companies to which subsection applies.

This subsection shall apply to every mutual insurance company which has been subject to the tax imposed by this section (as in effect before the enactment of this subsection) for the 5 taxable years immediately preceding January 1, 1962, and has incurred an underwriting loss for each of such 5 taxable years.

(2) Reduction of statutory underwriting income.

For purposes of this part, the statutory underwriting income of a company described in paragraph (1) for the taxable year shall be the statutory underwriting income for the taxable year (determined without regard to this subsection) reduced by the amount by which—

(A) the sum of the underwriting losses of such company for the 5 taxable years immediately preceding January 1, 1962, exceeds

(B) the total amount by which the company's statutory underwriting income was reduced by reason of this subsection for prior taxable years.

(3) Underwriting loss defined.

For purposes of this subsection, the term "underwriting loss" means statutory underwriting loss, computed without any deduction under section 824(a) and without any deduction under section 832(c)(11).

(4) Years to which subsection applies.

This subsection shall apply with respect to any taxable year beginning after December 31, 1962, and before January 1, 1968, for which the taxpayer is subject to the tax imposed by subsection (a).

(f) Cross references.

(1) For exemption from tax of certain mutual insurance companies, see section 501(c)(15).

(2) For alternative tax in case of capital gains, see section 1201(a).

(3) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

(Aug. 16, 1954, ch. 736, 68A Stat. 260; Mar. 30, 1955, ch. 18, § 2, 69 Stat. 14; Mar. 13, 1956, ch. 83, § 3(a)(1), (2), 70 Stat. 47; Mar. 29, 1956, ch. 115 § 2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 2, 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 2, 72 Stat. 259; June 30, 1959, Pub. L. 86–75, § 2, 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II, § 201, 74 Stat. 290; June 30, 1961, Pub. L. 87–72, § 2, 75 Stat. 193; June 28, 1962, Pub. L. 87–508, § 2, 76 Stat. 114; Oct. 16, 1962, Pub. L. 87–834, § 8(a), 76 Stat. 989; June 29, 1963 Pub. L. 88–52, § 2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, § 123(a), 78 Stat. 29; Nov. 13, 1966, Pub. L. 89–809, title I, § 104(i)(4), 80 Stat. 1562.)

AMENDMENTS

1966—Subsec. (e). Pub. L. 89–809, § 104(i)(4(A), struck out former subsec. (e) dealing with foreign mutual insurance companies not carrying on an insurance business within the United States and redesignated subsec. (f) as subsec. (e).

Subsec. (f). Pub. L. 89–809, § 104(i)(4)(A), (B), redesignated subsec. (g) as subsec. (f) and, in subsec. (f) as so redesignated, added item (3). Former subsec. (f) redesignated as subsec. (e).

Subsec. (g). Pub. L. 89–809, § 104(i)(4)(A), redesignated subsec. (g) as subsec. (f). Former subsec. (f) redesignated as subsec. (e).

1964—Subsec. (a). Pub. L. 88–272, § 123(a)(1), substituted "December 31, 1963" for "December 31, 1962", provisions setting a normal tax of 22% of the mutual insurance company taxable income, or 44% of the amount such income exceeds $6,000, whichever is the lesser, for provisions taxing 30% of such income, or 60% of the amount it exceeded $6,000, whichever was the lesser, for taxable years beginning before July 1, 1964, and 25% of such income, or 50% of the amount it exceeded $6,000, whichever was the lesser, for taxable years beginning after June 30, 1964, in par. (1), and in par. (2), "on the mutual insurance company taxable income computed as provided in section 11(c) as though the mutual insurance company taxable income were the taxable income referred to in section 11(c)" for "of 22 percent of the mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax exempt interest) in excess of $25,000."

Subsec. (c)(1). Pub. L. 88–272, § 123(a)(2), substituted "December 31, 1963" for "December 31, 1962", provisions setting a normal tax of 22% of the taxable investment income, or 44% of the amount such income exceeds $3,000, whichever is the lesser, for provisions taxing 30% of such income, or 60% of the amount it exceeded $3,000, whichever was the lesser, for taxable years beginning before July 1, 1964, and 25% of such income, or 50% of the amount it exceeded $3,000, whichever was the lesser, for taxable years beginning after June 30, 1964, and in par. (B), "on the taxable investment income computed as provided in section 11(c) as though the taxable investment income were the taxable income referred to in section 11(c)" for "of 22 percent of the taxable investment income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) in excess of $25,000."

1963—Subsec. (a)(1). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" and "June 30, 1964" for "June 30, 1963", wherever appearing.

Subsec. (c)(1)(A). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" and "June 30, 1964" for June 30, 1963", wherever appearing.

1962—Subsec. (a). Pub. L. 87–834 excluded flood insurance companies subject to the tax imposed by section 831 of this title, eliminated provisions which excluded

mutual insurance companies which are interinsurers or reciprocal underwriters, and substituted provisions authorizing a normal tax, in the case of taxable years beginning before July 1, 1963, of 30 percent of the taxable income, or 60 percent of the amount by which such taxable income exceeds $6,000, whichever is lesser, and in the case of taxable years beginning after June 30, 1963, of 25 percent of the taxable income, or 50 percent of the amount by which such taxable income exceeds $6,000, whichever is less, for provisions which imposed a normal tax, in the case of taxable years beginning before July 1, 1962, of 30 percent of the taxable income, or 60 percent of the amount by which such taxable income exceeds $3,000, whichever is the lesser, and in the case of taxable years beginning after June 30, 1962, of 25 percent of the taxable income, or 50 percent of the amount by which such taxable income exceeds $3,000, whichever is the lesser, and if for the taxable year the gross amount of income from the items described in section 822(b) (other than par. (1)(D) thereof) and net premiums, minus dividends to policyholders, minus the interest which under section 103 is excluded from gross income, exceeds $75,000, a tax equal to 1 percent of the amount so computed, or 2 percent of the excess of the amount so computed over $75,000, whichever is the lesser.

Subsec. (a)(1)(A). Pub. L. 87-508 substituted "July 1, 1963" for "July 1, 1962" and "June 30, 1963" for "June 30, 1962", wherever appearing.

Subsec. (b). Pub. L. 87-834 substituted provisions defining "mutual insurance company taxable income" for provisions which imposed a tax on mutual insurance companies which are interinsurers or reciprocal underwriters.

Subsec. (b)(1). Pub. L. 87-508 substituted "July 1, 1963" for "July 1, 1962" and "June 30, 1963" for "June 30, 1962", wherever appearing.

Subsec. (c). Pub. L. 87-834 amended subsection generally to read as above set forth. Prior to such amendment, subsection read as follows: "If the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) is over $75,000 but less than $125,000, the tax imposed by subsection (a) or subsection (b), whichever applies, shall be reduced to an amount which bears the same proportion to the amount of the tax determined under such subsection as the excess over $75,000 of such gross amount received bears to $50,000."

Subsec. (d). Pub. L. 87-834 added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 87-834 redesignated former subsec. (d) as (e) and included flood insurance companies subject to the tax imposed by section 831 within the exception clause. Former subsec. (e) redesignated (g)(2).

Subsec. (f). Pub. L. 87-834 added subsec. (f).

Subsec. (g). Pub. L. 87-834 added subsec. (g). Provisions of subsec. (g)(2) were formerly contained in subsec. (e) of this section.

1961—Subsec. (a)(1)(A). Pub. L. 87-72 substituted "July 1, 1962" for "July 1, 1961" and "June 30, 1962" for "June 30, 1961", wherever appearing.

Subsec. (b)(1). Pub. L. 87-72 substituted "July 1, 1962" for "July 1, 1961" and "June 30, 1962" for "June 30, 1961", wherever appearing.

1960—Subsec. (a)(1)(A). Pub. L. 86-564 substituted "July 1, 1961" for "July 1, 1960" and "June 30, 1961" for "June 30, 1960" wherever appearing.

Subsec. (b)(1). Pub. L. 86-564 substituted "July 1, 1961" for "July 1, 1960" and "June 30, 1961" for "June 30, 1960" wherever appearing.

1959—Subsec. (a)(1)(A). Pub. L. 86-75 substituted "July 1, 1960" for "July 1, 1959" and "June 30, 1960" for "June 30, 1959" wherever appearing.

Subsec. (b)(1). Pub. L. 86-75 substituted "July 1, 1960" for "July 1, 1959" wherever appearing.

1958—Subsec. (a) (1) (A). Pub. L. 85-475 substituted "July 1, 1959" for "July 1, 1958" and "June 30, 1959" for "June 30, 1958" wherever appearing.

Subsec. (b) (1). Pub. L. 85-475 substituted "July 1, 1959" for "July 1, 1958" and "June 30, 1959" for "June 30, 1958" wherever appearing.

1957—Subsec. (a) (1) (A). Pub. L. 85-12 substituted "July 1, 1958" for "April 1, 1957" and "June 30, 1958" for "March 31, 1957" wherever appearing.

Subsec. (b) (1). Pub. L. 85-12 substituted "July 1, 1958" for "April 1, 1957" and "June 30, 1958" for "March 31, 1957" wherever appearing.

1956—Subsec. (a) (1) (A). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" and "March 31, 1957" for "March 31, 1956" wherever appearing.

Subsec. (a) (2). Act Mar. 13, 1956, § 3 (a) (1), substituted "the items described in section 822(b) (other than paragraph (1) (D) thereof)" for "interest, dividends, rents,".

Subsec. (b) (1). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" and "March 31, 1957" for "March 31, 1956" wherever appearing.

Subsec. (c). Act Mar. 13, 1956, § 3 (a) (2), substituted "the items described in section 822 (b) (other than paragraph (1) (D) thereof)" for "interest, dividends, rents,".

1955—Subsec. (a) (1) (A). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" and "March 31, 1956" for "March 31, 1955" wherever appearing.

Subsec. (b)(1). Act. Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" and "March 31, 1956" for March 31, 1955" wherever appearing.

Effective Date of 1966 Amendment

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

Effective Date of 1964 Amendment

Amendment of section by Pub. L. 88-272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

Effective Date of 1962 Amendment

Section 8(h) of Pub. L. 87-834 provided that: "The amendments made by this section [adding sections 823-826 of this title, amending this section and sections 501, 822, 831, 832, 841, 1016 and 1201 of this title, and redesignating former section 823 of this title as section 822(f) of this title] (other than by subsection (f) [adding subsec. (c) of section 831 of this title]) shall apply with respect to taxable years beginning after December 31, 1962."

Effective Date of 1956 Amendment

Section 6 of act Mar. 13, 1956, provided that: "The amendments made by this Act [to part I, of this subchapter as it existed prior to June 25, 1959 and to this section and sections 316(b)(1), 501(c)(15), 594(a)(2), 822 (b), (c)(3), (6), (8), (9), (d)(1), (e), 832(b)(4), (c) (5), (8), 841, 842, 843, 891, 1201(a), 1504(b)(2), and 4371(2) of this title] shall apply only to taxable years beginning after December 31, 1954."

Short Title

Congress in enacting amendments to part I of this subchapter as it existed prior to June 25, 1959 and to this section and sections 316(b)(1), 501(c)(15), 594(a)(2), 822(b), (c) (3), (6), (8), (9), (d)(1), (e), 832(b)(4), (c) (5), (8), 841, 842, 891, 1201(a), 1504(b)(2), and 4371(2) of this title, and adding section 843 of this title, provided by section 1 of act Mar. 13, 1956, that they shall be popularly known as the "Life Insurance Company Tax Act for 1955".

Cross References

Alternative tax, see section 1201 of this title.

Burial or funeral benefit insurance company as taxable under this section or section 831, see section 801 of this title.

Consolidated returns, includible corporation defined to mean insurance companies taxable under this section, see section 1504 of this title.

Credit for foreign taxes, see section 841 of this title.

Dividends defined in distributions by corporations, see section 316 of this title.

Doubling tax rates on citizens and corporations of certain foreign countries, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 801, 822, 823, 824, 825, 826, 831, 841, 891, 1201, 1504, 1563, 4914 of this title.

§ 822. Determination of taxable investment income.

(a) Definitions.

For purposes of this part—

(1) The term "taxable investment income" means the gross investment income, minus the deductions provided in subsection (c).

(2) The term "investment loss" means the amount by which the deductions provided in subsection (c) exceed the gross investment income.

(b) Gross investment income.

For purposes of subsection (a), the term "gross investment income" means the sum of the following:

(1) The gross amount of income during the taxable year from—

(A) interest, dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) gains from sales or exchanges of capital assets to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses).

(2) The gross income during the taxable year from any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

(c) Deductions.

In computing taxable investment income, the following deductions shall be allowed:

(1) Tax-free interest.

The amount of interest which under section 103 is excluded for the taxable year from gross income.

(2) Investment expenses.

Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which taxable investment income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for partially tax-exempt interest and dividends received allowed by paragraph (7)), exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) Real estate expenses.

Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(4) Depreciation.

The depreciation deduction allowed by section 167.

(5) Interest paid or accrued.

All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest on which is wholly exempt from taxation under this subtitle.

(6) Capital losses.

Capital losses to the extent provided in subchapter P (sec. 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of the items described in subsection (b) (other than paragraph (1) (D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable investment income (computed without regard to gains or losses from sales or exchanges of capital assets or to the deduction provided in section 242 for partially tax-exempt interest); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(7) Special deductions.

The special deductions allowed by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to partially tax-exempt interest and to dividends received). In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for

purposes of this paragraph, the reference in such section to "taxable income" shall be treated as a reference to "taxable investment income".

(8) Trade or business deductions.

The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner; except that for purposes of this paragraph—

(A) any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account, and

(B) the deduction for net operating losses provided in section 172 shall not be allowed.

(9) Depletion.

The deduction allowed by section 611 (relating to depletion).

(d) Other applicable rules.

(1) Rental value of real estate.

The deduction under subsection (c) (3) or (4) on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 821 shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this paragraph) as the rental value of the space not so occupied bears to the rental value of the entire property.

(2) Amortization of premium and accrual of discount.

The gross amount of income during the taxable year from interest, the deduction provided in subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 821. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

For taxable years beginning after December 31, 1962, no accrual of discount shall be required under this paragraph on any bond (as defined in section 171(d)).

(3) Double deductions.

Nothing in this part shall permit the same item to be deducted more than once.

(e) Definitions.

For purposes of this part—

(1) Net premiums.

The term "net premiums" means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (2).

(2) Dividends to policyholders.

The term "dividends to policyholders" means dividends and similar distributions paid or declared to policyholders. For purposes of the preceding sentence, the term "paid or declared" shall be construed according to the method regularly employed in keeping the books of the insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 261; Mar. 13, 1956, ch. 83, § 3(a) (3)—(8), 70 Stat. 47, 48; Oct. 16, 1962, Pub. L. 87-834, § 8(b), 76 Stat. 991; Feb. 26, 1964, Pub. L. 88-272, title II, § 228 (b)(2), 78 Stat. 99; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(i)(5), 80 Stat. 1562.)

AMENDMENTS

1966—Subsec. (e). Pub. L. 89-809 struck out former subsec. (e) dealing with foreign mutual insurance companies other than life or marine and redesignated subsec. (f) as subsec. (e).

Subsec. (f). Pub. L. 89-809, redesignated subsec. (g) as subsec. (f). Former subsec. (f) redesignated as subsec. (e).

1964—Subsec. (d)(2). Pub. L. 88-272 provided that for taxable years beginning after Dec. 31, 1962, no accrual of discount shall be required under par. (2) on any bond.

1962—Pub. L. 87-834, § 8(b)(1), substituted "Determination of taxable investment income" for "Determination of mutual insurance company taxable income" in the section catchline.

Subsec. (a). Pub. L. 87-834, § 8(b)(1), defined "taxable investment income" and "investment loss" for purposes of this part, and eliminated provisions which defined "mutual insurance company taxable income" for purposes of section 821 of this title, which provisions are now contained in section 821(b) of this title.

Subsec. (c). Pub. L. 87-834, § 8(b)(2), (3), substituted "taxable investment income" for "mutual insurance company taxable income" in the opening provisions and in pars. (2) and (6)(A), and inserted sentence in par. (7) providing that in applying section 246(b) (relating to limitations on aggregate amount of deductions for dividends received) for purposes of par. (7), the reference in such section to "taxable income" shall be treated as a reference to "taxable investment income."

Subsec. (e). Pub. L. 87-834, § 8(b)(2), substituted "taxable investment income" for "mutual insurance company taxable income."

Subsec. (f). Pub. L. 87-834, § 8(b)(4), added subsec. (f). Provisions of subsec. (f) were formerly contained in section 823 of this title.

1956—Subsec. (b). Act Mar. 13, 1956, § 3(a)(3), principally included royalties, and the income from a trade or business other than the insurance business carried on by the insurance company in "gross investment income."

Subsec. (c). Act Mar. 13, 1956, § 3(a)(4), (5), (6), clarified the deduction for real estate expenses in par. (3), substituted in par. (6) "the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212" for "the sum of interest, dividends, rents, and net premiums received. In the application of section 1211", and inserted pars. (8) and (9).

Subsec. (d)(1). Act Mar. 13, 1956, § 3(a)(7), substituted "subsection (c)(3) or (4)" for "subsection (e)(3) or (4)".

Subsec. (e). Act Mar. 13, 1956, § 3(a)(8), substituted "items described in subsection (b) (other than paragraph (1)(D) thereof" for "interest, dividends, rents,".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsecs. (a), (c) and (e) of this section, and addition of subsec. (f) of this section, by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956 applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 821, 822, 832, 841 of this title.

§ 823. Determination of statutory underwriting income or loss.

(a) In general.

For purposes of this part—

(1) The term "statutory underwriting income" means the amount by which—

(A) the gross income which would be taken into account in computing taxable income under section 832 if the taxpayer were subject to the tax imposed by section 831, reduced by the gross investment income, exceeds

(B) the sum of (i) the deductions which would be taken into account in computing taxable income if the taxpayer were subject to the tax imposed by section 831, reduced by the deductions provided in section 822(c), plus (ii) the deductions provided in subsection (c) and section 824(a).

(2) The term "statutory underwriting loss" means the excess of the amount referred to in paragraph (1)(B) over the amount referred to in paragraph (1)(A).

(b) Modifications.

In applying subsection (a)—

(1) Net operating loss deduction.

Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(2) Interinsurers.

In the case of a mutual insurance company which is an interinsurer or reciprocal underwriter—

(A) there shall be allowed as a deduction the increase for the taxable year in savings credited to subscriber accounts, or

(B) there shall be included as an item of gross income the decrease for the taxable year in savings credited to subscriber accounts.

For purposes of the preceding sentence, the term "savings credited to subscriber accounts" means such portion of the surplus as is credited to the individual accounts of subscribers before the 16th day of the third month following the close of the taxable year, but only if the company would be obligated to pay such amount promptly to such subscriber if he terminated his contract at the close of the company's taxable year. For purposes of determining his taxable income, the subscriber shall treat any such savings credited to his account as a dividend paid or declared.

(c) Special deduction for small company having gross amount of less than $1,100,000.

(1) In general.

If the gross amount received during the taxable year by a taxpayer subject to the tax imposed by section 821(a) from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not equal or exceed $1,100,000, then in determining the statutory underwriting income or loss for the taxable year there shall be allowed an additional deduction of $6,000; except that if such gross amount exceeds $500,000, such additional deduction shall be equal to 1 percent of the amount by which $1,100,000 exceeds such gross amount.

(2) Limitation.

The amount of the deduction allowed under paragraph (1) shall not exceed the statutory underwriting income for the taxable year, computed without regard to any deduction under this subsection or section 824(a).

(Added Pub. L. 87–834, § 8(c), Oct. 16, 1962, 76 Stat. 992, and amended Pub. L. 91–172, title IX, § 907(c)(2)(B), Dec. 30, 1969, 83 Stat. 717.)

PRIOR PROVISIONS

A prior section 823, act Aug. 16, 1954, ch. 736, 68A Stat. 263, which defined "net premiums" and "dividends to policyholders", was redesignated section 822(f) of this title by section 8(b)(4) of Pub. L. 87–834.

AMENDMENTS

1969—Subsec. (b)(1). Pub. L. 91–172 provided that section 844 of this title be excepted from the nondeduction operating loss provision of section 172 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to losses incurred in taxable year beginning after Dec. 31, 1962, but not affecting any tax liability for any taxable year beginning before Jan. 1, 1967, see section 907(d) of Pub. L. 91–172, set out as a note under section 805 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 821 of this title.

§ 824. Adjustments to provide protection against losses.

(a) Allowance of deduction.

(1) In general.

In determining the statutory underwriting income or loss for any taxable year there shall be allowed as a deduction the sum of—

(A) an amount equal to 1 percent of the losses incurred during the taxable year (as determined under section 832(b)(5)), plus

(B) an amount equal to 25 percent of the underwriting gain for the taxable year, plus

(C) if the concentrated windstorm, etc., premium percentage for the taxable year exceeds 40 percent, an amount determined by applying so much of such percentage as exceeds 40 percent to the underwriting gain for the taxable year.

For purposes of this paragraph, the term "underwriting gain" means statutory underwriting income, computed without any deduction under this subsection.

(2) Special rule for companies having concentrated windstorm, etc., risks.

For purposes of paragraph (1)(C), the term "concentrated windstorm, etc., premium percentage" means, with respect to any taxable year, the percentage obtained by dividing—

(A) the amount of the premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4)), to the extent attributable to insuring against losses arising, either in any one State or within 200 miles of any fixed point selected by the taxpayer, from windstorm, hail, flood, earthquake, or similar hazards, by

(B) the amount of the premiums earned on insurance contracts during the taxable year (as so defined).

(b) Protection against loss account.

Each insurance company subject to the tax imposed by section 821(a) for any taxable year shall, for purposes of this part, establish and maintain a protection against loss account.

(c) Additions to account.

There shall be added to the protection against loss account for each taxable year an amount equal to the amount allowable as a deduction for the taxable year under subsection (a)(1).

(d) Subtractions.

(1) Annual subtractions.

After applying subsection (c), there shall be subtracted for the taxable year from the protection against loss account—

(A) first, an amount equal to the excess (if any) of the deduction allowed under subsection (a) for the taxable year over the underwriting gain (within the meaning of subsection (a)(1)) for the taxable year,

(B) then, the amount (if any) by which—

(i) the sum of the investment loss for such year and the statutory underwriting loss (reduced by the amount referred to in subparagraph (A)) for such year, exceeds

(ii) the sum of the statutory underwriting income for such taxable year and the taxable investment income for such taxable year,

(C) next (in the order in which the losses occurred), amounts equal to the unused loss carryovers to such year,

(D) next, any amount remaining which was added to the account for the fifth preceding taxable year, minus one-half of the amount remaining in the account for such taxable year which was added by reason of subsection (a)(1)(B), and

(E) finally, the amount by which the total amount in the account exceeds which ever of the following is the greater:

(i) 10 percent of premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4)) less dividends to policyholders (as defined in section 832(c)(11)), or

(ii) the total amount in the account at the close of the preceding taxable year.

(2) Rules for ceiling on protection against loss account.

For purposes of paragraph (1)(E), the total amount in the account shall be determined—

(A) after the application of this section without regard to paragraph (1)(E), and

(B) without taking into consideration amounts remaining in the account which were added, with respect to all taxable years, by reason of subsection (a)(1)(C).

(3) Priorities.

The amounts required to be subtracted from the protection against loss account—

(A) under subparagraphs (A), (B), and (C) of paragraph (1) shall be subtracted—

(i) first (on a first-in, first-out, basis) from amounts in the account with respect to the five preceding taxable years and the taxable year, and

(ii) then from amounts in the account with respect to earlier years,

(B) under subparagraph (E) of paragraph (1) shall be subtracted only from amounts in the account with respect to the taxable year, and

(C) under paragraphs (A), (B), (C), and (E) of paragraph (1) shall, if the amount to be subtracted from the total amounts in the account with respect to any taxable year is less than such total, be subtracted from each of the amounts (referred to in subsection (a)(1)) in the account with respect to such year in the proportion which each bears to such total.

(4) Termination of taxability under section 821.

If the taxpayer is not subject to tax under section 821 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year.

(5) Election to subtract amount from account.

(A) A taxpayer may elect for any taxable year for which it is subject to tax under section 821 (a) to subtract from its protection against loss account any amount which, but for the application of this subparagraph, would be in such account as of the close of such taxable year.

(B) The election provided by subparagraph (A) for any taxable year shall be made (in such manner and in such form as the Secretary or his delegate may by regulations prescribe) after the close of such taxable year and not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year following such taxable year. Such an election, once made, may not be revoked.

(Added Pub. L. 87–834, § 8(c), Oct. 16, 1962, 76 Stat. 993.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 823, 825, 826 of this title.

§ 825. Unused loss deduction.

(a) Amount of deduction.

For purposes of this part, the unused loss deduction for the taxable year shall be an amount equal to the unused loss carryovers or carrybacks to the taxable year.

(b) Unused loss defined.

For purposes of this part, the term "unused loss" means, with respect to any taxable year, the amount (if any) by which—

(1) the sum of the statutory underwriting loss and the investment loss, exceeds

(2) the sum of—

(A) the taxable investment income,

(B) the statutory underwriting income, and

(C) the amounts required by section 824(d) to be subtracted from the protection against loss account.

(c) Loss year defined.

For purposes of this part, the term "loss year" means, with respect to any company subject to the tax imposed by section 821(a), any taxable year in which the unused loss (as defined in subsection (b)) of such taxpayer is more than zero.

(d) Years to which carried.

The unused loss for any loss year shall be—

(1) an unused loss carryback to each of the 3 taxable years preceding the loss year, and

(2) an unused loss carryover to each of the 5 taxable years following the loss year.

(e) Amount of carrybacks and carryovers.

The entire amount of the unused loss for any loss year shall be carried to the earliest of the taxable years to which such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (f)) for each of the prior taxable years to which such loss may be carried.

(f) Offset defined.

For purposes of subsection (e), the term "offset" means with respect to any taxable year(hereinafter referred to as the "offset year")—

(1) in the case of an unused loss carryback from the loss year to the offset year, the mutual insurance company taxable income for the offset year; or

(2) in the case of an unused loss carryover from the loss year to the offset year, an amount equal to the sum of—

(A) the amount required to be subtracted from the protection against loss account under section 824(d)(1)(C) for the offset year, plus

(B) the mutual insurance company taxable income for the offset year.

For purposes of paragraphs (1) and (2)(B), the mutual insurance company taxable income for the offset year shall be determined without regard to any unused loss carryback or carryover from the loss year or any taxable year thereafter.

(g) Limitations.

For purposes of this part, an unused loss shall not be carried—

(1) to or from any taxable year beginning before January 1, 1963,

(2) except as provided by section 844, to or from any taxable year for which the insurance company is not subject to the tax imposed by section 821(a), nor

(3) except as provided by section 844, to any taxable year if, between the loss year and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by section 821(a).

(Added Pub. L. 87–834, § 8(c), Oct. 16, 1962, 76 Stat. 995, and amended Pub. L. 91–172, title IX, § 907(c)(2)(C), (D), Dec. 30, 1969, 83 Stat. 717.)

AMENDMENTS

1969—Subsec. (g)(2), (3). Pub. L. 91–172 provided that section 844 of this title be excepted from the nonallowable carryover provisions of this section.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 907(c)(2)(C), (D) of Pub. L. 91–172 applicable with respect to losses incurred in taxable year beginning after Dec. 31, 1962, but not affecting any tax liability for any taxable year beginning before Jan. 1, 1967, see section 907(d) of Pub. L. 91–172, set out as a note under section 805 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 844 of this title.

§ 826. Election by reciprocal.

(a) In general.

Except as otherwise provided in this section, any mutual insurance company which is an interinsurer or reciprocal underwriter (hereinafter in this section referred to as a "reciprocal") subject to the taxes imposed by section 821(a) may, under regulations prescribed by the Secretary or his delegate, elect to be subject to the limitation provided in subsection (b). Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary or his delegate.

(b) Limitation.

The deduction for amounts paid or incurred in the taxable year to the attorney-in-fact by a reciprocal making the election provided in subsection (a) shall be limited to, but in no case increased by, the deductions of the attorney-in-fact allocable, in accordance with regulations prescribed by the Secretary or his delegate, to the income received by the attorney-in-fact from the reciprocal.

(c) Exception.

An election may not be made by a reciprocal under subsection (a) unless the attorney-in-fact of such reciprocal—

(1) is subject to the taxes imposed by section 11 (b) and (c);

(2) consents in such manner as the Secretary or his delegate shall prescribe by regulations to make available such information as may be re-

quired during the period in which the election provided in subsection (a) is in effect, under regulations prescribed by the Secretary or his delegate;

(3) reports the income received from the reciprocal and the deductions allocable thereto under the same method of accounting under which the the reciprocal reports deductions for amounts paid to the attorney-in-fact; and

(4) files its return on the calendar year basis.

(d) Special rule.

In applying section 824(d)(1)(D), any amount which was added to the protection against loss account by reason of an election under this section shall be treated as having been added by reason of section 824(a)(1)(A).

(e) Credit.

Any reciprocal electing to be subject to the limitation provided in subsection (b) shall be credited with so much of the tax paid by the attorney-in-fact as is attributable, under regulations prescribed by the Secretary or his delegate, to the income received by the attorney-in-fact from the reciprocal in such taxable year.

(f) Surtax exemption denied.

Any increase in taxable income of a reciprocal attributable to the limitation provided in subsection (b) shall be taxed without regard to the surtax exemption provided in section 821(a)(2).

(g) Adjustment for refund.

If for any taxable year an attorney-in-fact is allowed a credit or refund for taxes paid with respect to which credit or refund to the reciprocal resulted under subsection (e), the taxes of such reciprocal for such taxable year shall be properly adjusted under regulations prescribed by the Secretary or his delegate.

(h) Taxes of attorney-in-fact unaffected.

Nothing in this section shall increase or decrease the taxes imposed by this chapter on the income of the attorney-in-fact. (Added Pub. L. 87-834, § 8(c), Oct. 16, 1962, 76 Stat. 996.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 821 of this title.

PART III.—OTHER INSURANCE COMPANIES

Sec.
831. Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies.
832. Insurance company taxable income.

AMENDMENTS

1962—Pub. L. 87-834, § 8(g)(4)(C), Oct. 16, 1962, 76 Stat. 999, substituted "and certain mutual fire or flood insurance companies" for "and mutual fire insurance companies issuing perpetual policies" in item 831.

§ 831. Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies.

(a) Imposition of tax.

Taxes computed as provided in section 11 shall be imposed for each taxable year or the taxable income of—

(1) every insurance company (other than a life or mutual insurance company),

(2) every mutual marine insurance company, and

(3) every mutual fire or flood insurance company—

(A) exclusively issuing perpetual policies, or

(B) whose principal business is the issuance of policies for which the premium deposits are the same, regardless of the length of the term for which the policies are written, if the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy.

(b) Election for multiple line company to be taxed on total income.

(1) In general.

Any mutual insurance company engaged in writing marine, fire, and casualty insurance which for any 5-year period beginning after December 31, 1941, and ending before January 1, 1962, was subject to the tax imposed by section 831 (or the tax imposed by corresponding provisions of prior law) may elect, in such manner and at such time as the Secretary or his delegate may by regulations prescribe, to be subject to the tax imposed by section 831, whether or not marine insurance is its predominant source of premium income.

(2) Effect of election.

If an election is made under paragraph (1), the electing company shall (in lieu of being subject to the tax imposed by section 821) be subject to the tax imposed by this section for taxable years beginning after December 31, 1961. Such election shall not be revoked except with the consent of the Secretary or his delegate.

(c) Cross references.

(1) For alternative tax in case of capital gains, see section 1201(a).

(2) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

(Aug. 16, 1954, ch. 736, 68A Stat 264; Oct. 16, 1962, Pub. L. 87-834, § 8(e)(1), (f), (g)(4)(B), 76 Stat. 997-999; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(i)(6), 80 Stat. 1562.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-809, § 104(i)(6)(A), struck out subsec. (b) which excepted foreign insurance companies other than life or mutual insurance companies, foreign mutual marine insurance companies, and foreign mutual fire insurance companies not carrying on an insurance business within the United States and provided that they would be taxable as other foreign corporations and redesignated subsec. (c) as subsec. (b).

Subsec. (c). Pub. L. 89-809, § 104(i)(6)(B), redesignated subsec. (d) as subsec. (c) and, in subsec. (c) as so redesignated, added item (2). Former subsec. (c) redesignated as subsec. (b).

Subsec. (d). Pub. L. 89-809, § 104(i)(6)(B), redesignated subsec. (d) as subsec. (c).

1962—Pub. L. 87-834, § 8(g)(4)(B), substituted "and certain mutual fire or flood insurance companies" for "and mutual fire insurance companies issuing perpetual policies" in the section catchline.

Subsec. (a). Pub. L. 87-834, § 8(e)(1), included flood insurance companies, and substituted provisions authorizing imposition of the tax on those companies whose principal business is the issuance of policies for which the premium deposits are the same, regardless of the

length of the term for which the policies are written, if the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy for provisions which authorized imposition of tax on those companies which issued policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable on cancellation or expiration of the policy.

Subsec. (c). Pub. L. 87–834, § 8(f), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 87–834, § 8(f), redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

CROSS REFERENCES

Alternative tax, see section 1201 of this title.

Burial or funeral benefit insurance company as taxable under this section or section 821, see section 801(f) of this title.

Consolidated returns, see section 1503 of this title.

Doubling of tax rates on citizens and corporations of certain foreign countries, see section 891 of this title.

Tax on mutual insurance companies to which part II applies, see section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 801, 815, 821, 823, 832, 841, 891, 1201, 4914 of this title.

§ 832. Insurance company taxable income.

(a) Definition of taxable income.

In the case of an insurance company subject to the tax imposed by section 831, the term "taxable income" means the gross income as defined in subsection (b) (1) less the deductions allowed by subsection (c).

(b) Definitions.

In the case of an insurance company subject to the tax imposed by section 831—

(1) Gross income.

The term "gross income" means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property, and

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company described in section 831(a)(3)(A), the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company described in section 831(a)(3)(B), an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to policies described in section 831(a)(3)(B) after deduction of premium deposits returned or credited during the same taxable year; and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) Investment income.

The term "investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) Underwriting income.

The term "underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) Premiums earned.

The term "premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 801 (b), pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 801. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in section 831(a)(3)(B) means (with respect to the policies described in section 831(a)(3)(B)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company referred to in paragraph (3) of section 831(a) shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in such paragraph (3).

(5) Losses incurred.

The term "losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

(A) To losses paid during the taxable year, add salvage and reinsurance recoverable out-

standing at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

(B) To the result so obtained, add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year.

(6) Expenses incurred.

The term "expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(c) Deductions allowed.

In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) all ordinary and necessary expenses incurred, as provided in section 162 (relating to trade or business expenses);

(2) all interest, as provided in section 163;

(3) taxes, as provided in section 164;

(4) losses incurred, as defined in subsection (b) (5) of this section;

(5) capital losses to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of the items described in section 822 (b) (other than paragraph (1) (D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable income (computed without regard to gains or losses from sales or exchanges of capital assets or to the deductions provided in section 242 for partially tax-exempt interest); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders;

(6) debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) the amount of interest earned during the taxable year which under section 103 is excluded from gross income;

(8) the depreciation deduction allowed by section 167 and the deduction allowed by section 611 (relating to depletion);

(9) charitable, etc., contributions, as provided in section 170;

(10) deductions (other than those specified in this subsection) as provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions for individuals and corporations) and in part I of subchapter D (sec. 401 and following, relating to pension, profit-sharing, stock bonus plans, etc.);

(11) dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in section 831(a)(3)(A). For purposes of the preceding sentence, the term "dividends and similar distributions" includes amounts returned or credited to policyholders on cancellation or expiration of policies described in section 831(a)(3)(B). For purposes of this paragraph, the term "paid or declared" shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company;

(12) the special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to partially tax-exempt interest and to dividends received); and

(13) in the case of a company which writes mortgage guaranty insurance, the deduction allowed by subsection (e).

(d) Double deductions.

Nothing in this section shall permit the same item to be deducted more than once.

(e) Special deduction and income account.

In the case of taxable years beginning after December 31, 1966, of a company which writes mortgage guaranty insurance—

(1) Additional deduction.

There shall be allowed as a deduction for the taxable year, if bonds are purchased as required by paragraph (2), the sum of—

(A) an amount representing the amount required by State law or regulation to be set aside in a reserve for mortgage guaranty insurance losses resulting from adverse economic cycles; and

(B) an amount representing the aggregate of amounts so set aside in such reserve for the 8 preceding taxable years to the extent such amounts were not deducted under this paragraph in such preceding taxable years,

except that the deduction allowable for the taxable year under this paragraph shall not exceed the taxable income for the taxable year computed without regard to this paragraph or to any carry-

back of a net operating loss. For purposes of this paragraph, the amount required by State law or regulation to be so set aside in any taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in subsection (b)(4)) with respect to mortgage guaranty insurance for such year. For purposes of this subsection, all amounts shall be taken into account on a first-in-time basis. The computation and deduction under this section of losses incurred (including losses resulting from adverse economic cycles) shall not be affected by the provisions of this subsection. For purposes of this subsection, the terms "preceding taxable years" and "preceding taxable year" shall not include taxable years which began before January 1, 1967.

(2) Purchase of bonds.

The deduction under paragraph (1) shall be allowed only to the extent that tax and loss bonds are purchased in an amount equal to the tax benefit attributable to such deduction, as determined under regulations prescribed by the Secretary or his delegate, on or before the date that any taxes (determined without regard to this subsection) due for the taxable year for which the deduction is allowed are due to be paid, as if no election to make installment payments under section 6152 is made. If a deduction would be allowed but for the fact that tax and loss bonds were not timely purchased, such deduction shall be allowed to the extent such purchases are made within a reasonable time, as determined by the Secretary or his delegate, if all interest and penalties, computed as if this sentence did not apply, are paid.

(3) Mortgage guaranty account.

Each company which writes mortgage guaranty insurance shall, for purposes of this part, establish and maintain a mortgage guaranty account.

(4) Additions to account.

There shall be added to the mortgage guaranty account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from account and inclusion in gross income.

After applying paragraph (4), there shall be subtracted for the taxable year from the mortgage guaranty account and included in gross income—

(A) the amount (if any) remaining which was added to the account for the tenth preceding taxable year, and

(B) the excess (if any) of the aggregate amount in the mortgage guaranty account over the aggregate amount in the reserve referred to in paragraph (1)(A). For purposes of determining such excess, the aggregate amount in the mortgage guaranty account shall be determined after applying subparagraph (A), and the aggregate amount in the reserve referred to in paragraph (1)(A) shall be determined by disregarding any amounts remaining in such reserve added for taxable years beginning before January 1, 1967,

(C) an amount (if any) equal to the net operating loss for the taxable year computed without regard to this subparagraph, and

(D) any amount improperly subtracted from the account under subparagraph (A), (B), or (C) to the extent that tax and loss bonds were redeemed with respect to such amount.

If a company liquidates or otherwise terminates its mortgage guaranty insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such account shall be subtracted. Except in the case where a company transfers or distributes its mortgage guaranty insurance in an acquisition of assets referred to in section 381(a), if the company is not subject to the tax imposed by section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Mar. 13, 1956, ch. 83, § 3(b), 70 Stat. 48; Oct. 16, 1962, Pub. L. 87-834, § 8(e) (2—5), 76 Stat. 997, 998; Feb. 26, 1964, Pub. L. 88-272, title II, § 228(c), 78 Stat. 99; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(i)(7), 80 Stat. 1562; Jan. 2, 1968, Pub. L. 90-240, § 5(a)—(c), 81 Stat. 776, 777.)

AMENDMENTS

1968—Subsec. (b)(1). Pub. L. 90-240, § 5(a), added subpar. (E).

Subsec. (c). Pub. L. 90-240, § 5(b), added par. (13).

Subsec. (e). Pub. L. 90-240, § 5(c), added subsec. (e).

1966—Subsec. (d). Pub. L. 89-809 struck out subsec. (d) having reference to the taxable income of foreign insurance companies other than life or mutual and foreign mutual marine and redesignated subsec. (e) as subsec. (d).

Subsec. (e). Pub. L. 89-809 redesignated subsec. (e) as subsec. (d).

1964—Subsec. (c)(10). Pub. L. 88-272 inserted the reference to part I of subchapter D.

1962—Subsec. (b)(1)(C). Pub. L. 87-834, § 8(e)(3), (5), substituted "section 831(a)(3)(A)" for "section 831(a)."

Subsec. (b)(1)(D). Pub. L. 87-834, §8(e)(5), added subsec. (b)(1)(D).

Subsec. (b)(4). Pub. L. 87-834, § 8(e)(2), inserted provisions defining unearned premiums of mutual fire or flood insurance companies, and which require premiums paid by the subscriber of a mutual flood insurance company to be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in par. (3) of section 831(a) of this title.

Subsec. (c)(11). Pub. L. 87-834, § 8(e)(4), substituted "section 831(a)(3)(A)" for "section 831(a)", and inserted the definition of "dividends and similar distributions."

1956—Subsec. (b)(4). Act Mar. 13, 1956, § 3(b)(1), substituted "section 801(b)" for "section 806".

Subsec. (c). Act Mar. 13, 1956, § 3(b)(2), (3), substituted "the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212" for "interest, dividends, rents, and net premiums received. In the application of section 1211" in par. (5), and authorized the deduction for depletion in par. (8).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 5(e) of Pub. L. 90-240 provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 381(c)(22) of this title] shall apply to taxable years beginning after December 31, 1966, except that so much of section 832(e)(2) of the Internal Revenue Code of 1954 [subsec. (e)(2) of this section] (as added by the amendment made by sub-

section (c)) as provides for payment of interest and penalties for failure to make a timely purchase of tax and loss bonds shall not apply with respect to any period during which such bonds are not available for purchase."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 228(d) of Pub. L. 88–272, set out as a note under section 809 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsecs. (b) (1), (4) and (c)(11) of this section by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

TREATMENT AS UNEARNED PREMIUMS OF ADDITIONS TO RESERVES REQUIRED BY STATE LAW OR REGULATIONS FOR MORTGAGE GUARANTY INSURANCE LOSSES

Section 5(g) of Pub. L. 90–240 provided that:

"(1) In the case of taxable years beginning before 1967, a company shall treat additions to a reserve, required by State law or regulations for mortgage guaranty insurance losses resulting from adverse economic cycles, as unearned premiums for purposes of section 832(b)(4) of the Internal Revenue Code of 1954 [subsec. (b)(4) of this section], but the amount so treated as unearned premiums in a taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in section 832 (b)(4) of such Code [subsec. (b)(4) of this section]), determined without regard to amounts added to the reserve, with respect to mortgage guaranty insurance for such year. The amount of unearned premiums at the close of 1966 shall be determined without regard to the preceding sentence for the purpose of applying section 832(b) (4) of such Code [subsec. (b)(4) of this section] to 1967. Additions to such a reserve shall not be treated as unearned premiums for any taxable year beginning after 1966.

"(2) If a mortgage guaranty insurance company made additions to a reserve which were so treated as unearned premiums described in paragraph (1), such company, in taxable years beginning after 1966, shall include in gross income (in addition to the items specified in section 832 (b)(1) of such Code [subsec. (b)(1) of this section]) the sum of the following amounts until there is included in gross income an amount equal to the aggregate additions to the reserve described in paragraph (1) for taxable years beginning before 1967:

"(A) an amount (if any) equal to the excess of losses incurred (as defined in section 832(b)(5) of such Code [subsec. (b)(5) of this section]) for the taxable year over 35 percent of premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4) of such Code [subsec. (b)(4) of this section]), determined without regard to amounts added to the reserve referred to in paragraph (1), with respect to mortgage guaranty insurance,

"(B) the amount (if any) remaining which was added to the reserve for the tenth preceding taxable year, and

"(C) the excess (if any) of—

"(i) the aggregate of amounts so treated as unearned premiums for all taxable years beginning before 1967 less the total of the amounts included in gross income under this paragraph for prior taxable years and the amounts included in gross income under subparagraphs (A) and (B) for the taxable year, over

"(ii) the aggregate of the additions made for taxable years beginning before 1967 which remain in the reserve at the close of the taxable year.

Amounts shall be taken into account on a first-in-time basis. For purposes of section 832(e) of such Code [subsec. (e) of this section] and this paragraph, if part of the reserve is reduced under State law or regulation, such reduction shall first apply to the extent of amounts added to the reserve for taxable years beginning before 1967, and only then to amounts added thereafter.

"(3) The provisions of this subsection shall apply to taxable years beginning after December 31, 1956."

CROSS REFERENCES

Consolidated returns, see section 1504 of this title.

Credit on foreign taxes, see section 841 of this title.

Dividends defined in distributions by corporations, see section 316 of this title.

Personal holding company income, see section 543 of this title.

Tax imposed on corporations, see section 11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 543, 821, 823, 824, 841, 844, 953, 4914, 6511 of this title; title 31 section 757c–3.

PART IV.—PROVISIONS OF GENERAL APPLICATION

Sec.
841. Credit for foreign taxes.
842. Foreign corporations carrying on insurance business.
843. Annual accounting period.
844. Special loss carryover rules.

AMENDMENTS

1969—Pub. L. 91–172, title IX, § 907(c)(2)(A), Dec. 30, 1969, 83 Stat. 717, added item 844.

1966—Pub. L. 89–809, title I, § 104(i)(2), Nov. 13, 1966, 80 Stat. 1561, substituted "Foreign corporations carrying on insurance business" for "Computation of gross income" in item 842.

1956—Act Mar. 13, 1956, ch. 83, § 4 (b), 70 Stat. 49, added item 843.

§ 841. Credit for foreign taxes.

The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 802, 821, or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term "taxable income" as used in section 904 means—

(1) in the case of the tax imposed by section 802, the life insurance company taxable income (as defined in section 802(b)),

(2) in the case of the tax imposed by section 821(a), the mutual insurance company taxable income (as defined in section 821(b)); and in the case of the tax imposed by section 821(c), the taxable investment income (as defined in section 822(a)), and

(3) in the case of the tax imposed by section 831, the taxable income (as defined in section 832(a)).

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, § 5(4), 70 Stat. 49; June 25, 1959, Pub. L. 86–69, § 3(b), 73 Stat. 139; Oct. 16, 1962, Pub. L. 87–834, § 8(g)(1), 76 Stat. 998; Nov. 13, 1966, Pub. L. 89–809, title I, § 104(i)(8), 80 Stat. 1562.)

AMENDMENTS

1966—Pub. L. 89-809 substituted "For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term "taxable income" as used in section 904" for "For purposes of the preceding sentence, the term 'taxable income' as used in section 904".

1962—Pub. L. 87-834 added par. (2) and redesignated former par. (2) as (3).

1959—Pub. L. 86-69 eliminated a reference to section 811 of this title in the first sentence, and substituted "section 802, the life insurance company taxable income (as defined in section 802(b)), and" for "section 802 or 811, the net investment income (as defined in section 803(c))" in par. (1).

1956—Act Mar. 13, 1956, inserted references to section 811.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 821 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956 applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

§ 842. Foreign corporations carrying on insurance business.

If a foreign corporation carrying on an insurance business within the United States would qualify under part I, II, or III of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such corporation shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income, which is from sources within the United States, such a foreign corporation shall be taxable as provided in section 881. (Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, § 5(5), 70 Stat. 49; June 25, 1959, Pub. L. 86-69, § 3(f)(1), 73 Stat. 140; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(i)(1), 80 Stat. 1561.)

AMENDMENTS

1966—Pub. L. 89-809 substituted provisions covering the taxability of foreign corporations that are carrying on an insurance business within the United States which would qualify under part I, II, or III of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation for provisions that the gross income of insurance companies subject to the tax imposed by section 802 or 831 shall not be determined in the manner provided in part I of subchapter N (relating to determination of sources of income).

1959—Pub. L. 86-69 eliminated reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by Pub. L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956 applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1442 of this title.

§ 843. Annual accounting period.

For purposes of this subtitle, the annual accounting period for each insurance company subject to a tax imposed by this subchapter shall be the calendar year. (Added Mar. 13, 1956, ch. 83, § 4 (a), 70 Stat. 48.)

EFFECTIVE DATE

Section as applicable not only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

§ 844. Special loss carryover rules.

(a) General rule.

If an insurance company—

(1) is subject to the tax imposed by part I, II, or III of this subchapter for the taxable year, and

(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year beginning after December 31, 1962,

then any operations loss carryover under section 812, unused loss carryover under section 825, or net operating loss carryover under section 172, as the case may be, arising in such prior taxable year shall be included in its operations loss deduction under section 812(a), unused loss deduction under section 825(a), or net operating loss deduction under section 832(c)(10), as the case may be.

(b) Limitation.

The amount included under section 812(a), 825 (a), or 832(c)(10), as the case may be, by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years such company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence—

(1) in the case of a mutual insurance company which becomes a stock insurance company, an amount equal to 25 percent of the deduction under section 832(c)(11) (relating to dividends to policyholders) shall not be allowed, and

(2) section 812(b)(1)(A)(iii) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.

(c) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 91-172, title IX, § 907(c)(1), Dec. 30, 1969, 83 Stat. 716.)

EFFECTIVE DATE

Section applicable with respect to losses incurred in taxable years beginning after Dec. 31, 1962, but not affecting any tax liability for any taxable year beginning before Jan. 1, 1967, see section 907(d) of Pub. L. 91–172, set out as a note under section 805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 809, 823, 825 of this title.

Subchapter M.—Regulated Investment Companies and Real Estate Investment Trusts

Part
I.—Regulated investment companies.
II.—Real estate investment trusts.

PART I.—REGULATED INVESTMENT COMPANIES

Sec.
851. Definition of regulated investment company.
852. Taxation of regulated investment companies and their shareholders.
853. Foreign tax credit allowed to shareholders.
854. Limitations applicable to dividends received from regulated investment company.
855. Dividends paid by regulated investment company after close of taxable year.

AMENDMENTS

1960—Pub. L. 86–779, § 10(b)(1), Sept. 14, 1960, 74 Stat. 1008, added "and Real Estate Investment Trusts" to the Subchapter M heading, Part I and Part II designations thereunder and Part I designation preceding table of sections numbered 851 to 855.

§ 851. Definition of regulated investment company.

(a) General rule.

For purposes of this subtitle, the term "regulated investment company" means any domestic corporation (other than a personal holding company as defined in section 542)—

(1) which, at all times during the taxable year, is registered under the Investment Company Act of 1940, as amended (54 Stat. 789; 15 U. S. C. 80 a–1 to 80b–2) either as a management company or as a unit investment trust, or

(2) which is a common trust fund or similar fund excluded by section 3 (c) (3) of such Act (15 U.S.C. 80a–3(c)) from the definition of "investment company" and is not included in the definition of "common trust fund" by section 584 (a).

(b) Limitations.

A corporation shall not be considered a regulated investment company for any taxable year unless—

(1) it files with its return for the taxable year an election to be a regulated investment company or has made such election for a previous taxable year which began after December 31, 1941;

(2) at least 90 percent of its gross income is derived from dividends, interests, and gains from the sale or other disposition of stock or securities;

(3) less than 30 percent of its gross income is derived from the sale or other disposition of stock or securities held for less than 3 months; and

(4) at the close of each quarter of the taxable year—

(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e), in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary or his delegate, to be engaged in the same or similar trades or businesses or related trades or businesses.

(c) Rules applicable to subsection (b) (4).

For purposes of subsection (b) (4) and this subsection—

(1) In ascertaining the value of the taxpayer's investment in the securities of an issuer, for the purposes of subparagraph (B), there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer, as determined under regulations prescribed by the Secretary or his delegate.

(2) The term "controls" means the ownership in a corporation of 20 percent or more of the total combined voting power of all classes of stock entitled to vote.

(3) The term "controlled group" means one or more chains of corporations connected through stock ownership with the taxpayer if—

(A) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations, and

(B) the taxpayer owns directly 20 percent or more of the total combined voting power of all classes of stock entitled to vote, of at least one of the other corporations.

(4) The term "value" means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the board of directors, except that in the case of securities of majority-owned subsidiaries which are investment companies such fair value shall not exceed market value or asset value, whichever is higher.

(5) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended.

(d) Determination of status.

A corporation which meets the requirements of subsections (b) (4) and (c) at the close of any quar-

ter shall not lose its status as a regulated investment company because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A corporation which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a regulated investment company if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(e) Investment companies furnishing capital to development corporations.

(1) General rule.

If the Securities and Exchange Commission determines, in accordance with regulations issued by it, and certifies to the Secretary or his delegate not earlier than 60 days prior to the close of the taxable year of a registered management company, that such investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, such investment company may, in the computation of 50 percent of the value of its assets under subparagraph (A) of subsection (b) (4) for any quarter of such taxable year, include the value of any securities of an issuer, whether or not the investment company owns more than 10 percent of the outstanding voting securities of such issuer, the basis of which, when added to the basis of the investment company for securities of such issuer previously acquired, did not exceed 5 percent of the value of the total assets of the investment company at the time of the subsequent acquisition of securities. The preceding sentence shall not apply to the securities of an issuer if the investment company has continuously held any security of such issuer (or of any predecessor company of such issuer as determined under regulations prescribed by the Secretary or his delegate) for 10 or more years preceding such quarter of such taxable year.

(2) Limitation.

The provisions of this subsection shall not apply at the close of any quarter of a taxable year to an investment company if at the close of such quarter more than 25 percent of the value of its total assets is represented by securities of issuers with respect to each of which the investment company holds more than 10 percent of the outstanding voting securities of such issuer and in respect of each of which or any predecessor thereof the investment company has continuously held any security for 10 or more years preceding such quarter unless the value of its total assets so represented is reduced to 25 percent or less within 30 days after the close of such quarter.

(3) Determination of status.

For purposes of this subsection, unless the Securities and Exchange Commission determines otherwise, a corporation shall be considered to be principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, for at least 10 years after the date of the first acquisition of any security in such corporation or any predecessor thereof by such investment company if at the date of such acquisition the corporation or its predecessor was principally so engaged, and an investment company shall be considered at any date to be furnishing capital to any company whose securities it holds if within 10 years prior to such date it has acquired any of such securities, or any securities surrendered in exchange therefor, from such other company or predecessor thereof. For purposes of the certification under this subsection, the Securities and Exchange Commission shall have authority to issue such rules, regulations and orders, and to conduct such investigations and hearings, either public or private, as it may deem appropriate.

(4) Definitions.

The terms used in this subsection shall have the same meaning as in subsections (b) (4) and (c) of this section.

(f) Certain unit investment trusts.

For purposes of this title—

(1) A unit investment trust (as defined in the Investment Company Act of 1940)—

(A) which is registered under such Act and issues periodic payment plan certificates (as defined in such Act) in one or more series,

(B) substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company (as defined in such Act) and securities acquired pursuant to subparagraph (C), or (ii) securities issued by a single other corporation, and

(C) which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regulations of the Securities and Exchange Commission,

shall not be treated as a person.

(2) In the case of a unit investment trust described in paragraph (1)—

(A) each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust;

(B) the basis of the assets of such trust which are treated under subparagraph (A) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust; and

(C) in determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (A) as being owned by him, there

shall be included the period for which such holder has held his interest in such trust.

This subsection shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a State. (Aug. 16, 1954, ch. 736, 68A Stat. 268; Sept. 3, 1958, Pub. L. 85–886, title I, § 38, 72 Stat. 1638; Dec. 30, 1969, Pub. L. 91–172, title IX, § 908(a), 83 Stat. 717.)

AMENDMENTS

1969—Subsec. (f). Pub. L. 91–172 added subsec. (f).

1958—Subsec. (e)(1). Pub. L. 85–866, § 38(a), substituted in the first sentence "not earlier than 60 days" for "not less than 60 days".

Subsec. (e)(2). Pub. L. 85–866, § 38(b), substituted "issuer" for "issues".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 908(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [adding subsec. (f) of this section] shall apply to taxable years of unit investment trusts ending after December 31, 1968, and to taxable years of holders of interests in such trusts ending with or within such taxable years of such trusts. The enactment of this section shall not be construed to result in the realization of gain or loss by any unit investment trust or by any holder of an interest in a unit investment trust."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (e) (1) and (e) (2) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 401, 853, 1212, 1247 of this title.

§ 852. Taxation of regulated investment companies and their shareholders.

(a) Requirements applicable to regulated investment companies.

The provisions of this part (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gains dividends) equals or exceeds 90 percent of its investment company taxable income for the taxable year (determined without regard to subsection (b) (2) (D)), and

(2) the investment company complies for such year with regulations prescribed by the Secretary or his delegate for the purpose of ascertaining the actual ownership of its outstanding stock.

(b) Method of taxation of companies and shareholders.

(1) Imposition of normal tax and surtax on regulated investment companies.

There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a normal tax and surtax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11. For purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such investment company for the taxable year (computed without regard to capital gains dividends) shall be reduced by the deduction provided by section 242 (relating to partially tax-exempt interest).

(2) Investment company taxable income.

The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

(A) There shall be excluded the excess, if any, of the net long-term capital gain over the net short-term capital loss.

(B) The net operating loss deduction provided in section 172 shall not be allowed.

(C) The deductions for corporations provided in part VIII (except section 248) in subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(D) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gains dividends.

(E) The taxable income shall be computed without regard to section 443 (b) (relating to computation of tax on change of annual accounting period).

(3) Capital gains.

(A) Imposition of tax.

There is hereby imposed for each taxable year in the case of every regulated investment company a tax, determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of—

(i) the net short-term capital loss, and

(ii) the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) Treatment of capital gain dividends by shareholders.

A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 6 months.

(C) Definition of capital gain dividend.

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the taxable year described in section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For purposes of subparagraph (A) (ii), the deduction for dividends paid shall, in the case of a taxable year beginning before January 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1) (B), to the extent thereof, and then from the

amount subject to tax in accordance with section 1201(a)(1)(A).

(D) Treatment by shareholders of undistributed capital gains.

(i) Every shareholder of a regulated investment company at the close of the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 45 days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A) which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be increased, with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and by 70 percent (72 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971) of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(B) or (2).

(iv) In the event of such designation the tax imposed by subparagraph (A) shall be paid by the regulated investment company within 30 days after close of its taxable year.

(v) The earnings and profits of such regulated investment company, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary or his delegate.

(4) Loss on sale or exchange of stock held less than 31 days.

If—

(A) under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

(B) such share is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, the rules of section 246 (c) (3) shall apply in determining whether any share of stock has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246 (c) (3).

(c) Earnings and profits.

The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term "regulated investment company" includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

(d) Distributions in redemption of interests in unit investment trusts.

In the case of a unit investment trust—

(1) which is registered under the Investment Company Act of 1940 and issues periodic payment plan certificates (as defined in such Act), and

(2) substantially all of the assets of which consist of securities issued by a management company (as defined in such Act),

section 562(c) (relating to preferential dividends) shall not apply to a distribution by such trust to a holder of an interest in such trust in redemption of part of all of such interest, with respect to the net capital gain of such trust attributable to such redemption. (Aug. 16, 1954, ch. 736, 68A Stat. 271; July 11, 1956, ch. 573, § 2(a), 70 Stat. 530; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 39(a), 101(a), (b), 72 Stat. 1638, 1674; Sept. 14, 1960, Pub. L. 86-779, § 10(b)(2),(3), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88-272, title II, § 229(a) (1), (2), (b), 78 Stat. 99; Dec. 30, 1969, Pub. L. 91-172, title V, § 511(c)(2), 83 Stat. 637.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d), is classified to section 80a-1 et seq. of Title 15, Commerce and Trade.

AMENDMENTS

1969—Subsec. (b)(3)(A). Pub. L. 91-172, § 511(c)(2)(A), substituted "determined as provided in section 1201(a), on" for "of 25 percent of."

Subsec. (b)(3)(C). Pub. L. 91-172, § 511(c)(2)(B), added provision requiring for the purposes of the deduction for capital gains dividends paid the deduction shall, in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance wtih section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D). Pub. L. 91-172, § 511(c)(2)(C), (D), struck out "of 25 percent" in cl. (ii), substituted reference in cl. (iii) to the increase of the adjusted basis of shares in the hands of the shareholder, with respect to the amounts required by this subpar., by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and by 70 percent (72 percent in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971) of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(B) or (2), for reference to the increase of the adjusted basis of shares in

the hand of the shareholder by 75 percent of the amounts required by this subpar. to be included in computing his long-term capital gains.

1964—Subsec. (b)(3) (C), (D)(i). Pub. L. 88-272, § 229(a)(1), (2), substituted "45 days" for "30 days" in pars. (C) and (D)(i).

Subsec. (d). Pub. L. 88-272, § 229(b), added subsec. (d).

1960—Subsec. (a). Pub. L. 86-779, § 10(b)(2), substituted "this part" for "this subchapter."

Subsec. (b)(3)(C). Pub. L. 86-779, § 10(b)(3), substituted "For purposes of this part, a capital gain dividend is" for "A capital gain dividend means."

1958—Subsec. (a). Pub. L. 85-866, § 101(a), inserted "(other than subsection (c) of this section)".

Subsec. (b) (4). Pub. L. 85-866, § 39 (a), added subsec. (b)(4).

Subsec. (c). Pub. L. 85-866, § 101 (b), added sentence defining regulated investment company.

1956—Subsec. (b) (3) (D). Act July 11, 1956, added subsec. (b)(3)(D).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91-172, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 229(c) of Pub. L. 88-272 provided that: "The amendments made by subsection (a) [to subsec. (b) of this section, and sections 853, 854(b)(2), and 855 of this title] shall apply to taxable years of regulated investment companies ending on or after the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (b) [adding subsec. (d) of this section] shall apply to taxable years of regulated investment companies ending after December 31, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 39 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [adding subsec. (b) (4) of this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired after December 31, 1957."

Section 101 (c) of Pub. L. 85-866 provided that: "The amendments made by this section [to subsecs. (a) and (c) of this section] shall apply with respect to taxable years of regulated investment companies beginning on or after March 1, 1958."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 (b) of act July 11, 1956, provided that amendment adding subpar. (D) to subsec. (b) (3) should apply only with respect to taxable years of regulated investment companies beginning after Dec. 31, 1956.

CROSS REFERENCES

Doubling of tax rate on citizens and corporations of certain foreign countries, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 51, 58, 853, 854, 891, 1562 of this title.

§ 853. Foreign tax credit allowed to shareholders.

(a) General rule.

A regulated investment company—

(1) more than 50 percent of the value (as defined in section 851 (c) (4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations, and

(2) which meets the requirements of section 852 (a) for the taxable year,

may, for such taxable year, elect the application of this section with respect to income, war profits, and excess profits taxes described in section 901 (b) (1), which are paid by the investment company during such taxable year to foreign countries and possessions of the United States.

(b) Effect of election.

If the election provided in subsection (a) is effective for a taxable year—

(1) the regulated investment company—

(A) shall not, with respect to such taxable year, be allowed a deduction under section 164 (a) or a credit under section 901 for taxes to which subsection (a) is applicable, and

(B) shall be allowed as an addition to the dividends paid deduction for such taxable year the amount of such taxes;

(2) each shareholder of such investment company shall—

(A) include in gross income and treat as paid by him his proportionate share of such taxes, and

(B) treat as gross income from sources within the respective foreign countries and possessions of the United States, for purposes of applying subpart A of part III of subchapter N, the sum of his proportionate share of such taxes and the portion of any dividend paid by such investment company which represents income derived from sources within foreign countries or possessions of the United States.

(c) Notice to shareholders.

The amounts to be treated by the shareholder, for purposes of subsection (b) (2), as his proportionate share of—

(1) taxes paid to any foreign country or possession of the United States, and

(2) gross income derived from sources within any foreign country or possession of the United States,

shall not exceed the amounts so designated by the company in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year.

(d) Manner of making election and notifying shareholders.

The election provided in subsection (a) and the notice to shareholders required by subsection (c) shall be made in such manner as the Secretary or his delegate may prescribe by regulations.

(e) Cross references.

(1) For treatment by shareholders of taxes paid to foreign countries and possessions of the United States, see section 164 (a) and section 901.

(2) For definition of foreign corporation, see section 7701 (a) (5).

(Aug. 16, 1954, ch. 736, 68A Stat. 272; Feb. 26, 1964, Pub. L. 88-272, title II, § 229(a)(3), 78 Stat. 99.)

AMENDMENTS

1964—Subsec. (c). Pub. L. 88-272 substituted "45 days" for "30 days."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88-272, set out as a note under section 852 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 855 of this title.

§ 854. Limitations applicable to dividends received from regulated investment company.

(a) Capital gain dividend.

For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a capital gain dividend (as defined in section 852(b)(3)) received from a regulated investment company shall not be considered as a dividend.

(b) Other dividends.

(1) General rule.

In the case of a dividend received from a regulated investment company (other than a dividend to which subsection (a) applies)—

(A) if such investment company meets the requirements of section 852 (a) for the taxable year during which it paid such dividend; and

(B) the aggregate dividends received by such company during such taxable year are less than 75 percent of its gross income,

then, in computing the exclusion under section 116 and the deduction under section 243, there shall be taken into account only that portion of the dividend which bears the same ratio to the amount of such dividend as the aggregate dividends received by such company during such taxable year bear to its gross income for such taxable year.

(2) Notice to shareholders.

The amount of any distribution by a regulated investment company which may be taken into account as a dividend for purposes of the exclusion under section 116 and the deduction under section 243 shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later than 45 days after the close of its taxable year.

(3) Definitions.

For purposes of this subsection—

(A) The term "gross income" does not include gain from the sale or other disposition of stock or securities.

(B) The term "aggregate dividends received" includes only dividends received from domestic corporations other than dividends described in section 116 (b) (relating to dividends excluded from gross income). In determining the amount of any dividend for purposes of this subparagraph, the rules provided in section 116 (c) (relating to certain distributions) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 273; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 201(d)(8)—(10), 229(a)(4), 78 Stat. 32, 99.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–272, § 201(d)(8), deleted "section 34(a) (relating to credit for dividends received by individuals)," preceding "section 116."

Subsec. (b). Pub. L. 88–272, §§ 201(d) (9), (10), 229 (a)(4), substituted "45 days" for "30 days" in par. (2), and deleted "the credit under section 34(a)," preceding "the exclusion" in par. (1), and "the credit under section 34," preceding "the exclusion" in par. (2).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsecs. (a), (b) (1), (2), by Pub. L. 88–272, applicable to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

Amendment of subsec. (b)(2) by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 116, 243 of this title.

§ 855. Dividends paid by regulated investment company after close of taxable year.

(a) General rule.

For purposes of this chapter, if a regulated investment company—

(1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary or his delegate, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

(b) Receipt by shareholder.

Amounts to which subsection (a) is applicable shall be treated as received by the shareholder in the taxable year in which the distribution is made.

(c) Notice to shareholders.

In the case of amounts to which subsection (a) is applicable, any notice to shareholders required under this part with respect to such amounts shall be made not later than 45 days after the close of the taxable year in which the distribution is made.

(d) Foreign tax election.

If an investment company to which section 853 is applicable for the taxable year makes a distribution as provided in subsection (a) of this section, the shareholders shall consider the amounts described in section 853 (b) (2) allocable to such distribution as paid or received, as the case may be, in the taxable year in which the distribution is made. (Aug. 16, 1954, ch. 736, 68A Stat. 274; Sept. 14, 1960, Pub. L. 86–779, § 10(b)(2), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, § 229(a)(5), 78 Stat. 99.)

AMENDMENTS

1964—Subsec. (c). Pub. L. 88–272 substituted "45 days" for "30 days."

1960—Subsec. (c). Pub. L. 86–779 substituted "this part" for "this subchapter."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 852 of this title.

PART II.—REAL ESTATE INVESTMENT TRUSTS

Sec.
856. Definition of real estate investment trust.
857. Taxation of real estate investment trusts and their beneficiaries.
858. Dividends paid by real estate investment trust after close of taxable year.

AMENDMENTS

1960—Pub. L. 86-779, § 10(a), Sept. 14, 1960, 74 Stat. 1003, added Part II analysis.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 116 of this title.

§ 856. Definition of real estate investment trust.

(a) In general.

For purposes of this subtitle, the term "real estate investment trust" means an unincorporated trust or an unincorporated association—

(1) which is managed by one or more trustees;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) which (but for the provisions of this part) would be taxable as a domestic corporation;

(4) which does not hold any property primarily for sale to customers in the ordinary course of its trade or business;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) which would not be a personal holding company (as defined in section 542) if all of its adjusted ordinary gross income (as defined in section 543(b)(2)) constituted personal holding company income (as defined in section 543); and

(7) which meets the requirements of subsection (c).

(b) Determination of status.

The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) Limitations.

A trust or association shall not be considered a real estate investment trust for any taxable year unless—

(1) it files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year which began after December 31, 1960;

(2) at least 90 percent of its gross income is derived from—

(A) dividends;

(B) interest;

(C) rents from real property;

(D) gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property); and

(E) abatements and refunds of taxes on real property;

(3) at least 75 percent of its gross income is derived from—

(A) rents from real property;

(B) interest on obligations secured by mortgages on real property or on interests in real property;

(C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property);

(D) dividends or other distributions on, and gain from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part; and

(E) abatements and refunds of taxes on real property;

(4) less than 30 percent of its gross income is derived from the sale or other disposition of—

(A) stock or securities held for less than 6 months; and

(B) real property (including interests in real property) not compulsorily or involuntarily converted within the meaning of section 1033, held for less than 4 years; and

(5) at the close of each quarter of the taxable year—

(A) at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities; and

(B) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(6) For purposes of this part—

(A) The term "value" means, with respect to securities for which market quotations are readily available, the market value of such securities;

and with respect to other securities and assets, fair value as determined in good faith by the trustees, except that in the case of securities of real estate investment trusts such fair value shall not exceed market value or asset value, whichever is higher.

(B) The term "real estate assets" means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part.

(C) The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

(D) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended.

(d) Rents from real property defined.

For purposes of paragraphs (2) and (3) of subsection (c), the term "rents from real property" includes rents from interests in real property but does not include—

(1) any amount received or accrued, directly or indirectly, with respect to any real property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales);

(2) any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly—

(A) in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total number of shares of all classes of stock of such person; or

(B) in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person; and

(3) any amount received or accrued, directly or indirectly, with respect to any real property, if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income. For purposes of this paragraph, the term "independent contractor" means—

(A) a person who does not own, directly or indirectly, more than 35 percent of the shares, or certificates of beneficial interest, in the real estate investment trust, or

(B) a person, if a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or, if not a corporation, not more than 35 percent of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the trust.

For purposes of paragraphs (2) and (3), the rules prescribed by section 318(a) for determining the ownership of stock shall apply in determining the ownership of stock, assets, or net profits of any person; except that "10 percent" shall be substituted for "50 percent" in subparagraph (C) of sections 318(a)(2) and 318(a)(3). (Added Pub. L. 86–779, § 10(a), Sept. 14, 1960, 74 Stat. 1004, and amended Pub. L. 88–272, title II, § 225(k)(4), Feb. 26, 1964, 78 Stat. 94; Pub. L. 88–554, § 4(b)(4), Aug. 31, 1964, 78 Stat. 763.)

REFERENCES IN TEXT

The Investment Company Act of 1940, as amended, referred to in subsec. (c)(6)(D), is classified to section 80a–1 et seq. of Title 15, Commerce and Trade.

AMENDMENTS

1964—Subsec. (a)(6). Pub. L. 88–272 substituted "adjusted ordinary gross income (as defined in section 543 (b)(2))" for "gross income."

Subsec. (d). Pub. L. 88–554 inserted the reference to subparagraph (C) of section 318(a)(3) of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment of section by section 4 of Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554 set out as a note under section 318 of this title.

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE

Section 10(k) of Pub. L. 86–779 provided that: "The amendments made by this section [adding sections 856–858 and amending sections 11(d)(3), 34(c), 116(b), 243(c), 318(b), 443(d), 852 (a), (b)(3)(c), 855(c) and 1504(b)(6) of this title] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1960."

CROSS REFERENCES

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1212 of this title.

§ 857. Taxation of real estate investment trusts and their beneficiaries.

(a) Requirements applicable to real estate investment trusts.

The provisions of this part (other than subsection (d) of this section) shall not apply to a real estate investment trust for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gains dividends) equals or exceeds 90 percent of its real estate investment trust taxable income for the taxable year (determined without regard to subsection (b)(2)(C)), and

(2) the real estate investment trust complies for such year with regulations prescribed by the Secretary or his delegate for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest.

(1) Imposition of normal tax and surtax on real estate investment trusts.

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a normal tax and surtax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11. For purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) shall be reduced by the deduction provided by section 242 (relating to partially tax-exempt interest).

(2) Real estate investment trust taxable income.

For purposes of this part, the term "real estate investment trust taxable income" means the taxable income of the real estate investment trust, adjusted as follows:

(A) There shall be excluded the excess, if any, of the net long-term capital gain over the net short-term capital loss.

(B) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(C) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gains dividends.

(D) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(E) The net operating loss deduction provided in section 172 shall not be allowed.

(3) Capital gains.

(A) Imposition of tax.

There is hereby imposed for each taxable year in the case of every real estate investment trust a tax, determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of—

(i) the net short-term capital loss; and

(ii) the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) Treatment of capital gain dividends by shareholders.

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 6 months.

(C) Definition of capital gain dividend.

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For purposes of subparagraph (A)(ii), in the case of a taxable year beginning before January 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

(4) Loss on sale or exchange of stock held less than 31 days.

If—

(A) under subparagraph (B) of paragraph (3) a shareholder of, or a holder of a beneficial interest in, a real estate investment trust is required, with respect to any share or beneficial interest, to treat any amount as a long-term capital gain, and

(B) such share or interest is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock or beneficial interest has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

(c) Restrictions applicable to dividends received from real estate investment trusts.

For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.

(d) Earnings and profits.

The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term "real estate investment trust" includes a domestic unincorporated trust or association which is a real estate investment trust determined without regard to the requirements of subsection (a). (Added Pub. L. 86–779, § 10(a), Sept. 14, 1960, 74 Stat. 1006, and

amended Pub. L. 88–272, title II, § 201(d)(11), Feb. 26, 1964, 78 Stat. 32, Pub. L. 91–172, title V, § 511(c)(3), Dec. 30, 1969, 83 Stat. 637.)

AMENDMENTS

1969—Subsec. (b)(3)(A). Pub. L. 91–172, § 511 (c)(3)(A), substituted "determined as provided in section 1201(a), on" for "of 25 percent of."

Subsec. (b)(3)(C). Pub. L. 91–172, § 511(c)(3)(B), added provision requiring for the purposes of the deduction for capital gains dividends paid, in the case of a taxable year beginning before Jan. 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

1964—Subsec. (c). Pub. L. 88–272 deleted "section 34 (a) (relating to credit for dividends received by individuals)," preceding "section 116."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 58, 1562 of this title.

§ 858. Dividends paid by real estate investment trust after close of taxable year.

(a) General rule.

For purposes of this part, if a real estate investment trust—

(1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return in accordance with regulations prescribed by the Secretary or his delegate, be considered as having been paid during such taxable year, except as provided in subsections (b) and (c).

(b) Receipt by shareholder.

Amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

(c) Notice to shareholders.

In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made. (Added Pub. L. 86–779, § 10(a), Sept. 14, 1960, 74 Stat. 1008.)

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 857 of this title.

Subchapter N.—Tax Based on Income From Sources Within or Without the United States

Part
I. Determination of sources of income.
II. Nonresident aliens and foreign corporations.
III. Income from sources without the United States.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 555 of this title.

PART I.—DETERMINATION OF SOURCES OF INCOME

Sec.
861. Income from sources within the United States.
862. Income from sources without the United States.
863. Items not specified in section 861 or 862.
864. Definitions.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 306 of this title.

§ 861. Income from sources within the United States.

(a) Gross income from sources within United States.

The following items of gross income shall be treated as income from sources within the United States:

(1) Interest.

Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States,

(B) interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary or his delegate that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable,

(C) interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), when it is shown to the satisfaction of the Secretary or his delegate that less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable

year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States,

(D) in the case of interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States, an amount of such interest which bears the same ratio to such interest as the gross income of such foreign corporation for such period which was not effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources,

(E) income derived by a foreign central bank of issue from bankers' acceptances, and

(F) interest on deposits with a foreign branch of a domestic corporation or a domestic partnership, if such branch is engaged in the commercial banking business.

(2) Dividends.

The amount received as dividends—

(A) from a domestic corporation other than a corporation entitled to the benefits of section 931, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary or his delegate to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) from a foreign corporation unless less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) from a foreign corporation to the extent that such amount is required by section 243(d) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount.

(3) Personal services.

Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with—

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporaton.

(4) Rentals and royalties.

Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property.

(5) Sale of real property.

Gains, profits, and income from the sale of real property located in the United States.

(6) Sale of personal property.

Gains, profits, and income derived from the purchase of personal property without the United States (other than within a possession of the United States) and its sale within the United States.

(b) Taxable income from sources within United States.

From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(c) Interest on deposits, etc.

For purposes of subsection (a)(1)(A), the amounts described in this subsection are—

(1) deposits with persons carrying on the banking business,

(2) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to section 265) in computing the taxable income of such institutions, and

(3) amounts held by an insurance company under an agreement to pay interest thereon. Effective with respect to amounts paid or credited after December 31, 1975, subsection (a)(1)(A) and this subsection shall cease to apply.

(d) Special rules for application of paragraphs (1)(B), (1)(C), (1)(D), and (2)(B) of subsection (a).

(1) New entities.

For purposes of paragraphs (1)(B), (1)(C), (1)(D), and (2)(B) of subsection (a), if the resident alien individual, domestic corporation, or foreign corporation, as the case may be, has no gross income from any source for the 3-year period (or part thereof) specified, the 20 percent test or the 50 percent test, as the case may be, shall be applied with respect to the taxable year of the payor in which payment of the interest or dividends, as the case may be, is made.

(2) Transition rule.

For purposes of paragraphs (1)(C), (1)(D), and (2)(B) of subsection (a), the gross income of the foreign corporation for any period before the first taxable year beginning after December 31, 1966, which is effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 275; Sept. 14, 1960, Pub. L. 86-779, § 3(b), 74 Stat. 998; Oct. 16, 1962, Pub. L. 87-834, § 9(c), 76 Stat. 1001; Nov. 13, 1966, Pub. L. 89-809, title I, § 102(a)(1)—(3), (b), (c), 80 Stat. 1541—1543; Dec. 30, 1969, Pub. L. 91-172, title IV, § 435(a), 83 Stat. 625.)

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91-172, § 435(a)(1), struck out "after December 31, 1972," following "interest paid or credited" in parenthetical material following "interest received from a foreign corporation" in subpars. (C) and (D).

Subsec. (c)(3). Pub. L. 91-172, § 435(a)(2), substituted "1975" for "1972".

1966—Subsec. (a)(1)(A). Pub. L. 89-809, § 102(a)(1)(A), substituted "interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States" for "interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States."

Subsec. (a)(1)(B). Pub. L. 89-809, § 102(a)(2), eliminated interest received from a resident foreign corporation, and substituted "gross income from all sources of such individual or such corporation" for "gross income of such resident payor or domestic corporation", and "taxable year of such individual or such corporation" for "taxable year of such payor."

Subsec. (a)(1)(C). Pub. L. 89-809, § 102(a)(2), added subsec. (a)(1)(C), and redesignated former subsec. (a)(1)(C) as (a)(1)(E).

Subsec. (a)(1)(D). Pub. L. 89-809, § 102(a)(2), added subsec. (a)(1)(D).

Subsec. (a)(1)(E). Pub. L. 89-809, § 102(a)(2), redesignated former subsec. (a)(1)(C) as (a)(1)(E).

Subsec. (a)(1)(F). Pub. L. 89-809, § 102(a)(2), added subsec. (a)(1)(F).

Subsec. (a)(2)(B). Pub. L. 89-809, § 102(b), substituted "50 percent of the gross income from all sources" for "50 percent of the gross income", "effectively connected with the conduct of a trade or business within the United States" for "derived from sources within the United States as determined from the provisions of this part", and "ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources" for "ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources" and inserted "(other than dividends for which a deduction is allowable under section 245(b))" after "dividends" and "(and only to the extent)" after "extent".

Subsec. (a)(3)(C)(ii). Pub. L. 89-809, § 102(c), inserted "an individual who is a citizen or resident of the United States, a domestic partnership, or" before "a domestic corporation" and "individual, partnership, or" after "United States by such".

Subsec. (c). Pub. L. 89-809, § 102(a)(1)(B), added subsec. (c).

Subsec. (d). Pub. L. 89-809, § 102(a)(3), added subsec. (d).

1962—Subsec. (a)(2)(B). Pub. L. 87-834 substituted "to the extent exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends" for "to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends."

1960—Subsec. (a)(2)(C). Pub. L. 86-779 added subpar. (C).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 435(a)(1) of Pub. L. 91-172 provided in part that the amendments to subsec. (a)(1)(C), (D), by section 435(a)(1) of Pub. L. 91-172, were effective with respect to amounts paid or credited after Dec. 31, 1969.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 102(e) of Pub. L. 89-809 provided that:

"(1) The amendments made by subsections (a), (c), and (d) [amending subsec. (a)(1)(A), (a)(1)(B) and (a)(3)(C)(ii) of this section and 895 of this title, redesignating subsec. (a)(1) (C) and (F) and subsecs. (c) and (d) of this section and section 864 (b) and (c) of this title] shall apply with respect to taxable years beginning after December 31, 1966; except that in applying section 864(c)(4)(B)(iii) of the Internal Revenue Code of 1954 [section 864(c)(4)(B)(ii) of this title] (as added by subsection (d)) with respect to a binding contract entered into on or before February 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account.

"(2) The amendments made by subsection (b) [amending subsec. (a)(2)(B) of this section] shall apply with respect to amounts received after December 31, 1966."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (a)(2)(B) of this section by Pub. L. 87-834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87-834, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable to dividends received after Dec. 31, 1959, in taxable years ending after such date, see section 3(c) of Pub. L. 86–779, set out as a note under section 243 of this title.

SHORT TITLE

Section 101 of Pub. L. 89–809 provided that: "This title [adding sections 877, 896, 906, 981, 2107, 2108, and 6683 of this title, amending this section and sections 1, 11, 116, 154, 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 864, 871, 872, 873, 874, 875, 881, 882, 884, 894, 895, 901, 904, 911, 931, 932, 952, 953, 1248, 1249, 1441, 1442, 1461, 2014, 2101, 2102, 2104, 2105, 2106, 2501, 2511, 3401, 6015, 6016, 6018, 6501, 6513, and 7701 of this title, redesignating former section 877 as 878 repealing section 1493, and enacting provisions set out as notes under this section and sections 11, 871, 874, 894, 901, 904, 931, 2101, 2501, and 6501 of this title] may be cited as the 'Foreign Investors Tax Act of 1966'."

CONFORMITY OF AMENDMENTS MADE BY FOREIGN INVESTORS TAX ACT OF 1966 WITH TREATY OBLIGATIONS OF THE UNITED STATES.

Section 110 of Pub. L. 89–809 provided that: "No amendment made by this title shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States." See Short Title note under this section for list of sections affected by Title I of Pub. L. 89–809.

CROSS REFERENCES

Income from sources without the United States—

Generally, see section 901 et seq. of this title.

Determination of source, see section 862 of this title.

Items not specified in section 861 or 862, see section 863 of this title.

Personal holding companies defined, exception if a foreign corporation with gross income from sources within United States, see section 542 (c) (7) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 638, 862, 863, 864, 2104, 2105, 4948 of this title.

§ 862. Income from sources without the United States.

(a) Gross income from sources without United States.

The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861 (a) (1);

(2) dividends other than those derived from sources within the United States as provided in section 861 (a) (2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale of real property located without the United States; and

(6) gains, profits, and income derived from the purchase of personal property within the United States and its sale without the United States.

(b) Taxable income from sources without United States.

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 276.)

CROSS REFERENCES

Income from sources within the United States, see section 861 of this title.

Income from sources without the United States, see section 901 et seq. of this title.

Items not specified in section 861 or 862, see section 863 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 638, 863, 864 of this title.

§ 863. Items not specified in section 861 or 862.

(a) Allocation under regulations.

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861 (a) and 862 (a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary or his delegate. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) Income partly from within and partly from without the United States.

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary or his delegate. Gains, profits, and income—

(1) from transportation or other services rendered partly within and partly without the United States,

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, or

(3) derived from the purchase of personal property within a possession of the United States and its sale within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 277.)

§ 864. Definitions.

(a) Sale, etc.

For purposes of this part, the word "sale" includes "exchange"; the word "sold" includes "exchanged"; and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged".

(b) Trade or business within the United States.

For purposes of this part, part II, and chapter 3, the term "trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include—

(1) Performance of personal services for foreign employer.

The performance of personal services—

(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000.

(2) Trading in securities or commodities.

(A) Stocks and securities.

(i) In general.

Trading in stocks or securities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account.

Trading in stocks or securities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in stocks or securities, or in the case of a corporation (other than a corporation which is, or but for section 542(c)(7) or 543(b)(1)(C) would be, a personal holding company) the principal business of which is trading in stocks or securities for its own account, if its principal office is in the United States.

(B) Commodities.

(i) In general.

Trading in commodities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account.

Trading in commodities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in commodities.

(iii) Limitation.

Clauses (i) and (ii) shall apply only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

(C) Limitation.

Subparagraphs (A)(i) and (B)(i) shall apply only if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected.

(c) Effectively connected income, etc.

(1) General rule.

For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), and (4) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in section 871(d) or sections 882 (d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—factors.

In determining whether income from sources within the United States of the types described in section 871(a)(1) or section 881(a), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or

business. In applying this paragraph and paragraph (4), interest referred to in section 861 (a)(1)(A) shall be considered income from sources within the United States.

(3) Other income from sources within United States.

All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States.

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a)(4) (including any gain or loss realized on the sale of such property) derived in the active conduct of such trade or business;

(ii) consists of dividends or interest, or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) is derived from the sale (without the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale.

(C) In the case of a foreign corporation taxable under part I of subchapter L, any income from sources without the United States which is attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4)(B).

For purposes of subparagraph (B) of paragraph (4)—

(A) in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business,

(B) income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) the income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss property allocable thereto, but, in the case of a sale described in clause (iii) of such paragraph, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale were made in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Nov. 13, 1966, Pub. L. 89-809, title I, § 102(d), 80 Stat. 1544.)

AMENDMENTS

1966—Pub. L. 89-809 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89-809, set out as a note under section 861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 871 of this title.

PART II.—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart

A. Nonresident alien individuals.

B. Foreign corporations.

C. Miscellaneous provisions.

SUBPART A.—NONRESIDENT ALIEN INDIVIDUALS

Sec.
871. Tax on nonresident alien individuals.
872. Gross income.
873. Deductions.
874. Allowance of deductions and credits.
875. Partnerships; beneficiaries of estates and trusts.
876. Alien residents of Puerto Rico.
877. Expatriation to avoid tax.
878. Foreign educational, charitable, and certain other exempt organizations.

AMENDMENTS

1966—Pub. L. 89-809, title I, § 103(e)(2), (f)(2), Nov. 13, 1966, 80 Stat. 1551, 1552, inserted "; beneficiaries of estates and trusts" in item 875, added item 877, and redesignated former item 877 as 878.

§ 871. Tax on nonresident alien individuals.

(a) Income not connected with United States business—30 percent tax.

(1) Income other than capital gains.

There is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in section 402(a)(2), 403(a)(2), or 631 (b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) in the case of bonds or other evidences of indebtedness issued after September 28, 1965, amounts which under section 1232 are considered as gains from the sale or exchange of property which is not a capital asset, and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged, or from payments which are treated as being so contingent under subsection (e),

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more.

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(b) Income connected with United States business—graduated rate of tax.

(1) Imposition of tax.

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 1201(b) on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income.

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs.

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F) or (J)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in section 1441(b) (1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business.

(1) In general.

A nonresident alien individual who during the taxable year derives any income—

(A) from real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631 (b) or (c), and

(B) which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary or his delegate with respect to any taxable year.

(2) Election after revocation.

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary or his delegate consents to such new election.

(3) Form and time of election and revocation.

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary or his delegate may by regulations prescribe.

(e) Gains from sale or exchange of certain intangible property.

For purposes of subsection (a)(1)(D), and for purposes of sections 881(a)(4), 1441(b), and 1442(a)—

(1) Payments treated as contingent on use, etc.

If more than 50 percent of the gain for any taxable year from the sale or exchange of any patent, copyright, secret process or formula, good will, trademark, trade brand, franchise, or other like property, or of any interest in any such property, is from payments which are contingent on the productivity, use, or disposition of such property or interest, all of the gain for the taxable year from the sale or exchange of such property or interest shall be treated as being from payments which are contingent on the productivity, use, or disposition of such property or interest.

(2) Source rule.

In determining whether gains described in subsection (a)(1)(D) and section 881(a)(4) are received from sources within the United States, such gains shall be treated as rentals or royalties for the use of, or privilege of using, property or an interest in property.

(f) Certain annuities received under qualified plans.

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

(1) all of the personal services by reason of which such annuity is payable were either (A) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or (B) personal services described in section 864(b)(1) performed within the United States by such individual, and

(2) at the time the first amount is paid as such annuity under such annuity plan, or by such trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which such trust is a part, are citizens or residents of the United States.

(g) Cross references.

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(a)(4).

(2) For taxation of nonresident alien individuals who are expatriated United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For the requirement of making a declaration of estimated tax by certain nonresident alien individuals, see section 6015(i).

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 40 (a), 41 (a), 72 Stat. 1638, 1639; Apr. 22, 1960, Pub. L. 86-437, § 2(b), 74 Stat. 79; Sept. 21, 1961, Pub. L. 87-256, § 110(b), 75 Stat. 535; Feb. 26, 1964, Pub. L. 88-272, title I, § 113(b), title II, § 201(d)(12), 78 Stat. 24, 32; Nov. 18, 1966, Pub. L. 89-809, title I, § 103(a)(1), 80 Stat. 1547.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (c), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

AMENDMENTS

1966—Subsecs. (a), (b). Pub. L. 89-809 consolidated the substance of former subsecs. (a)—(c) and, as part of the consolidation, revised the overall income tax treatment of nonresident alien individuals by substituting provisions dividing their income for tax purposes into two basic groups according to whether or not the income is effectively connected with a United States trade or business for provisions calling for different tax treatment based upon whether or not they are, or are not, engaged in a trade or business in the United States, with a further breakdown of those not engaged in trade or business in the United States as to whether their income is over or under $21,200.

Subsec. (c). Pub. L. 89-809 redesignated former subsec. (d) as subsec. (c) and, in subsec. (c) as so redesignated, added provisions that any income described in section 1441(b) (1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States. Substance of former subsec. (c) revised and incorporated into subsecs. (a) and (b).

Subsec. (d). Pub. L. 89-809 added subsec. (d). Former subsec. (d) redesignated as subsec. (c) and amended.

Subsec. (e). Pub. L. 89-809 added subsec. (e). Former subsec. (e) redesignated as subsec. (g) and amended.

Subsec. (f). Pub. L. 89-809 added subsec. (f).

Subsec. (g). Pub. L. 89-809 redesignated former subsec. (e) as subsec. (g) and, in subsec. (g) as so redesignated, added pars. (2) and (4)—(6) while redesignating former pars. (1) and (2) as (3) and (1) respectively.

1964—Subsec. (a). Pub. L. 88-272, § 113(b)(2), substituted "30 percent tax" for "and gross income of not more than $15,400" in the subsection catchline.

Subsec. (b). Pub. L. 88-272, §§ 113(b)(1), (3), 201 (d)(12), substituted "$19,000 in the case of a taxable year beginning in 1964 or more than $21,200 in the case of a taxable year beginning after 1964" for "$15,400", "the credit under section 35" for "the sum of the credits under sec-

tions 34 and 35" in the text, and "Regular tax" for "and gross income of more than $15,400" in the subsection catchline.

1961—Subsec. (d). Pub. L. 87–256 added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 87–256 redesignated former subsec. (d) as (e).

1960—Subsec. (d). Pub. L. 86–437 substituted "Cross references" for "Doubling of tax" in subsection catchline, and added the cross reference to section 402(a)(4).

1958—Subsec. (a) (1). Pub. L. 85–866, § 40 (a), inserted "section 403 (a) (2)," after "section 402 (a) (2),".

Subsec. (b) Pub. L. 85–866, § 41 (a), added last par. covering former provisions of par. (3), which was deleted by the amendment, and containing new provisions with references to credits under section 34 and 35 and exclusion under section 116 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 103(n) of Pub. L. 89–809 provided that:

"(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) [amending this section and sections 1, 116, 154, 872, 873, 874, 875, 932, 6015, and 7701 of this title, redesignating section 877 as 878 and adding section 877 of this title and repealing section 1493 of this title] shall apply with respect to taxable years beginning after December 31, 1966.

"(2) The amendments made by subsection (h) [amending section 1441 of this title] shall apply with respect to payments made in taxable years of recipients beginning after December 31, 1966.

"(3) The amendments made by subsection (i) [amending section 1461 of this title] shall apply with respect to payments occurring after December 31, 1966.

"(4) The amendments made by subsection (k) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (b) by section 113(b)(1) of Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment of subsec. (b) by section 201(d)(12) of Pub. L. 88–272, which substituted "the credit under section 35" for the "sum of the credits under sections 34 and 35," applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of subsec. (d) of this section by Pub. L. 86–437 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 3 of Pub. L. 86–437, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 40 (c) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [to subsec. (a) (1) of this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958]. The amendments made by subsection (b) [to section 1441 (b), (c) (5) of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958]."

Section 41 (c) of Pub. L. 85–866 provided that: "The amendments made by this section [to subsec. (b) of this section and section 35 (c), (d) of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

CROSS REFERENCES

Consent dividends, nonresident aliens and foreign corporations, see section 565 (e) of this title.

Dispositions of certain stock, source of gain, see section 306 (f) of this title.

Income tax returns, persons required to make returns of income, see section 6012 of this title.

Judicial proceedings, production of records in case of foreign corporations, foreign trusts or estates and nonresident alien individuals, see section 7456 (b) of this title.

Partial exclusion of dividends received by individuals, certain nonresident aliens ineligible for exclusion, see section 116 (d) of this title.

Retirement income, nonresident alien ineligible for credit, see section 37 (h) of this title.

Standard deduction for individuals, nonresident alien as ineligible, see section 142 (b) (1) of this title.

Time for filing income tax returns, nonresident aliens and foreign corporations, see section 6072 (c) of this title.

Withholding tax on—

Foreign corporations, see section 1442 of this title.

Nonresident aliens, see section 1441 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 5, 35, 51, 116, 306, 864, 873, 877, 881, 882, 891, 906, 1441, 1442, 6012 of this title.

§ 872. Gross income.

(a) General rule.

In the case of a nonresident alien individual, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions.

The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships under foreign flag.

Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(2) Aircraft of foreign registry.

Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(3) Compensation of participants in certain exchange or training programs.

Compensation paid by a foreign employer to a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended. For purposes of this paragraph, the term "foreign employer" means—

(A) a nonresident alien individual, foreign partnership, or foreign corporation, or

(B) an office or place of business maintained in a foreign country or in a possession of the United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Income derived by a nonresident alien individual from a series E or series H United States savings bond, if such individual acquired such

bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Sept. 21, 1961, Pub. L. 87–256, § 110(c), 75 Stat. 536; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(b), 80 Stat. 1550.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b)(3), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–809, § 103(b)(1), limited the inclusion of gross income which is derived from sources within the United States to such income which is not effectively connected with the conduct of a trade or business within the United States and added provision including gross income without the limitation as to source which is effectively connected with the conduct of a trade or business within the United States.

Subsec. (b)(3)(B). Pub. L. 89–809, § 103(b)(2), substituted "by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States" for "by a domestic corporation".

Subsec. (b)(4). Pub. L. 89–809, § 102(b)(3), added par. (4).

1961—Subsec. (b). Pub. L. 87–256 added par. (3).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 877 of this title.

§ 873. Deductions.

(a) General rule.

In the case of a nonresident alien individual, the deductions shall be allowed only for purposes of section 871(b) and (except as provided by subsection (b)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary or his delegate.

(b) Exceptions.

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses.

The deduction, for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 165 (c)(3), but only if the loss is of property located within the United States.

(2) Charitable contributions.

The deduction for charitable contributions and gifts allowed by section 170.

(3) Personal exemption.

The deduction for personal exemptions allowed by section 151, except that in the case of a nonresident alien individual who is not a resident of a contiguous country only one exemption shall be allowed under section 151.

(c) Cross references.

(1) For disallowance of standard deduction, see section 142(b)(1).

(2) For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(c)(1), 80 Stat. 1550.)

AMENDMENTS

1966—Pub. L. 89–809 substituted "connected with income which is effectively connected with the conduct of a trade or business within the United States" for "connected with income from sources within the United States" in subsec. (a), deleted provisions relating to the deduction of losses not connected with a trade or business but incurred in transactions entered into for profit in subsec. (b), made the casualty loss deduction available even if the property giving rise to the loss is not effectively connected with the conduct of a trade or business in the United States if the property is located in this country, made the charitable contribution deduction available even though not related to the trade or business, and added subsec. (c)(2) making a cross reference to section 906(b)(1) for rule that certain foreign taxes are not to be taken into account in determining deduction or credit.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 877, 906 of this title.

§ 874. Allowance of deductions and credits.

(a) Return prerequisite to allowance.

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary or his delegate a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary or his delegate may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 32 for tax withheld at source or the credit provided by section 39 for certain uses of gasoline, special fuels, and lubricating oil.

(b) Tax withheld at source.

The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary or his delegate, and under regulations prescribed by the Secretary or his delegate, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) Foreign tax credit.

Except as provided in section 906, a nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901. (Aug. 16, 1954, ch. 736, 68A Stat. 281; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d)(3), 79 Stat.

167; Nov. 13, 1966, Pub. L. 89–809, title I, §§ 103(d), 106(a)(3), 80 Stat. 1551, 1569; May 21, 1970, Pub. L. 91–258, title II, § 207(d)(1), 84 Stat. 248.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–258 included provision against construction of subsec. (a) to deny credit provided by section 39 for certain uses of special fuels.

1966—Subsec. (a). Pub. L. 89–809, § 103(d), struck out "of his total income received from all sources in the United States" following "true and accurate return".

Subsec. (c). Pub. L. 89–809, § 106(a)(3), substituted "Foreign tax credit" for "Foreign tax credit not allowed" as the subsection heading and inserted reference to an exception provided in section 906.

1965—Subsec. (a). Pub. L. 89–44 inserted "or the credit provided by section 39 for certain uses of gasoline and lubricating oil" before the period at the end.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Section 106(a)(6) of Pub. L. 89–809 provided that: "The amendments made by this subsection [adding sections 901(b)(4) and 906 of this title and amending subsec. (c) of this section] shall apply with respect to taxable years beginning after Dec. 31, 1966. In applying section 904 of the Internal Revenue Code of 1954 [section 904 of this title] with respect to section 906 of such Code [section 906 of this title], no amount may be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year shall be taken into account."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1441, 1451 of this title.

§ 875. Partnerships; beneficiaries of estates and trusts.

For purposes of this subtitle—

(1) a nonresident alien individual or foreign corporation shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged, and

(2) a nonresident alien individual or foreign corporation which is a beneficiary of an estate or trust which is engaged in any trade or business within the United States shall be treated as being engaged in such trade or business within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(e)(1), 80 Stat. 1551.)

AMENDMENTS

1966—Pub. L. 89–809 designated existing provisions as par. (1), substituted reference to nonresident alien individuals or foreign corporations for reference simply to nonresident alien individuals in par. (1) as so designated, and added par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§ 876. Alien residents of Puerto Rico.

(a) No application to certain alien residents of Puerto Rico.

This subpart shall not apply to an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, and such alien shall be subject to the tax imposed by section 1.

(b) Cross reference.

For exclusion from gross income of income derived from sources within Puerto Rico, see section 933.

(Aug. 16, 1954, ch. 736, 68A Stat. 281.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 901 of this title.

§ 877. Expatriation to avoid tax.

(a) In general.

Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(b) Alternative tax.

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or section 1201(b), except that—

(1) the gross income shall include only the gross income described in section 872(a) (as modified by subsection (c) of this section), and

(2) the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary or his delegate.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section.

(c) Special rules of source.

For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

(1) Sale of property.

Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(2) Stock or debt obligations.

Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(d) Exception for loss of citizenship for certain causes.

Subsection (a) shall not apply to a nonresident alien individual whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).

(e) Burden of proof.

If the Secretary or his delegate establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual. (Added Pub. L. 89-809, title I, § 103(f)(1), Nov. 13, 1966, 80 Stat. 1551.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as a note under section 871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 116, 894 of this title.

§ 878. Foreign educational, charitable, and certain other exempt organizations.

For special provisions relating to foreign educational, charitable, and other exempt organizations, see sections 512(a) and 4948.

(Aug. 16, 1954, ch. 736, 68A Stat. 282, formerly § 877, renumbered § 878, Nov. 13, 1966, Pub. L. 89-809, title I, § 103(f)(1), 80 Stat. 1551, and amended Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(20), 83 Stat. 528.)

AMENDMENTS

1969—Pub. L. 91-172 substituted provisions requiring reference to organizations in sections 512(a) and 4948 for provisions requiring reference to trusts in section 512(a), and struck out reference to unrelated business income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

SUBPART B.—FOREIGN CORPORATIONS

Sec.
881. Tax on income of foreign corporations not connected with United States business.
882. Tax on income of foreign corporations connected with United States business.
883. Exclusions from gross income.
884. Cross references.

AMENDMENTS

1966—Pub. L. 89-809, title I, § 104(b)(3), Nov. 13, 1966, 80 Stat. 1557, substituted "Tax on income of foreign corporations not connected with United States business" for "Tax on foreign corporations not engaged in business in United States" in item 881, and "Tax on income of foreign corporations connected with United States business" for "Tax on resident foreign corporations" in item 882.

§ 881. Tax on income of foreign corporations not connected with United States business.

(a) Imposition of tax.

There is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as—

(1) interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(2) gains described in section 631 (b) or (c),

(3) in the case of bonds or other evidences of indebtedness issued after September 28, 1965, amounts which under section 1232 are considered as gains from the sale or exchange of property which is not a capital asset, and

(4) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged, or from payments which are treated as being so contingent under section 871(e),

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(b) Doubling of tax.

For doubling of tax on corporations of certain foreign countries, see section 891.

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(a), 80 Stat. 1555.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809 substantially revised the income tax treatment of foreign corporations, substituted the concept of amounts received from sources within the United States by foreign corporations but not effectively connected with the conduct of a trade or business within the United States for the concept of amounts received from sources within the United States by foreign corporations not engaged in trade or business within the United States as the amount upon which the existing 30 percent levy should be imposed, and added contingent income received from the sale of patents and other intangibles and amounts of original issue discount which are treated as ordinary income received on retirement or sale or exchange of bonds or other evidences of indebtedness issued after Sept. 28, 1965, to the specified types of fixed or determinable income.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

CROSS REFERENCES

Consent dividends, nonresident aliens and foreign corporations, see section 565 (e) of this title.

Corporate organizations, foreign corporations, see section 367 of this title.

Credit for corporate stockholder in foreign corporation, see section 902 of this title.

Distributions by corporations, source of gain when dispositions of certain stock, see section 306 (f) of this title.

Dividends received from certain foreign corporations, see section 245 of this title.

Income from sources within the United States, see section 861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 306, 819, 842, 864, 871, 891, 906, 1442, 1563, 6016, 6154 of this title.

§ 882. Tax on income of foreign corporations connected with United States business.

(a) Normal tax and surtax.

(1) Imposition of tax.

A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11 or 1201(a) on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income.

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Gross income.

In the case of a foreign corporation, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of deductions and credits.

(1) Allocation of deductions.

(A) General rule.

In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary or his delegate.

(B) Charitable contributions.

The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed.

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary or his delegate a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary or his delegate may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 32 for tax withheld at source or the credit provided by section 39 for certain uses of gasoline and lubricating oil.

(3) Foreign tax credit.

Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference.

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906 (b)(1).

(d) Election to treat real property income as income connected with United States business.

(1) In general.

A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631 (b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary or his delegate with respect to any taxable year.

(2) Election after revocation, etc.

Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) Interest on United States obligations received by banks organized in possessions.

In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) Returns of tax by agent.

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent. (Aug. 16, 1954, ch. 736, 68A Stat. 282; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(b)(1), 80 Stat. 1555.)

AMENDMENTS

1966—Pub. L. 89-809 substantially revised the income tax treatment of foreign corporations, introduced the concept of taxable income effectively connected with the conduct of a trade or business within the United States into provisions dealing with the imposition of tax, substituted a concept of gross income that included gross income derived from sources within the United States not effectively connected with the conduct of a trade or business within the United States and gross income effectively connected with the conduct of a trade or business within the United States for a concept of gross income that included only gross income from sources within the United States, and inserted provisions for an election to treat real property income as income connected with United States business, treatment of interest on United States obligations received by banks organized in possessions, and the returns of tax by agents, and added cross reference to section 906(b)(1).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 864, 906, 1442 of this title.

§ 883. Exclusions from gross income.

(a) Income of foreign corporations from ships and aircraft.

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships under foreign flag.

Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(2) Aircraft of foreign registry.

Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(b) Earnings derived from communications satellite System.

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following). (Aug. 16, 1954, ch. 736, 68A Stat. 283; Oct. 22, 1968, Pub. L. 90-622, § 1(a), 82 Stat. 1311.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-622 denominated existing provisions as subsec. (a) and added the subsec. catchline "Income of foreign corporations from ships and aircraft".

Subsec. (b). Pub. L. 90-622 added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(b) of Pub. L. 90-622 provided that: "The amendment made by subsection (a) [adding subsec. (b) to this section] shall apply with respect to taxable years beginning after December 31, 1966."

§ 884. Cross references.

(1) For special provisions relating to foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 864(b).

(3) For adjustment of tax in case of corporations of certain foreign countries, see section 896.

(4) For allowance of credit against the tax in case of a foreign corporation having income effectively connected with the conduct of a trade or business within the United States, see section 906.

(5) For withholding at source of tax on income of foreign coroporations, see section 1442.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(m)(1), 80 Stat. 1563; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(21), 83 Stat. 528.)

AMENDMENTS

1969—Par. (1). Pub. L. 91-172 redesignated former par. (2) as par. (1). Former par. (1) referring to section 512 (a) was stricken.

Pars. (2)-(5). Pub. L. 91-172 redesignated former pars. (3), (4), (5) and (6) as pars. (2), (3), (4) and (5).

1966—Par. (1). Pub. L. 89-809 redesignated former par. (4) as par. (1). Former par. (1) redesignated as par (6).

Par. (2). Pub. L. 89-809 redesignated former par. (3) as par. (2) and, in par. (2) as so redesignated, substituted "foreign corporations carrying on an insurance business within the United States, see section 842" for "foreign insurance companies, see subchapter L (sec. 801 and following". Former par. (2) redesignated as par. (3).

Par. (3). Pub. L. 89-809 redesignated former par. (2) as par. (3) and, in par. (3) as so redesignated, substituted "section 864(b) for "section 871(c)". Former par. (3) redesignated as par. (2).

Pars. (4), (5). Pub. L. 89-809 added pars. (4) and (5). Former par. (4) redesignated as par. (1).

Par. (6). Pub. L. 89-809 redesignated former par. (1) as par. (6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

SUBPART C.—MISCELLANEOUS PROVISIONS

Sec.
891. Doubling of rates of tax on citizens and corporations of certain foreign countries.
892. Income of foreign governments and of international organizations.
893. Compensation of employees of foreign governments or international organizations.
894. Income affected by treaty.
895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.
896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries.

AMENDMENTS

1966—Pub. L. 89-809, title I, §§ 102(a)(4)(B), 105(c), Nov. 13, 1966, 80 Stat. 1543, 1565, substituted "affected by treaty" for "exempt under treaty" in item 894, inserted "or from bank deposits" in item 895, and added item 896.

1961—Pub. L. 87-29, § 1(b), May 4, 1961, 75 Stat. 64, added item 895.

§ 891. Doubling of rates of tax on citizens and corporations of certain foreign countries.

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 802, 821, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be

doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made. (Aug. 16, 1954, ch. 736, 68A Stat. 283; Mar. 13, 1956, ch. 83, § 5(6), 70 Stat. 49; June 25, 1959, Pub. L. 86-69, § 3(f)(1), 73 Stat. 140.)

AMENDMENTS

1959—Pub. L. 86-69 eliminated reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out a note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, as applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 12 of this title.

§ 892. Income of foreign governments and of iternational organizations.

The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle. (Aug. 16, 1954, ch. 736, 68A Stat. 284.)

§ 893. Compensation of employees of foreign governments or international organizations.

(a) Rule for exclusion.

Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if—

(1) such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); and

(2) in the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) in the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(b) Certificate by Secretary of State.

The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries. (Aug. 16, 1954, ch. 736, 68A Stat. 284.)

§ 894. Income affected by treaty.

(a) Income exempt under treaty.

Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

(b) Permanent establishment in United States.

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b). (Aug. 16, 1954, ch. 736, 68A Stat. 284; Nov. 13, 1966, Pub. L. 89-809, title I, § 105(a), 80 Stat. 1563.)

AMENDMENTS

1966—Pub. L. 89-809 designated existing provisions as subsec. (a) added subsec. (b) and substituted "affected by treaty" for "exempt under treaty" in the section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 105(d) of Pub. L. 89-809 provided that: "The amendments made by this section (other than subsections (d) and (f)) [amending this section and adding section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 819 of this title.

§ 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be

exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue. (Added Pub. L. 87–29, § 1(a), May 4, 1961, 75 Stat. 64, and amended Pub. L. 89–809, title I, § 102(a)(4)(A), Nov. 13, 1966, 80 Stat. 1543.)

AMENDMENTS

1966—Pub. L. 89–809 exempted income derived from obligations of agencies or instrumentalities of the United States, and income derived from interest on deposits with persons carrying on the banking business, inserted parenthetical phrase "(including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717))," and inserted sentence requiring the Bank for International Settlements to be treated as a foreign central bank of issue.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

EFFECTIVE DATE

Section 1(c) of Pub. L. 87–29 provided that: "The amendments made by subsections (a) and (b) [adding this section and amending analysis preceding section 891 of this title] shall be effective with respect to income received in taxable years beginning after December 31, 1960."

§ 896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries.

(a) Imposition of more burdensome taxes by foreign country.

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, citizens of the United States not residents of such foreign country or domestic corporations are being subjected to more burdensome taxes, on any item of income received by such citizens or corporations from sources within such foreign country, than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such taxes so that they are no more burdensome than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with the provisions of this subsection to residents or corporations of such foreign country,

the President shall proclaim that the tax on such similar income derived from sources within the United States by residents or corporations of such foreign country shall, for taxable years beginning after such proclamation, be determined under this subtitle without regard to amendments made to this subchapter and chapter 3 on or after the date of enactment of this section.

(b) Imposition of discriminatory taxes by foreign country.

Whenever the President finds that—

(1) under the laws of any foreign country, citizens of the United States or domestic corporations (or any class of such citizens or corporations) are, with respect to any item of income, being subjected to a higher effective rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes.

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for

any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required.

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations.

The Secretary or his delegate shall prescribe such regulations as he deems necessary or appropriate to implement this section. (Added Pub. L. 89-809, title I, § 105(b), Nov. 13, 1966, 80 Stat. 1563.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 105(d) of Pub. L. 89-809, set out as a note under section 894 of this title.

PART III.—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart

A. Foreign tax credit.
B. Earned income of citizens of United States.
C. Western Hemisphere trade corporations.
D. Possessions of the United States.
E. China Trade Act corporations.
F. Controlled foreign corporations.
G. Export trade corporations.
H. Income of certain nonresident United States citizens subject to foreign community property laws.

AMENDMENTS

1966—Pub. L. 89-809, title I, § 105(e)(2), Nov. 13, 1966, 80 Stat. 1567, added the heading of subpart H.

1962—Pub. L. 87-834, § 12(b)(3), Oct. 16, 1962, 76 Stat. 1031, added the headings of subparts F and G.

SUBPART A.—FOREIGN TAX CREDIT

Sec.
901. Taxes of foreign countries and of possessions of United States.
902. Credit for corporate stockholder in foreign corporation.
903. Credit for taxes in lieu of income, etc., taxes.
904. Limitation on credit.
905. Applicable rules.
906. Nonresident alien individuals and foreign corporations.

AMENDMENTS

1966—Pub. L. 89-809, title I, § 106(a)(2), Nov. 13, 1966, 80 Stat. 1569, added item 906.

§ 901. Taxes of foreign countries and of possessions of United States.

(a) Allowance of credit.

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against the tax imposed by section 56 (relating to minimum tax for tax preferences), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1333 (relating to war loss recoveries) or under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541.

(b) Amount allowed.

Subject to the applicable limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations.

In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of the United States or Puerto Rico.

In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien resident of the United States or Puerto Rico.

In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country; and

(4) Nonresident alien individuals and foreign corporations.

In the case of any nonresident alien individual not described in section 876 and in the case of any foreign corporation, the amount determined pursuant to section 906; and

(5) Partnerships and estates.

In the case of any individual described in paragraph (1), (2), (3), or (4), who is a member of a partnership or a beneficiary of an estate or trust, the amount of his proportionate share of the taxes (described in such paragraph) of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

(c) Similar credit required for certain alien residents.

Whenever the President finds that—

(1) a foreign country, in imposing income, war profits, and excess profits taxes, does not allow to citizens of the United States residing in such foreign country a credit for any such taxes paid or accrued to the United States or any foreign country, as the case may be, similar to the credit allowed under subsection (b)(3),

(2) such foreign country, when requested by the United States to do so, has not acted to provide such a similar credit to citizens of the United States residing in such foreign country, and

(3) it is in the public interest to allow the credit under subsection (b)(3) to citizens or subjects of such foreign country only if it allows such a similar credit to citizens of the United States residing in such foreign country,

the President shall proclaim that, for taxable years beginning while the proclamation remains in effect, the credit under subsection (b)(3) shall be allowed to citizens or subjects of such foreign country only if such foreign country, in imposing income, war profits, and excess profits taxes, allows to citizens of the United States residing in such foreign country such a similar credit.

(d) Corporations treated as foreign.

For purposes of this subpart, the following corporations shall be treated as foreign corporations:

(1) a corporation entitled to the benefits of section 931, by reason of receiving a large percentage of its gross income from sources within a possession of the United States; and

(2) a corporation organized under the China Trade Act, 1922 (15 U. S. C., chapter 4), and entitled to the deduction provided in section 941.

(e) Foreign taxes on mineral income.

(1) Reduction in amount allowed.

Notwithstanding subsection (b), the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or possession of the United States with respect to foreign mineral income from sources within such country or possession which would (but for this paragraph) be allowed under such subsection shall be reduced by the amount (if any) by which—

(A) the amount of such taxes (or, if smaller, the amount of the tax which would be computed under this chapter with respect to such income determined without the deduction allowed under section 613), exceeds

(B) the amount of the tax computed under this chapter with respect to such income.

(2) Foreign mineral income defined.

For purposes of paragraph (1), the term "foreign mineral income" means income derived from the extraction of minerals from mines, wells, or other natural deposits, the processing of such minerals into their primary products, and the transportation, distribution, or sale of such minerals or primary products. Such term includes, but is not limited to—

(A) dividends received from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902, to the extent such dividends are attributable to foreign mineral income, and

(B) that portion of the taxpayer's distributive share of the income of partnerships attributable to foreign mineral income.

(f) Cross reference.

(1) For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275.

(2) For right of each partner to make election under this section, see section 703 (b).

(3) For right of estate or trust to the credit for taxes imposed by foreign countries and possessions of the United States under this section, see section 642 (a) (2).

(4) For reduction of credit for failure of a United States person to furnish certain information with respect to a foreign corporation controlled by him, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 285; Sept. 14, 1960, Pub. L. 86–780, § 3(a), (b), 74 Stat. 1013; Oct. 16, 1962, Pub. L. 87–834, §§ 9(d)(3), 12(b)(1), 76 Stat. 1001, 1031; Feb. 26, 1964, Pub. L. 88–272, title II, § 207(b)(7), 78 Stat. 42; Apr. 8, 1966, Pub. L. 89–384, § 1(c)(2), 80 Stat. 102; Nov. 13, 1966, Pub. L. 89–809, title I, § 106(a)(4), (5), (b)(1), (2), 80 Stat. 1569; Dec. 30, 1969, Pub. L. 91–172, title III, § 301(b)(9), title V, § 506(a), 83 Stat. 585, 634.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 301(b)(9), inserted in last sentence "against the tax imposed by section 56 (relating to minimum tax for tax preferences)," after "not be allowed".

Subsec. (e). Pub. L. 91–172, § 506(a), added subsec. (e). Former subsec. (e) redesignated (f).

1966—Subsec. (a). Pub. L. 89–384 added the additional tax imposed under section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes against which the foreign tax credit may not be allowed.

Subsec. (b)(3). Pub. L. 89–809, § 106(b)(1), struck out provisions which made the allowance of the credit dependent upon whether the foreign country of which the alien resident was a citizen or subject, in imposing such taxes, allowed a similar credit to citizens of the United States residing in such country.

Subsec. (b)(4). Pub. L. 89–809, § 106(a)(4), added subsec. (a)(4). Former subsec. (a)(4) redesignated as (a)(5).

Subsec. (b)(5). Pub. L. 89–809, § 106(a) (4), (5), redesignated former subsec. (b)(4) as (b)(5) and, in subsec. (b)(5) as so redesignated, inserted reference to paragraph (4).

Subsec. (c). Pub. L. 89–809, § 106(b)(2), added subsec. (c). Former subsec. (c) redesignated as (d).

Subsecs. (d), (e). Pub. L. 89–809, § 106(b)(2), redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1964—Subsec. (d)(1). Pub. L. 88–272 inserted the reference to section 275.

1962—Subsec. (a). Pub. L. 87–834, § 12(b)(1), substituted "sections 902 and 960" for "section 902."

Subsec. (d)(4). Pub. L. 87–834, § 9(d)(3), added subsec. (d)(4).

1960—Subsec. (a). Pub. L. 86–780, § 3 (a), (b), inserted "applicable" preceding "limitation" and substitued "Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year" for "Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax against which the credit is allowable."

Subsec. (b). Pub. L. 86–780, § 3(b), inserted "applicable" preceding "limitation."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 506(c) of Pub L. 91–172 provided that: "The amendments made by this section [amending this section and section 904 of this title] shall apply with respect to taxable years beginning after December 31, 1969."

Amendment of subsec. (a) of this section by section 301(b)(9) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of subsec. (a) by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as a note under section 1351 of this title.

Addition of par. (4) of subsec. (b), redesignation of former par. (4) as par. (5), and amendment of par. (5) as so redesignated by section 106(a) (4), (5) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 106(a)(6) of Pub. L. 89–809, set out as a note under section 874 of this title.

Section 106(b)(4) of Pub. L. 89–809 provided that: "The amendments made by this subsection (other than paragraph (3)) [amending par. (3) of subsec. (b), adding subsec. (c), and redesignating former subsecs. (c) and (d) as (d) and (e) respectively] shall apply with

respect to taxable years beginning after December 31, 1966. The amendment made by paragraph (3) [amending section 2014(a) and adding section 2014(h) of this title] shall apply with respect to estates of decedents dying after the date of enactment of this Act [November 13, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. 87–834, set out as a note under section 821 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of subsecs. (a) and (b) by section 3(a) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, and amendment of subsec. (a) by section 3(b) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

ECONOMICALLY LESS DEVELOPED COUNTRIES

Designation of certain foreign countries as economically less developed countries, see Ex. Ord. No. 11071, Dec. 27, 1962, 27 F.R. 12875, set out as a note under section 955 of this title.

CROSS REFERENCES

Credit for foreign taxes, see section 841 of this title.

Disallowance of foreign tax credit, see section 942 of this title.

Foreign tax credit, applicable rules, see section 905 of this title.

Income from sources within possessions of the United States, foreign tax credit, see section 931 (g) of this title.

Investment companies, foreign tax credit allowed to shareholder, see section 853 of this title.

Limitations, special rules relating to foreign tax credit, see section 6511 (d) (3) of this title.

Nonresident aliens, foreign tax credit not allowed, see section 874 (c) of this title.

Partners and partnerships, taxes paid or accrued to foreign countries and possessions of the United States, see section 702 (a) (6) of this title.

Tax on resident foreign corporations, foreign tax credit, see section 882 (4) of this title.

Taxes of foreign countries and possessions of the United States, see sections 33 and 515 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33, 243, 275, 515, 642, 702, 703, 841, 853, 874, 882, 905, 906, 931, 1247, 1503, 6038 of this title.

§ 902. Credit for corporate stockholder in foreign corporation.

(a) Treatment of taxes paid by foreign corporation.

For purposes of this subpart, a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall—

(1) to the extent such dividends are paid by such foreign corporation out of accumulated profits (as defined in subsection (c)(1)(A)) of a year for which such foreign corporation is not a less developed country corporation, be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid); and

(2) to the extent such dividends are paid by such foreign corporation out of accumulated profits (as defined in subsection (c)(1)(B)) of a year for which such foreign corporation is a less developed country corporation, be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends bears to the amount of such accumulated profits.

(b) Foreign subsidiary of first and second foreign corporation.

(1) If the foreign corporation described in subsection (a) (hereinafter in this subsection referred to as the "first foreign corporation") owns 10 percent or more of the voting stock of a second foreign corporation from which it receives dividends in any taxable year, it shall be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such second foreign corporation to any foreign country or to any possession of the United States on or with respect to the accumulated profits of the corporation from which such dividends were paid which—

(A) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such second foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or

(B) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such second foreign corporation from which such dividends were paid.

(2) If such first foreign corporation owns 10 percent or more of the voting stock of a second foreign corporation which, in turn, owns 10 percent or more of the voting stock of a third foreign corporation from which the second foreign corporation receives dividends in any taxable year, the second foreign corporation shall be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid by such third foreign corporation to any foreign country or to any possession of the United States on or with respect to the accumulated profits of the corporation from which such dividends were paid which—

(A) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such third foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or

(B) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such third foreign corporation from which such dividends were paid.

(3) For purposes of this subpart, subsection (b)(1) shall not apply unless the percentage of voting stock owned by the domestic corporation in the first foreign corporation and the percentage of voting stock owned by the first foreign corporation in the second foreign corporation when multiplied together equal at least 5 percent, and for purposes of this subpart, subsection (b)(2) shall not apply unless the percentage arrived at for purposes of applying subsection (b)(1) when multiplied by the percentage of voting stock owned by the second foreign corporation in the third foreign corporation is equal to at least 5 percent.

(c) Applicable rules.

(1) Accumulated profits defined.

For purposes of this section, the term "accumulated profits" means with respect to any foreign corporation—

(A) for purposes of subsections (a)(1), (b)(1)(A), and (b)(2)(A), the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by any foreign country or any possession of the United States; and

(B) for purposes of subsections (a)(2), (b)(1)(B), and (b)(2)(B), the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income.

The Secretary or his delegate shall have full power to determine from the accumulated profits of what year or years such dividends were paid, treating dividends paid in the first 60 days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings.

(2) Accounting periods.

In the case of a foreign corporation, the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than 1 year, the word "year" as used in this subsection shall be construed to mean such accounting period.

(d) Less developed country corporation defined.

For purposes of this section, the term "less developed country corporation" means—

(1) a foreign corporation which, for its taxable year, is a less developed country corporation within the meaning of section 955(c)(1) or (2), and

(2) a foreign corporation which owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation which is a less developed country corporation within the meaning of section 955(c)(1), and—

(A) 80 percent or more of the gross income of which for its taxable year meets the requirement of section 955(c)(1)(A); and

(B) 80 percent or more in value of the assets of which on each day of such year consists of property described in section 955(c)(1)(B).

A foreign corporation which is a less developed country corporation for its first taxable year beginning after December 31, 1962, shall, for purposes of this section, be treated as having been a less developed country corporation for each of its taxable years beginning before January 1, 1963.

(e) Cross references.

(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a)(1), see section 78.

(2) For application of subsections (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.

(3) For reduction of credit with respect to dividends paid out of accumulated profits for years for which certain information is not furnished, see section 6038.

(Aug. 16 1954, ch. 736, 68A Stat. 286; Sept. 14, 1960, Pub. L. 86-780, § 6(b)(2), 74 Stat. 1016; Oct. 16, 1962, Pub. L. 87-834, § 9(a), 76 Stat. 999; Jan. 12, 1971, Pub. L. 91-684, §§ 1, 2, 84 Stat. 2068, 2069.)

AMENDMENTS

1971—Subsec. (b). Pub. L. 91-684, § 1, in the subsection catchline substituted "Foreign subsidiary of first and second foreign corporation" for "Foreign subsidiary of foreign corporation", designated existing provisions as par. (1), and, as so designated, added terminology denominating corporations involved as first foreign corporation and second foreign corporation, and reduced the ownership percentage requirement in voting stock from 50 percent to 10 percent between the first and second foreign corporations, and added pars. (2), and (3).

Subsec. (c)(1)(A). Pub. L. 91-684, § 2(1), substituted "(b)(1)(A), and (b)(2)(A)" for "and (b)(1)".

Subsec. (c)(1)(B). Pub. L. 91-684, § 2(2), substituted "(b)(1)(B), and (b)(2)(B)" for "and (b)(2)".

1962—Subsec. (a). Pub. L. 87-834 limited provisions which required a domestic corporation owning at least 10 per cent of the voting stock of a foreign corporation from which it receives dividends in any taxable year to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States which the amount of such dividends bears to the amount of accumulated profits to those cases where a foreign corporation paid such dividends out of accumulated profits of a year for which such foreign corporation is a less developed country corporation, and inserted provisions requiring, in the case of a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in a taxable year, to the extent such dividends are paid by such foreign corporation out of accumulated profits of a year for which such foreign corporation is not a less developed country corporation, to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid).

Subsec. (b). Pub. L. 87-834 substituted "from which such dividends were paid which—

"(1) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such other foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or

"(2) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such other foreign corporation from which such dividends were paid"

for "from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits."

Subsec. (c). Pub. L. 87-834 defined "accumulated profits" for purposes of subsec. (a)(1) and (b)(1) as meaning the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by and foreign country or any possession of the United States, and limited the provisions defining "accumulated profits" as the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income to subsecs. (a)(2) and (b)(2).

Subsec. (d). Pub. L. 87-834 substituted provisions defining "less developed country corporation" for provisions which established special rules for certain wholly-owned foreign corporations.

Subsec. (e). Pub. L. 87-834 designated existing provisions as par. (3) and added pars. (1) and (2).

1960—Subsec. (e). Pub. L. 86-780 added subsec. (e).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 91-684 provided that: "The amendments made by this Act [amending subsecs. (b) and (c) of this section] shall apply with respect to all taxable years of domestic corporations, ending after the date of enactment of this Act [Jan. 12, 1971], but only in respect of dividends paid by one corporation to another corporation after the date of the enactment of this Act."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 9(e) of Pub. L. 87-834 provided that:

"The amendments made by this section [adding section 78 of this title and amending this section and sections 535, 545, 861 and 901 of this title] shall apply—

"(1) in respect of any distribution received by a domestic corporation after December 31, 1964, and

"(2) in respect of any distribution received by a domestic corporation before January 1, 1965, in a taxable year of such corporation beginning after December 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1962.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign subsidiary to which section 902(b) applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1963, to the extent that such distribution was paid out of the accumulated profits of such foreign subsidiary for a taxable year beginning before January 1, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-780 applicable to taxable years beginning after Dec. 31, 1960, see section 6(c) of Pub. L. 86-780, set out as a note under section 6038 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78, 535, 545, 901, 906, 960, 963, 1248, 6038 of this title.

§ 903. Credit for taxes in lieu of income, etc., taxes.

For purposes of this subpart and of sections 164(a) and 275(a), the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 287; Feb. 26, 1964, Pub. L. 88-272, title II, § 207(b)(8), 78 Stat. 42.)

AMENDMENTS

1964—Pub. L. 88-272 substituted "sections 164(a) and 275(a)" for "section 164(b)."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88-272, set out as a note under section 164 of this title.

§ 904. Limitation on credit.

(a) Alternative limitations.

(1) Per-country limitation.

In the case of any taxpayer who does not elect the limitation provided by paragraph (2), the amount of the credit in respect of the tax paid or accrued to any foreign country or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(2) Overall limitation.

In the case of any taxpayer who elects the limitation provided by this paragraph, the total amount of the credit in respect of taxes paid or accrued to all foreign countries and possessions of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) Election of overall limitation.

(1) In general.

A taxpayer may elect the limitation provided by subsection (a)(2) for any taxable year beginning after December 31, 1960. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked (A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer's first taxable year beginning after December 31, 1969.

(2) Election after revocation.

Except in a case to which paragraph (1)(B) applies, if the taxpayer has made an election under paragraph (1) and such election has been revoked, such taxpayer shall not be eligible to make a new election under paragraph (1) for any taxable year, unless the Secretary or his delegate consents to such new election.

(3) Form and time of election and revocation.

An election under paragraph (1), and any revocation of such an election, may be made only in such manner as the Secretary or his delegate may by regulations prescribe. Such an election or revocation with respect to any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year.

(c) Taxable income for purpose of computing limitation.

For purposes of computing the applicable limitation under subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(d) Carryback and carryover of excess tax paid.

Any amount by which any such tax paid or accrued to any foreign country or possession of the United States for any taxable year beginning after December 31, 1957, for which the taxpayer chooses to have the benefits of this subpart exceeds the applicable limitation under subsection (a) shall be deemed tax paid or accrued to such foreign country or possession of the United States in the second preceding taxable year, in the first preceding taxable year, and in the first, second, third, fourth, or fifth succeeding taxable years, in that order and to the extent not deemed tax paid or accrued in a prior taxable year, in the amount by which the applicable limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the tax paid or accrued to such foreign country or possession for such preceding or succeeding taxable year and the amount of the tax for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions. For purposes of this subsection, the terms "second preceding taxable year" and "first preceding taxable year" do not include any taxable year beginning before January 1, 1958.

(e) Carrybacks and carryovers where overall limitation is elected.

(1) Foreign taxes to be aggregated for purposes of subsection (d).

With respect to each taxable year of the taxpayer to which the limitation provided by subsection (a)(2) applies, the taxes referred to in the first sentence of subsection (d) shall, for purposes of applying such first sentence, be aggregated on an overall basis (rather than taken into account on a per-country basis).

(2) Foreign taxes may not be carried from per-country year to overall year or from overall year to per-country year.

No amount paid or accrued for any taxable year to which the limitation provided by subsection (a)(1) applies shall (except for purposes of determining the number of taxable years which have elapsed) be deemed paid or accrued under subsection (d) in any taxable year to which the limitation provided by subsection (a)(2) applies. No amount paid or accrued for any taxable year to which the limitation provided by subsection (a)(2) applies shall (except for purposes of determining the number of taxable years which have elapsed) be deemed paid or accrued under subsection (d) in any taxable year to which the limitation provided by subsection (a)(1) applies.

(f) Application of section in case of certain interest income.

(1) In general.

The provisions of subsections (a), (c), (d), and (e) of this section shall be applied separately with respect to—

(A) the interest income described in paragraph (2), and

(B) income other than the interest income described in paragraph (2).

(2) Interest income to which applicable.

For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

(A) derived from any transaction which is directly related to the active conduct of a trade or business in a foreign country or a possession of the United States,

(B) derived in the conduct of a banking, financing, or similar business,

(C) received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock,

(D) received on obligations acquired as a result of the disposition of a trade or business actively conducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned, directly or indirectly, by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

(3) Overall limitation not to apply.

The limitation provided by subsection (a)(2) shall not apply with respect to the interest income described in paragraph (2). The Secretary or his delegate shall by regulations prescribe the manner of application of subsection (e) with respect to cases in which the limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2).

(4) Transitional rules for carrybacks and carryovers.

(A) Carrybacks to years prior to Revenue Act of 1962.

Where, under the provisions of subsection (d), taxes (i) paid or accrued to any foreign country or possession of the United States in any taxable year beginning after the date of the enactment of the Revenue Act of 1962 are deemed (ii) paid or accrued in one or more taxable years beginning on or before the date of enactment of the Revenue Act of 1962, the amount of such taxes deemed paid or accrued shall be determined without regard to the provisions of this subsection. To the extent the

taxes paid or accrued to a foreign country or possession of the United States in any taxable year described in clause (i) are not, with the application of the preceding sentence, deemed paid or accrued in any taxable year described in clause (ii), such taxes shall, for purposes of applying subsection (d), be deemed paid or accrued in a taxable year beginning after the date of the enactment of the Revenue Act of 1962, with respect to interest income described in paragraph (2), and with respect to income other than interest income described in paragraph (2), in the same ratios as the amount of such taxes paid or accrued with respect to interest income described in paragraph (2), and the amount of such taxes paid or accrued with respect to income other than interest income described in paragraph (2), respectively, bear to the total amount of such taxes paid or accrued to such foreign country or possession of the United States.

(B) Carryovers to years after Revenue Act of 1962. Where, under the provisions of subsection (d), taxes (i) paid or accrued to any foreign country or possession of the United States in any taxable year beginning on or before the date of the enactment of the Revenue Act of 1962 are deemed (ii) paid or accrued in one or more taxable years beginning after the date of the enactment of the Revenue Act of 1962, the amount of such taxes deemed paid or accrued in any year described in clause (ii) shall, with respect to interest income described in paragraph (2), be an amount which bears the same ratio to the amount of such taxes deemed paid or accrued as the amount of the taxes paid or accrued to such foreign country or possession for such year with respect to interest income described in paragraph (2) bears to the total amount of the taxes paid or accrued to such foreign country or possession for such year; and the amount of such taxes deemed paid or accrued in any year described in clause (ii) with respect to income other than interest income described in paragraph (2) shall be an amount which bears the same ratio to the amount of such taxes deemed paid or accrued for such year as the amount of taxes paid or accrued to such foreign country or possession for such year with respect to income other than interest income described in paragraph (2) bears to the total amount of the taxes paid or accrued to such foreign country or possession for such year.

(g) Cross reference.

(1) For increase of applicable limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For special rule relating to the application of the credit provided by section 901 in the case of affiliated groups which include Western Hemisphere trade corporations for years in which the limitation provided by subsection (a)(2) applies, see section 1503(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Sept. 2, 1958, Pub. L. 85–866, title I, § 42(a), 72 Stat. 1639; Sept. 14, 1960, Pub. L. 86–780, § 1, 74 Stat. 1010; Oct. 16, 1962, Pub. L. 87–834, §§ 10(a), 12(b)(2), 76 Stat. 1002, 1031; Feb. 26, 1964, Pub. L. 88–272, title II, § 234(b)(6), 78 Stat. 116; Nov. 13, 1966, Pub. L. 89–809, title I, § 106(c)(1), 80 Stat. 1570; Dec. 30, 1969, Pub. L. 91–172, title V, § 506(b), 83 Stat. 635.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Act of 1962, referred to in subsec. (f)(4), means the date of the enactment of Pub. L. 87–834, which was approved on Oct. 16, 1962.

AMENDMENTS

1969—Subsec. (b)(1). Pub. L. 91–172, § 506(b)(1), substituted "(A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer's first taxable year beginning after December 31, 1969" for "with the consent of the Secretary or his delegate with respect to any taxable year."

Subsec. (b)(2). Pub. L. 91–172, § 506(b)(2), substituted "Except in a case to which paragraph (1)(B) applies, if the taxpayer" for "If a taxpayer."

1966—Subsec. (f)(2). Pub. L. 89–809 inserted reference to includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member and inserted reference to both direct and indirect ownership in subpar. (C) and added provision that, for purposes of subpar. (C), stock owned directly or indirectly by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

1964—Subsec. (g)(2). Pub. L. 88–272 substituted "section 1503(b)" for "section 1503(d)."

1962—Subsec. (f). Pub. L. 87–834, § 10(a), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g). Pub. L. 87–834, §§ 10(a), 12(b)(2), redesignated former subsec. (f) as (g), designated existing provisions as par. (2), and added par. (1).

1960—Subsec. (a). Pub. L. 86–780, § 1(a), designated existing provisions as par. (1), added the introductory clause "In the case of any taxpayer who elects the limitation provided by this paragraph" and inserted the words "foreign", "or possession of the United States" and "or possession" therein and added par. (2).

Subsec. (b). Pub. L. 86–780, § 1(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–780, § 1(b), redesignated former subsec. (b) as (c) and inserted "applicable" preceding "limitation" therein. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–780, § 1(c), redesignated former subsec. (c) as (d) and inserted "applicable" preceding "limitation" in two instances therein.

Subsecs. (e), (f). Pub. L. 86–780, § 1(d), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 506(c) of Pub. L. 91–172, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 106(c)(2) of Pub. L. 89–809 provided that: "The amendments made by paragraph (1) [amending subsec. (f)(2)] shall apply to interest received after December 31, 1965, in taxable years ending after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 10(b) of Pub. L. 87–834 provided that: "The amendments made by subsection (a) [adding subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962], but only with respect to interest resulting from transactions consummated after April 2, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86-780 provided that: "The amendments made by the first section [amending this section], section 2 [amending section 1503(d) of this title], and subsection (a) of section 3 of this Act [amending section 901 (a), (b) of this title] shall apply with respect to taxable years beginning after December 31, 1960. The amendment made by subsection (b) of section 3 of this Act [amending section 901(a) of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (c) of section 3 of this Act [adding section 6501(i) of this title] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 42 (c) of Pub. L. 85-866 provided that: "The amendments made by subsections (a) and (b) [adding subsec. (c) of this section and amending section 6611 (g) (h) of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 841, 901, 906, 960, 1351, 1503, 6038, 6501 of this title.

§ 905. Applicable rules.

(a) Year in which credit taken.

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken on the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(b) Proof of credits.

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary or his delegate—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary or his delegate, and

(3) all other information necessary for the verification and computation of such credits.

For purposes of this subpart, the recipient of a royalty or other amount paid or accrued as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulas, trademarks, and other like property, and derived from sources within the United Kingdom of Great Britain and Northern Ireland, shall be deemed to have paid or accrued any income, war-profits and excess-profits taxes paid or accrued to the United Kingdom with respect to such royalty or other amount (including the amount by which the payor's United Kingdom tax was increased by insuch recipient elects to include in its gross income ability to deduct such royalty or other amount) if the amount of such United Kingdom tax.

(c) Adjustments on payment of accrued taxes.

If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary or his delegate, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary or his delegate, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (sec. 6511 and following). In the case of such a tax accrued but not paid, the Secretary or his delegate, as a condition precedent to the allowance of this credit, may require the taxpayer to give a bond, with sureties satisfactory to and to be approved by the Secretary or his delegate, in such sum as the Secretary or his delegate may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary or his delegate may require. In such redetermination by the Secretary or his delegate of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, and no deduction under section 164 (relating to deduction for taxes) shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary or his delegate, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period. (Aug. 16, 1954, ch. 736, 68A Stat. 288; Sept. 2, 1958, Pub. L. 85-866, title I, § 103 (b), 72 Stat. 16.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-866 added sentence deeming recipient of a royalty or other amount for use of copyright, patent, and other like property derived from sources within United Kingdom, to have paid or accrued taxes paid or accrued to United Kingdom with respect to royalty if recipient elects to include in its gross income the amount of such United Kingdom tax.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 103 (c) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) of this section [to section 131 (e) of Internal Revenue Code of 1939] shall apply for all taxable years beginning on or after January 1, 1950, as to which section 131 of the Internal Revenue Code of 1939 is the applicable provision. The amendment made by subsection (b) of this section [to subsec. (b) of this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the amendments made by subsections (a) and (b) of this section."

§ 906. Nonresident alien individuals and foreign corporations.

(a) Allowance of credit.

A nonresident alien individual or a foreign corporation engaged in trade or business within the

United States during the taxable year shall be allowed a credit under section 901 for the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year (or deemed, under section 902, paid or accrued during the taxable year) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States.

(b) Special rules.

(1) For purposes of subsection (a) and for purposes of determining the deductions allowable under sections 873(a) and 882(c), in determining the amount of any tax paid or accrued to any foreign country or possession there shall not be taken into account any amount of tax to the extent the tax so paid or accrued is imposed with respect to income from sources within the United States which would not be taxed by such foreign country or possession but for the fact that—

(A) in the case of a nonresident alien individual, such individual is a citizen or resident of such foreign country or possession, or

(B) in the case of a foreign corporation, such corporation was created or organized under the law of such foreign country or possession or is domiciled for tax purposes in such country or possession.

(2) For purposes of subsection (a), in applying section 904 the taxpayer's taxable income shall be treated as consisting only of the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States.

(3) The credit allowed pursuant to subsection (a) shall not be allowed against any tax imposed by section 871(a) (relating to income of nonresident alien individual not connected with United States business) or 881 (relating to income of foreign corporations not connected with United States business).

(4) For purposes of sections 902(a) and 78, a foreign corporation choosing the benefits of this subpart which receives dividends shall, with respect to such dividends, be treated as a domestic corporation.

(Added Pub. L. 89-809, title I, § 106(a)(1), Nov. 13, 1966, 80 Stat. 1568.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, and, in applying section 904 of this title with respect to this section, no amount to be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year to be taken into account, see section 106(a)(6) of Pub. L. 89-809, set out as a note under section 874 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 874, 882, 901 of this title.

SUBPART B.—EARNED INCOME OF CITIZENS OF UNITED STATES

Sec.
911. Earned income from sources without the United States.
912. Exemption for certain allowances.

§ 911. Earned income from sources without the United States.

(a) General rule.

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Bona fide resident of foreign country.

In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such uninterrupted period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

(2) Presence in foreign country for 17 months.

In the case of an individual citizen of the United States who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

An individual shall not be allowed, as a deduction from his gross income, any deductions (other than those allowed by section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) Definition of earned income.

For purposes of this section, the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary or his delegate, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(c) Special rules.

For purposes of computing the amount excludable under subsection (a), the following rules shall apply:

(1) Limitations on amount of exclusion.

The amount excluded from the gross income of an individual under subsection (a) for any taxable

year shall not exceed an amount which shall be computed on a daily basis at an annual rate of—

(A) except as provided in subparagraph (B), $20,000 in the case of an individual who qualifies under subsection (a), or

(B) $25,000 in the case of an individual who qualifies under subsection (a)(1), but only with respect to that portion of such taxable year occuring after such individual has been a bona fide resident of a foreign country or countries for an uninterrupted period of 3 consecutive years.

(2) Attribution to year in which services are performed.

For purposes of applying paragraph (1), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(3) Treatment of community income.

In applying paragraph (1) with respect to amounts received for services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount excludable under subsection (a) from the gross income of such husband and wife shall equal the amount which would be excludable if such amounts did not constitute such community income.

(4) Requirement as to time of receipt.

No amount received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed may be excluded under subsection (a).

(5) Certain amounts not excludable.

No amount—

(A) received as a pension or annuity, or

(B) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of non-exempt trust), section 403(c) (relating to taxability of beneficiary under a non-qualified annuity), or section 403(d) (relating to taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations),

may be excluded under subsection (a).

(6) Test of bona fide residence.

A statement by an individual who has earned income from sources within a foreign country to the authorities of that country that he is not a resident of that country, if he is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings, shall be conclusive evidence with respect to such earnings that he is not a bona fide resident of that country for purposes of subsection (a)(1).

(7) Certain noncash remuneration.

If an individual who qualifies under subsection (a)(1) receives compensation from sources without the United States (except from the United States or any agency thereof) in the form of the right to use property or facilities, the limitation under paragraph (1) applicable with respect to such individual—

(A) for a taxable year ending in 1963, shall be increased by an amount equal to the amount of such compensation so received during such taxable year;

(B) for a taxable year ending in 1964, shall be increased by an amount equal to two-thirds of such compensation so received during such taxable year; and

(C) for a taxable year ending in 1965, shall be increased by an amount equal to one-third of such compensation so received during such taxable year.

(d) Cross reference.

(1) For administrative and penal provisions relating to the exclusion provided for in this section, see sections 6001, 6011, 6012 (c), and the other provisions of subtitle F.

(2) For elections as to treatment of income subject to foreign community property laws, see section 981.

(Aug. 16, 1954, ch. 736, 68A Stat. 289; Sept. 2, 1958, Pub. L. 85–866, title I, § 72(b), 72 Stat. 1660; Oct. 16, 1962, Pub. L. 87–834, § 11(a), 76 Stat. 1003; Feb. 26, 1964, Pub. L. 88–272, title II, § 237(a), 78 Stat. 128; Nov. 13, 1966, Pub. L. 89–809; title I, § 105(e)(3), 80 Stat. 1567.)

AMENDMENTS

1966—Subsec. (d). Pub. L. 89–809 designated existing par. as par. (1) and added par. (2).

1964—Subsec. (c)(1)(B). Pub. L. 88–272 substituted "$25,000" for "$35,000."

1962—Subsec. (a). Pub. L. 87–834 substituted "which constitute earned income attributable to services performed during such uninterrupted period" for "if such amounts constitute earned income (as defined in subsection (b)) attributable to such period" in par. (1), and "which constitute earned income attributable to services performed during such 18-month period" for "if such amounts constitute earned income (as defined in subsection (b)) attributable to such period" in par. (2), inserted provisions in pars. (1) and (2) requiring the amount excluded under such paragraphs to be computed by applying the special rules contained in subsec. (c), and eliminated provisions from par. (2) which limited the amount excluded under such paragraph to not more than $20,000 if the 18-month period includes the entire taxable year, and to not more than an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year if the 18-month period does not include the entire taxable year.

Subsec. (c). Pub. L. 87–834 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 87–834 redesignated former subsec. (c) as (d).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 237(b) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to this section] shall apply to taxable years beginning after December 31, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 11(c)(1) of Pub. L. 87–834 provided that:

"The amendment made by subsection (a) [to this section] shall apply to taxable years ending after September 4, 1962, but only with respect to amounts—

"(A) received after March 12, 1962, which are attributable to services performed after December 31, 1962, or

"(B) received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, unless on March 12, 1962, there existed a right (whether forfeitable or nonforfeitable) to receive such amounts."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–866, which added subsec. (c), applicable to taxable years beginning after Dec. 31, 1957, see note set out under section 6012 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 72, 403, 981, 1302, 1303, 1304, 1348, 1402, 3401, 4914, 6091 of this title; title 42 section 411.

§ 912. Exemption for certain allowances.

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances.

In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

(A) title IX of the Foreign Service Act of 1946, as amended (22 U.S.C., sec. 1131 and following),

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., sec. 403e),

(C) title II of the Overseas Differentials and Allowances Act, or

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act.

(2) Cost-of-living allowances.

In the case of civilian officers or employees of the Government of the United States stationed outside the continental United States (other than Alaska), amounts (other than amounts received under title II of the Overseas Differentials and Allowances Act) received as cost-of-living allowances in accordance with regulations approved by the President.

(3) Peace Corps allowances.

In the case of an individual who is a volunteer or volunteer leader within the meaning of the Peace Corps Act and members of his family, amounts received as allowances under section 5 or 6 of the Peace Corps Act other than amounts received as—

(A) termination payments under section 5(c) or section 6(1) of such Act,

(B) leave allowances,

(C) if such individual is a volunteer leader training in the United States, allowances to members of his family, and

(D) such portion of living allowances as the President may determine under the Peace Corps Act as constituting basic compensation.

(Aug. 16, 1954, ch. 736, 68A Stat. 290; Sept. 6, 1960, Pub. L. 86–707, title V, § 523(a), 74 Stat. 802; Sept. 22, 1961, Pub. L. 87–293, title II, § 201(a), 75 Stat. 625.)

REFERENCES IN TEXT

Title II of the Overseas Differentials and Allowances Act, referred to in pars. (1)(c) and (2), is classified to sections 5922 to 5925 of Title 5, Government Organization and Employees.

Subsections (e) and (f) of the first section of the Administrative Expenses Act of 1946, as amended, referred to in par. (1)(D), are classified to sections 5726, 5727 of Title 5.

Section 22 of such Act, referred to in par. (1)(D), means section 22 of the Administrative Expenses Act of 1946, which is classified to section 5913(b) of Title 5.

The Peace Corps Act, referred to in par. (3) and par. (3)(D), is classified to section 2501 et seq. of Title 22, Foreign Relations and Intercourse.

Sections 5 and 6 of the Peace Corps Act, referred to in par. (3), and sections 5(c) and 6(1) of such Act, referred to in par. (3)(A), are sections 5, 6, 5(c) and 6(1) of Pub. L. 87–293, which are classified to sections 2504, 2505, 2504(c) and 2505(1) of Title 22, Foreign Relations and Intercourse, respectively.

AMENDMENTS

1961—Par. (3). Pub. L. 87–293 added par. (3).

1960—Pub. L. 86–707 exempted foreign areas allowances received under section 4 of the Central Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that amounts received as post differentials shall not be exempt and in the provisions relating to cost-of-living allowances excluded Alaska from the term "continental United States" and amounts received under title II of the Overseas Differentials and Allowances Act.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 201(d) of Pub. L. 87–293 provided that: "The amendments made by subsections (a) and (b) of this section [to this section and section 1303 of this title] shall apply with respect to taxable years ending after March 1, 1961. The amendment made by subsection (c) [to section 3401 of this title] shall apply with respect to remuneration paid after the date of the enactment of this Act [Sept. 22, 1961]."

Section 201(d) of Pub. L. 87–293 repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see sections 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(b) of Pub. L. 86–707 provided that: "Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1954, as amended by subsection (a) of this section [pars. (1) and (2) of this section], shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960] in taxable years ending on or after such date."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(a) of Pub. L. 87–293 repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (3)(D) of this section delegated to the Secretary of State, see section 101(b) of Ex. Ord. No. 11041, Aug. 6, 1962, 27 F.R. 7859, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF AUTHORITY

Authority of the President under par. (2) of this section delegated to the Secretary of Defense with respect to the military departments, and the Secretary of the Treasury with respect to the Coast Guard, concerning civilian employees of nonappropriated fund instrumentalites of the armed forces, see section 201 of Ex. Ord. No. 11137, Jan. 7, 1964, set out as a note under section 150k of Title 5, Executive Departments and Government Officers and Employees.

SUBPART C.—WESTERN HEMISPHERE TRADE CORPORATIONS

Sec.
921. Definition of Western Hemisphere trade corporations.
922. Special deduction.

§ 921. Definition of Western Hemisphere trade corporations.

For purposes of this subtitle, the term "Western Hemisphere trade corporation" means a domestic corporation all of whose business (other than incidental purchases) is done in any country or countries in North, Central, or South America, or in the West Indies, and which satisfies the following conditions:

(1) if 95 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources without the United States; and

(2) if 90 percent or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business.

For any taxable year beginning prior to January 1, 1954, the determination as to whether any corporation meets the requirements of section 109 of the Internal Revenue Code of 1939 shall be made as if this section had not been enacted and without inferences drawn from the fact that this section is not expressly made applicable with respect to taxable years beginning prior to January 1, 1954. (Aug. 16, 1954, ch. 736, 68A Stat. 290.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1503 of this title.

§ 922. Special deduction.

In the case of a Western Hemisphere trade corporation there shall be allowed as a deduction in computing taxable income an amount computed as follows—

(1) First determine the taxable income of such corporation computed without regard to this section.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

(Aug. 16, 1954, ch. 736, 68A Stat. 291.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 172, 1562, 6091 of this title.

SUBPART D.—POSSESSIONS OF THE UNITED STATES

Sec.
931. Income from sources within possessions of the United States.
932. Citizens of possessions of the United States.
933. Income from sources within Puerto Rico.
934. Limitation on reduction in income tax liability incurred to the Virgin Islands.

AMENDMENTS

1960—Pub. L. 86-779, § 4(a)(2), Sept. 14, 1960, 74 Stat. 999, added item 934.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 1304 of this title.

§ 931. Income from sources within possessions of the United States.

(a) General rule.

In the case of citizens of the United States or domestic corporations, gross income means only gross income from sources within the United States if the conditions of both paragraph (1) and paragraph (2) are satisfied:

(1) Three-year period.

If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section) for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) Trade or business.

If—

(A) in the case of such corporation, 50 percent or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(B) in the case of such citizen, 50 percent or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) Amounts received in United States.

Notwithstanding subsection (a), there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) Definition.

For purposes of this section, the term "possession of the United States" does not include the Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico.

(d) Deductions.

(1) General rule.

Except as otherwise provided in this subsection and subsection (e), in the case of persons entitled to the benefits of this section the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in part I, under regulations prescribed by the Secretary or his delegate.

(2) Exceptions.

The following deductions shall be allowed whether or not they are connected with income from sources within the United States:

(A) The deduction, for losses not connected with the trade or business if incurred in trans-

actions entered into for profit, allowed by section 165(c)(2), but only if the profit, if such transaction had resulted in a profit, would be taxable under this subtitle.

(B) The deduction, for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 165(c)(3), but only if the loss is of property within the United States.

(C) The deduction for charitable contributions and gifts allowed by section 170.

(3) Deduction disallowed.

For disallowance of standard deduction, see section 142 (b)(2).

(e) Deduction for personal exemption.

A citizen of the United States entitled to the benefits of this section shall be allowed a deduction for only one exemption under section 151.

(f) Allowance of deductions and credits.

Persons entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this subtitle only by filing or causing to be filed with the Secretary or his delegate a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in subtitle F, including therein all the information which the Secretary or his delegate may deem necessary for the calculation of such deductions and credits.

(g) Foreign tax credit.

Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(h) Internees.

In the case of a citizen of the United States interned by the enemy while serving as an employee within a possession of the United States—

(1) if such citizen was confined in any place not within a possession of the United States, such place of confinement shall, for purposes of this section, be considered as within a possession of the United States; and

(2) subsection (b) shall not apply to any compensation received within the United States by such citizen attributable to the period of time during which such citizen was interned by the enemy.

(i) Employees of the United States.

For purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 291; Nov. 13, 1966, Pub. L. 89-809, title I, § 107(a), 80 Stat. 1571.)

AMENDMENTS

1966—Subsec (d). Pub. L. 89-809 made applicable to United States citizens and domestic corporations engaged in trade or business in possessions, who qualify for the special tax treatment of income qualifying for the exclusion relating to income from United States possessions, provisions which allow deductions to nonresident aliens or foreign corporations engaged in trade or business in the United States by allowing deductions only where they are allocable to income effectively connected with the trade or business in the United States and by spelling out the exceptions allowing deductions whether or not connected with income from sources within the United States in the case of losses not connected with the trade or business but incurred in transactions entered into for profit, casualty losses, and charitable contributions.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 107(b) of Pub. L. 89-809 provided that: "The amendment made by this section [amending subsec. (d) of this section] shall apply with respect to taxable years beginning after December 31, 1966."

CROSS REFERENCES

Consolidated returns, definition of "includible corporation" as not meaning corporation entitled to the benefits of this section, see section 1504 (b) (4) of this title.

Income from sources within the United States, see section 861 of this title.

Optional tax, citizen entitled to benefits of this section as ineligible, see section 4 (d) (2) of this title.

Partial exclusion of dividends received by individuals, corporation to which this section applies, see section 116 (b) (2) (B) of this title.

Special deductions for corporations, deductions not allowed for dividends from corporation to which this section applies, see section 246 (a) (2) (B) of this title.

Standard deduction, citizen entitled to benefits of this section ineligible, see section 142 (b) (2) of this title.

Taxes of foreign countries and of possessions of the United States, corporations entitled to benefits of this section treated as foreign, see section 901 (c) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 48, 116, 142, 246, 861, 901, 957, 1302, 1402, 1504, 6091 of this title; title 42 section 411; title 48 section 1421i.

§ 932. Citizens of possessions of the United States.

(a) General rule.

Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall be subject to taxation under this subtitle in the same manner and subject to the same conditions as in the case of a nonresident alien individual. This section shall have no application in the case of a citizen of Puerto Rico.

(b) Virgin Islands.

Nothing in this section shall be construed to alter or amend the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes", approved July 12, 1921 (48 U. S. C. 1397), relating to the imposition of income taxes in the Virgin Islands of the United States.

(c) Guam.

For applicability of United States income tax laws in Guam, see section 31 of the Act of August 1, 1950 (48 U. S. C. 1421i); for disposition of the proceeds of such taxes, see section 30 of such Act (48 U. S. C. 1421h).

(Aug. 16, 1954, ch. 736, 68A Stat. 292; Nov. 13, 1966, Pub. L. 89-809, title I, § 103(m), 80 Stat. 1554.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809 substituted "in the same manner and subject to the same conditions as in the case of a nonresident alien individual" for "only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources" following "this subtitle".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 1402 of this title and in title 42 section 411.

§ 933. Income from sources within Puerto Rico.

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year.

In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico.

In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151) properly allocable to or chargeable against amounts excluded from gross income under this paragraph. (Aug. 16, 1954, ch. 736, 68A Stat. 293.)

CROSS REFERENCES

Self-employment income, resident of Puerto Rico to compute his net earnings without regard to this section, see section 1402(a)(6) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 957, 1402, 6091 of this title; title 42 section 411.

§ 934. Limitation on reduction in income tax liability incurred to the Virgin Islands.

(a) General rule.

Tax liability incurred to the Virgin Islands pursuant to this subtitle, as made applicable in the Virgin Islands by the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes", approved July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in subsection (b) or (c).

(b) Exception for certain domestic and Virgin Islands corporations.

In the case of a domestic corporation or a Virgin Islands corporation, subsection (a) shall not apply (if the information required by subsection (d) is supplied) to the extent such corporation derived its income from sources without the United States if the conditions of both paragraph (1) and paragraph (2) are satisfied:

(1) Three-year period.

If 80 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within the Virgin Islands; and

(2) Trade or business.

If 50 percent or more of the gross income of such corporation for such period or such part thereof was derived from the active conduct of a trade or business within the Virgin Islands.

For purposes of the preceding sentence, the gross income of a Virgin Islands corporation, and the sources from which the income of such corporation is derived, shall be determined as if such corporation were a domestic corporation. For the purposes of this subsection, all amounts received by such corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States.

(c) Exception for certain residents of the Virgin Islands.

Subsection (a) shall not apply in the case of an individual citizen of the United States who is a bona fide resident of the Virgin Islands during the entire taxable year (if the information required by subsection (d) is supplied), to the extent his income is derived from sources within the Virgin Islands (except that subsection (a) shall apply in the case of amounts received for services performed as an employee of the United States or any agency thereof). For purposes of the preceding sentence, gain or loss from the sale or exchange of any security (as defined in section 165(g)(2)) shall not be treated as derived from sources within the Virgin Islands.

(d) Requirement to supply information.

Subsections (b) and (c) shall apply only in the case of persons who supply (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) such information as the Secretary or his delegate may by regulations prescribe for purposes of determining the applicability of such subsections. (Added Pub. L. 86–779, § 4(a)(1), Sept. 14, 1960, 74 Stat. 998.)

EFFECTIVE DATE

Section 4(e)(1) of Pub. L. 86–779 provided that: "The amendments made by subsection (a) [adding this section] shall apply to tax liability incurred with respect to taxable years beginning on or after January 1, 1960."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48 of this title.

SUBPART E.—CHINA TRADE ACT CORPORATIONS

Sec.
941. Special deduction for China Trade Act corporations.
942. Disallowance of foreign tax credit.
943. Exclusion of dividends to residents of Formosa or Hong Kong.

§ 941. Special deduction for China Trade Act corporations.

(a) Allowance of deduction.

For purposes only of the taxes imposed by section 11, there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922 (15 U. S. C. ch. 4, sec. 141 and following), in addition to the deductions from taxable income otherwise allowed such corporation, a special deduction, in computing the taxable income, of an amount equal to the proportion of the taxable income derived from sources within Formosa and Hong Kong (determined without regard to this section and determined in a similar manner to that provided in part I) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by—

(1) persons resident in Formosa, Hong Kong, the United States, or possessions of the United States, and

(2) individual citizens of the United States wherever resident,

bears to the par value of the whole number of shares of stock of the corporation outstanding on such date. In no case shall the diminution, by reason of such special deduction, of the taxes imposed by section 11 (computed without regard to this section) exceed the amount of the special dividend certified under subsection (b) of this section.

(b) Special dividend.

The special deduction provided in subsection (a) shall not be allowed unless the Secretary of Commerce has certified to the Secretary of the Treasury or his delegate—

(1) the amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in Formosa, Hong Kong, the United States, or possessions of the United States, or were individual citizens of the United States, and owned shares of stock of the corporation;

(2) that such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) that such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided.

(c) Ownership of stock.

For purposes of this section, shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested. (Aug. 16, 1954, ch. 736, 68A Stat. 293.)

CROSS REFERENCES

Partial exclusion of dividends received by individuals, not applicable to dividend from corporation organized under China Trade Act, see section 116 (b) (1) of this title.

Special deductions for corporations, deduction not allowed for dividends from corporation organized under China Trade Act, see section 246 (a) (1) of this title.

Taxes of foreign countries and of possessions of United States, corporations treated as foreign, see section 901 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 6091 of this title.

§ 942. Disallowance of foreign tax credit.

A corporation organized under the China Trade Act, 1922, shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901. (Aug. 16, 1954, ch. 736, 68A Stat. 294.)

REFERENCES IN TEXT

China Trade Act, 1922, referred to in the text, is classified to section 141 et seq. of Title 15, Commerce and Trade.

§ 943. Exclusion of dividends to residents of Formosa or Hong Kong.

Amounts distributed as dividends to or for the benefit of any person by a corporation organized under the China Trade Act, 1922, shall not be included in gross income and shall be exempt from taxation under this subtitle if, at the time of such distribution, such person is a resident of Formosa or Hong Kong, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him. (Aug. 16, 1954, ch. 736, 68A Stat. 294.)

REFERENCES IN TEXT

China Trade Act, 1922, referred to in the text, is classified to section 141 et seq. of Title 15, Commerce and Trade.

SUBPART F.—CONTROLLED FOREIGN CORPORATIONS

Sec.
951. Amounts included in gross income of United States shareholders.
952. Subpart F income defined.
953. Income from insurance of United States risks.
954. Foreign base company income.
955. Withdrawal of previously excluded subpart F income from qualified investment.
956. Investment of earnings in United States property.
957. Controlled foreign corporations; United States persons.
958. Rules for determining stock ownership.
959. Exclusion from gross income of previously taxed earnings and profits.
960. Special rules for foreign tax credit.
961. Adjustment to basis of stock in controlled foreign corporations and of other property.
962. Election by individuals to be subject to tax at corporate rates.
963. Receipt of minimum distributions by domestic corporations.
964. Miscellaneous provisions.

AMENDMENTS

1962—Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1006, added the heading of Subpart F, and items 951—964.

§ 951. Amounts included in gross income of United States shareholders.

(a) Amounts included.

(1) In general.

If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year beginning after December 31, 1962, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) the sum of—

(i) except as provided in section 963, his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year, and

(ii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year; and

(B) his pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) Pro rata share of subpart F income.

(The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

(3) Limitation on pro rata share of previously excluded subpart F income withdrawn from investment.

For purposes of paragraph (1)(A)(ii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in less developed countries shall not exceed an amount (A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(4) Limitation on pro rata share of investment in United States property.

For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United State property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(b) United States shareholder defined.

For purposes of this subpart, the term "United States shareholder" means, with respect to any foreign corporation, a United States person (as defined in section 957(d)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) Coordination with election of a foreign investment company to distribute income.

A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247 (c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

(d) Coordination with foreign personal holding company provisions.

A United States shareholder who, for his taxable year, is subject to tax under section 551 (b) (relating to foreign personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company. (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1006.)

EFFECTIVE DATE

Section 12(c) of Pub. L. 87-834 provided that: "The amendments made by this section [adding sections 951—964 and 970—972 of this title, and amending sections 901, 904 and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end."

ECONOMICALLY LESS DEVELOPED COUNTRIES

Designation of certain foreign countries as economically less developed countries, see Ex. Ord. No. 11071, Dec. 27, 1962, 27 F.R. 12875, set out as a note under section 955 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 958, 959, 960, 961, 962, 963, 970, 1246, 1248 of this title.

§ 952. Subpart F income defined.

(a) In general.

For purposes of this subpart, the term "subpart F income" means, in the case of any controlled foreign corporation, the sum of—

(1) the income derived from the insurance of United States risks (as determined under section 953), and

(2) the foreign base company income (as determined under section 954).

(b) Exclusion of United States income.

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(c) Limitation.

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

(1) an amount equal to—

(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.

(d) Special rule in case of indirect ownership.

For purposes of subsection (c), if—

(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year,

then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary or his delegate shall prescribe by regulations. (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1008, and amended Pub. L. 89-809, title I, § 104(j), Nov. 13, 1966, 80 Stat. 1562.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-809 substituted "In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States" for "Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 864, 953, 954, 956, 964 of this title.

§ 953. Income from insurance of United States risks.

(a) General rule.

For purposes of section 952(a)(1), the term "income derived from the insurance of United States risks" means that income which—

(1) is attributable to the reinsurance or the issuing of any insurance or annuity contract—

(A) in connection with property in, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States, or

(B) in connection with risks not included in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to any reinsurance or the issuing of any insurance or annuity contract in connection with property in, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States, and

(2) would (subject to the modifications provided by paragraphs (1), (2), and (3) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance corporation.

This section shall apply only in the case of a controlled foreign corporation which receives, during any taxable year, premiums or other consideration in respect of the reinsurance, and the issuing, of insurance and annuity contracts described in paragraph (1) in excess of 5 percent of the total of premiums and other consideration received during such taxable year in respect of all reinsurance and issuing of insurance and annuity contracts.

(b) Special rules.

For purposes of subsection (a)—

(1) In the application of part I of subchapter L, life insurance company taxable income is the gain from operations as defined in section 809(b).

(2) A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.

(3) The following provisions of subchapter L shall not apply:

(A) Section 809(d)(4) (operations loss deduction).

(B) Section 809(d)(5) (certain nonparticipating contracts).

(C) Section 809(d)(6) (group life, accident, and health insurance).

(D) Section 809(d)(10) (small business deduction).

(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

(F) Section 832(c)(5) (certain capital losses).

(4) The items referred to in—

(A) section 809(c)(1) (relating to gross amount of premiums and other considerations),

(B) section 809(c)(2) (relating to net decrease in reserves),

(C) section 809(d)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

(5) All items of income, expenses, losses, and deductions (other than those taken into account under paragraph (4)) shall be properly allocated or apportioned under regulations prescribed by the Secretary or his delegate.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1008, and amended Pub. L. 89–809, title I § 104(m)(2), Nov. 13, 1966, 80 Stat. 1563.)

AMENDMENTS

1966—Subsec. (b)(3)(F). Pub. L. 89–809 substituted "832(c)(5)" for "832(b)(5)".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 952, 956, 957, of this title.

§ 954. Foreign base company income.

(a) Foreign base company income.

For purposes of section 952(a)(2), the term "foreign base company income" means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)), and

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)).

(b) Exclusions and special rules.

(1) Exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

For purposes of subsection (a), foreign base company income does not include—

(A) dividends and interest received during the taxable year from investments which at the time of receipt are qualified investments in less developed countries (as defined in section 955(b)), or

(B) if the gains from the sale or exchange during the taxable year of investments which at the time of sale or exchange are qualified investments in less developed countries exceed the losses from the sale or exchange during the taxable year of such qualified investments, the amount by which such gains exceed such losses.

The preceding sentence shall apply only to the extent that the sum of the dividends and interest described in subparagraph (A) and the amount described in subparagraph (B) does not exceed the increase for the taxable year in qualified investments in less developed countries of the controlled foreign corporation (as determined under subsection (f)).

(2) Exclusion of certain shipping income.

For purposes of subsection (a), foreign base company income does not include income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or the performance of services directly related to the use of any such aircraft or vessel.

(3) Special rule where foreign base company income is less than 30 percent or more than 70 percent of gross income.

For purposes of subsection (a)—

(A) If the foreign base company income (determined without regard to paragraphs (1) and (5)) is less than 30 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

(B) If the foreign base company income (determined without regard to paragraphs (1) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (1), (2), (4), and (5), be treated as foreign base company income.

(4) Exception for foreign corporations not availed of to reduce taxes.

For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary or his delegate that neither—

(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes.

(5) Deductions to be taken into account.

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, and the foreign base company services income shall be reduced, under regulations prescribed by the Secretary or his delegate, so as to take into account deductions (including taxes) properly allocable to such income.

(c) Foreign personal holding company income.

(1) In general.

For purposes of subsection (a)(1), the term "foreign personal holding company income" means the foreign personal holding company income (as defined in section 553), modified and adjusted as provided in paragraphs (2), (3), and (4).

(2) Rents included without regard to 50 percent limitation.

For purposes of paragraph (1), all rents shall be included in foreign personal holding company income without regard to whether or not such rents constitute 50 percent or more of gross income.

(3) Certain income derived in active conduct of trade or business.

For purposes of paragraph (1), foreign personal holding company income does not include—

(A) rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)), or

(B) dividends, interest, and gains from the sale or exchange of stock or securities derived in the conduct of a banking, financing, or similar business, or derived from the investments made by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, and which are received from a person other than a related person (within the meaning of subsection (d)(3)).

(4) Certain income received from related persons.

For purposes of paragraph (1), foreign personal holding company income does not include—

(A) dividends and interest received from a related person which (i) is created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (ii) has a substantial part of its assets used in its trade or business located in such same foreign country;

(B) interest received in the conduct of a banking, financing, or similar business from a related person engaged in the conduct of a banking, financing, or similar business if the businesses of the recipient and the payor are predominantly with persons other than related persons; and

(C) rents, royalties, and similar amounts received from a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

(d) Foreign base company sales income.

(1) In general.

For purposes of subsection (a)(2), the term "foreign base company sales income" means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

(2) Certain branch income.

For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary or his delegate the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined.

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply.

(e) Foreign base company services income.

For purposes of subsection (a)(3), the term "foreign base company services income" means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(1) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(2) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

The preceding sentence shall not apply to income derived in connection with the performance of services which are directly related to the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed prior to the time of the sale or exchange, or of services directly related to an offer or effort to sell or exchange such property.

(f) Increase in qualified investments in less developed countries.

For purposes of subsection (b)(1), the increase for any taxable year in qualified investments in less developed countries of any controlled foreign corporation is the amount by which—

(1) the qualified investments in less developed countries (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceeds

(2) the qualified investments in less developed countries (as so defined) of the controlled foreign corporation at the close of the preceding taxable year.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1009, and amended Pub. L. 91-172, title IX, § 909(a), Dec. 30, 1969, 83 Stat. 718.)

AMENDMENTS

1969—Subsec. (b)(4). Pub. L. 91-172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary's power to disallow inclusion of any item of such income where such inclusion will have one of the effects proscribed by this section.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 909(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [amending subsec. (b)(4) of this section] shall apply to taxable years ending after October 9, 1969."

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 952, 955, 958, 970, 971 of this title.

§ 955. Withdrawal of previously excluded subpart F income from qualified investment.

(a) General rules.

(1) Amount withdrawn.

For purposes of this subpart, the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in less developed countries for any taxable year is an amount equal to the decrease in the amount of qualified investments in less developed countries of the controlled foreign corporation for such year, but only to the extent that the amount of such decrease does not exceed an amount equal to—

(A) the sum of the amounts excluded under section 954(b)(1) from the foreign base company income of such corporation for all prior taxable years, reduced by

(B) the sum of the amounts of previously excluded subpart F income withdrawn from investment in less developed countries of such corporation determined under this subsection for all prior taxable years.

(2) Decrease in qualified investments.

For purposes of paragraph (1), the amount of the decrease in qualified investments in less developed countries of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of qualified investments in less developed countries of the controlled foreign corporation at the close of the preceding taxable year, exceeds

(B) the amount of qualified investments in less developed countries of the controlled foreign corporation at the close of the taxable year,

to the extent the amount of such decrease does not exceed the sum of the earnings and profits for the taxable year and the earnings and profits accumulated for prior taxable years beginning after December 31, 1962. For purposes of this paragraph, if qualified investments in less developed countries are disposed of by the controlled foreign corporation during the taxable year, the amount of the decrease in qualified investments in less developed countries of such controlled foreign corporation for such year shall be reduced by an amount equal to the amount (if any) by which the losses on such dispositions during such year exceed the gains on such dispositions during such year.

(3) Pro rata share of amount withdrawn.

In the case of any United States shareholder, the pro rata share of the amount of previously excluded subpart F income of any controlled for-

eign corporation withdrawn from investment in less developed countries for any taxable year is his pro rata share of the amount determined under paragraph (1).

(b) Qualified investments in less developed countries.

(1) In general.

For purposes of this subpart, the term "qualified investments in less developed countries" means property which is—

(A) stock of a less developed country corporation held by the controlled foreign corporation but only if the controlled foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of such less developed country corporation;

(B) an obligation of a less developed country corporation held by the controlled foreign corporation, which, at the time of its acquisition by the controlled foreign corporation, has a maturity of one year or more, but only if the controlled foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of such less developed country corporation; or

(C) an obligation of a less developed country.

(2) Country ceases to be less developed country.

For purposes of this subpart, property which would be a qualified investment in less developed countries, but for the fact that a foreign country has, after the acquisition of such property by the controlled foreign corporation, ceased to be a less developed country, shall be treated as a qualified investment in less developed countries.

(3) Special rule.

For purposes of this subpart, a United States shareholder of a controlled foreign corporation may, under regulations prescribed by the Secretary or his delegate, make the determinations under subsection (a)(2) of this section and under subsection (f) of section 954 as of the close of the years following the years referred to in such subsections, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary or his delegate consents to the revocation of such election.

(4) Exception.

For purposes of this subpart, property shall not constitute qualified investments in less developed countries if such property is disposed of within 6 months after the date of its acquisition.

(5) Amount attributable to property.

The amount taken into account under this subpart with respect to any property described in paragraph (1) or (2) shall be its adjusted basis, reduced by any liability to which such property is subject.

(c) Less developed country corporations.

(1) In general.

For purposes of this subpart, the term "less developed country corporation" means a foreign corporation which during the taxable year is engaged in the active conduct of one or more trades or businesses and—

(A) 80 percent or more of the gross income of which for the taxable year is derived from sources within less developed countries; and

(B) 80 percent or more in value of the assets of which on each day of the taxable year consists of—

(i) property used in such trades or businesses and located in less developed countries,

(ii) money, and deposits with persons carrying on the banking business,

(iii) stock, and obligations which, at the time of their acquisition, have a maturity of one year or more, of any other less developed country corporation,

(iv) an obligation of a less developed country,

(v) an investment which is required because of restrictions imposed by a less developed country, and

(vi) property described in section 956(b)(2).

For purposes of subparagraph (A), the determination as to whether income is derived from sources within less developed countries shall be made under regulations prescribed by the Secretary or his delegate.

(2) Shipping companies.

For purposes of this subpart, the term "less developed country corporation" also means a foreign corporation—

(A) 80 percent or more of the gross income of which for the taxable year consists of—

(i) gross income derived from, or in connection with, the using (or hiring or leasing for use) in foreign commerce of aircraft or vessels registered under the laws of a less developed country, or from, or in connection with, the performance of services directly related to use of such aircraft or vessels, or from the sale or exchange of such aircraft or vessels, and

(ii) dividends and interest received from foreign corporations which are less developed country corporations within the meaning of this paragraph and 10 percent or more of the total combined voting power of all classes of stock of which are owned by the foreign corporation, and gain from the sale or exchange of stock or obligations of foreign corporations which are such less developed country corporations, and

(B) 80 percent or more of the assets of which on each day of the taxable year consists of (i) assets used, or held for use, for or in connection with the production of income described in subparagraph (A), and (ii) property described in section 956(b)(2).

(3) Less developed country defined.

For purposes of this subpart, the term "less developed country" means (in respect of any foreign corporation) any foreign country (other than an area within the Sino-Soviet bloc) or any possession of the United States with respect to which,

on the first day of the taxable year, there is in effect an Executive order by the President of the United States designating such country or possession as an economically less developed country for purposes of this subpart. For purposes of the preceding sentence, an overseas territory, department, province, or possession may be treated as a separate country. No designation shall be made under this paragraph with respect to—

Australia	Liechtenstein
Austria	Luxembourg
Belgium	Monaco
Canada	Netherlands
Denmark	New Zealand
France	Norway
Germany	Union of South Africa
(Federal Republic)	San Marino
Hong Kong	Sweden
Italy	Switzerland
Japan	United Kingdom

After the President has designated any foreign country or any possession of the United States as an economically less developed country for purposes of this subpart, he shall not terminate such designation (either by issuing an Executive order for that purpose or by issuing an Executive order under the first sentence of this paragraph which has the effect of terminating such designation) unless, at least 30 days prior to such termination, he has notified the Senate and the House of Representatives of his intention to terminate such designation. (Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1013.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as a note under section 951 of this title.

EX. ORD. NO. 11071. DESIGNATION OF ECONOMICALLY LESS DEVELOPED COUNTRIES

Ex. Ord. No. 11071, Dec. 27, 1962, 27 F.R. 12875, provided:

By virtue of the authority vested in me by section 955 (c)(3) of the Internal Revenue Code of 1954, as added by section 12(a) of the Revenue Act of 1962, approved October 16, 1962 (Public Law 87–834, 76 Stat. 1015) [subsec. (c)(3) of this section], by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *Economically less developed countries.* For purposes of subpart A (sec. 901 and following) and subpart F (sec. 951 and following) of part III of subchapter N, and section 1248 of part IV of subchapter P, of chapter 1 of the Internal Revenue Code of 1954, the following areas are designated as economically less developed countries:

(a) all foreign countries (including Trust Territories) in existence on or after December 31, 1962, other than Australia, Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Union of South Africa, San Marino, Spain, Sweden, Switzerland, United Kingdom, and any foreign country within the Sino-Soviet bloc, as defined in section 2;

(b) each territory, department, province, and possession (other than Hong Kong) of any foreign country in existence on or after December 31, 1962, other than of a foreign country within the Sino-Soviet bloc, as defined in section 2, if the territory, department, province, or possession is overseas from the foreign country of which it is a territory, department, province, or possession; and

(c) the Commonwealth of Puerto Rico and all possessions of the United States.

SEC. 2. *Definition of the term "foreign country within the Sino-Soviet bloc".* For purposes of this Order, the term "foreign country within the Sino-Soviet bloc" shall mean Albania, Bulgaria, any part of China which is dominated or controlled by International Communism, Cuba, Czechoslovakia, Estonia, Hungary, any part of Korea which is dominated or controlled by International Communism, Latvia, Lithuania, Outer Mongolia, Poland (including any area under its provisional administration), Rumania, Soviet Zone of Germany and the Soviet Sector of Berlin, Tibet, Union of Soviet Socialist Republics and the Kurile Islands, Southern Sakhalin, and areas in East Prussia which are under the provisional administration of the Union of Soviet Socialist Republics, and any part of Viet-Nam which is dominated or controlled by International Communism.

SEC. 3. *Rules and regulations.* The Secretary of the Treasury or his delegate is authorized to prescribe from time to time regulations, rulings, directions, and instructions to carry out the purposes of this Order.

SEC. 4. *Effective date.* This Order shall become effective December 31, 1962.

JOHN F. KENNEDY

Ex. Ord. No. 11071, Dec. 27, 1962, 27 F.R. 12875, set out as a note under this section, which designated economically less developed countries, was superseded, to the extent that such order applied to section 4916 of this title, by Ex. Ord. No. 11224, May 13, 1965, 30 F.R. 6679, set out as a note under section 4916 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 951, 954, 956, 958, 963, 964, 970, 4916 of this title

§ 956. Investment of earnings in United States property.

(a) General rules.

For purposes of this subpart—

(1) Amount of investment.

The amount of earnings of a controlled foreign corporation invested in United States property at the close of any taxable year is the aggregate amount of such property held, directly or indirectly, by the controlled foreign corporation at the close of the taxable year, to the extent such amount would have constituted a dividend (determined after the application of section 955(a)) if it had been distributed.

(2) Pro rata share of increase for year.

In the case of any United States shareholder, the pro rata share of the increase for any taxable year in the earnings of a controlled foreign corporation invested in United States property is the amount determined by subtracting his pro rata share of—

(A) the amount determined under paragraph (1) for the close of the preceding taxable year, reduced by amounts paid during such preceding taxable year to which section 959(c)(1) applies, from

(B) the amount determined under paragraph (1) for the close of the taxable year.

The determinations under subparagraphs (A) and (B) shall be made on the basis of stock owned (within the meaning of section 958(a)) by such United States shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation.

(3) Amount attributable to property.

The amount taken into account under paragraph (1) or (2) with respect to any property shall be its adjusted basis, reduced by any liability to which the property is subject.

(b) United States property defined.

(1) In general.

For purposes of subsection (a), the term "United States property" means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions.

For purposes of subsection (a), the term "United States property" does not include—

(A) obligations of the United States, money, or deposits with persons carrying on the banking business;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are not contracts described in section 953(a)(1); and

(F) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b).

(c) Pledges and guarantees.

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary or his delegate, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations. (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1015.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 955, 964, 4916 of this title.

§ 957. Controlled foreign corporations; United States persons.

(a) General rule.

For purposes of this subpart, the term "controlled foreign corporation" means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

(b) Special rule for insurance.

For purposes only of taking into account income described in section 953(a) (relating to income derived from insurance of United States risks), the term "controlled foreign corporation" includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts described in section 953(a)(1) exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

(c) Corporations organized in United States possessions.

For purposes of this subpart, the term "controlled foreign corporation" does not include any corporation created or organized in the Commonwealth of Puerto Rico or a possession of the United States or under the laws of the Commonwealth of Puerto Rico or a possession of the United States if—

(1) 80 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within the Commonwealth of Puerto Rico or a possession of the United States; and

(2) 50 percent or more of the gross income of such corporation for such period, or for such part thereof, was derived from the active conduct within the Commonwealth of Puerto Rico or a possession of the United States of any trades or businesses constituting the manufacture or

processing of goods, wares, merchandise, or other tangible personal property; the processing of agricultural or horticultural products or commodities (including but not limited to livestock, poultry, or fur-bearing animals); the catching or taking of any kind of fish or the mining or extraction of natural resources, or any manufacturing or processing of any products or commodities obtained from such activities; or the ownership or operation of hotels.

For purposes of paragraphs (1) and (2), the determination as to whether income was derived from sources within the Commonwealth of Puerto Rico or a possession of the United States and was derived from the active conduct of a described trade or business within the Commonwealth of Puerto Rico or a possession of the United States shall be made under regulations prescribed by the Secretary or his delegate.

(d) United States person.

For purposes of this subpart, the term "United States person" has the meaning assigned to it by section 7701(a)(30) except that—

(1) with respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico,

(2) with respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under this subtitle for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

(3) with respect to a corporation organized under the laws of any other possession of the United States, such term does not include an individual who is a bona fide resident of any such other possession and whose income derived from sources within possessions of the United States is not, by reason of section 931(a), includible in gross income under this subtitle for the taxable year.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1017.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is refrred to in sections 951, 958, 963, 971, 1248, 4916 of this title.

§ 958. Rules for determining stock ownership.

(a) Direct and indirect ownership.

(1) General rule.

For purposes of this subpart (other than sections 955(b)(1) (A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)), stock owned means—

(A) stock owned directly, and

(B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities.

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701 (a)(31)) shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(3) Special rule for mutual insurance companies.

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term "stock" shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership.

For purposes of sections 951(b), 954(d)(3), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318 (a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase "10 percent" shall be substituted for the phrase "50 percent" used in subparagraph (C).

(4) Subparagraph (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1018, and amended Pub. L. 88-554, § 4(b)(5), Aug. 31, 1964, 78 Stat. 763.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88-554 redesignated pars. (4) and (5) as (3) and (4), respectively, eliminated former par. (3) which related to ownership of stock by a

partnership, estate, trust, or corporation for purposes of applying the first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to the changes made in section 318 of this title by Pub. L. 88-554.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by section 4 of Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554 set out as a note under section 318 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 545, 864, 951, 952, 956, 957, 959, 961, 963, 964, 1246, 1248, 1249, 2107, 4916 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits.

(a) Exclusion from gross income of United States persons.

For purposes of this chapter, the earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary or his delegate may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person).

(b) Exclusion from gross income of certain foreign subsidiaries.

For purposes of section 951(a), the earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary or his delegate may prescribe by regulations).

(c) Allocation of distributions.

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and

(3) then to other earnings and profits.

(d) Distributions excluded from gross income not to be treated as dividends.

Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend. (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1019.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 952, 956, 960, 961, 962, 1246, 1248 of this title.

§ 960. Special rules for foreign tax credit.

(a) Taxes paid by a foreign corporation.

(1) General rule.

For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

(A) of a foreign corporation at least 10 percent of the voting stock of which is owned by such domestic corporation, or

(B) of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which is in turn owned by such domestic corporation,

then, under regulations prescribed by the Secretary or his delegate, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to—

(C) if the foreign corporation at least 10 percent of the voting stock of which is owned by such domestic corporation referred to in subparagraph (A) or (B) is not a less developed country corporation (as defined in section 902

(d)) for such taxable year, the entire amount of the earnings and profits of such foreign corporation for such taxable year, or

(D) if the foreign corporation at least 10 percent of the voting stock of which is owned by such domestic corporation referred to in subparagraph (A) or (B) is a less developed country corporation (as defined in section 902 (d)) for such taxable year, the sum of the entire amount of the earnings and profits of such foreign corporation for such taxable year and the total income, war profits, and excess profits taxes paid by such foreign corporation to foreign countries or possessions of the United States for such taxable year.

(2) Taxes previously deemed paid by domestic corporation.

If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 959, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corporation under paragraph (1) for any prior taxable year.

(3) Taxes paid by foreign corporation and not previously deemed paid by domestic corporation.

Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 959(a) shall be treated by the domestic corporation as a dividend, solely for purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under paragraph (1) for any prior taxable year.

(b) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits.

(1) Increase in section 904 limitation.

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States, and

(B) chooses to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A), and

(C) for the taxable year in which such distribution or amount is received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distribution or amount,

the applicable limitation under section 904 for the taxable year in which such distribution or amount is received shall be increased as provided in paragraph (2), but such increase shall not exceed the amount of such taxes paid, or deemed paid, or accrued with respect to such distribution or amount.

(2) Amount of increase.

The amount of increase of the applicable limitation under section 904(a) for the taxable year in which the distribution or amount referred to in paragraph (1)(B) is received shall be an amount equal to—

(A) the amount by which the applicable limitation under section 904(a) for the taxable year referred to in paragraph (1)(A) was increased by reason of the inclusion in gross income under section 951(a) of the amount in respect of the controlled foreign corporation, reduced by

(B) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for the taxable year referred to in paragraph (1)(A) and which would not have been allowable but for the inclusion in gross income of the amount described in subparagraph (A).

(3) Cases in which taxes not to be allowed as deduction.

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

(4) Insufficient taxable income.

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1020.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78, 535, 545, 901, 958, 959, 962, 6038 of this title.

§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property.

(a) Increase in basis.

Under regulations prescribed by the Secretary or his delegate, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis.

(1) In general.

Under regulations prescribed by the Secretary or his delegate, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the appplication of section 962(d).

(2) Amount in excess of basis.

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1022.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is refererd to in section 1016 of this title.

§ 962. Election by individuals to be subject to tax at corporate rates.

(a) General rule.

Under regulations prescribed by the Secretary or his delegate, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

(1) the tax imposed under this chapter on amounts which are included in his gross income under section 951(a) shall (in lieu of the tax determined under section 1) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election.

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary or his delegate shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary or his delegate.

(c) Surtax exemption.

For purposes of applying subsection (a)(1), the surtax exemption provided by section 11(c) shall not exceed, in the case of any United States shareholder, an amount which bears the same ratio to $25,000 as the amounts included in his gross income under section 951(a) for the taxable year bears to his pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such United States shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions.

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied. (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1023.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United State shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 961 of this title.

§ 963. Receipt of minimum distributions by domestic corporations.

(a) General rule.

In the case of a United States shareholder which is a domestic corporation and which consents to all

the regulations prescribed by the Secretary or his delegate under this section prior to the last day prescribed by law for filing its return of the tax imposed by this chapter for the taxable year, no amount shall be included in gross income under section 951(a)(1)(A)(i) for the taxable year with respect to the subpart F income of a controlled foreign corporation, if—

(1) in the case of a controlled foreign corporation described in subsection (c)(1), the United States shareholder receives a minimum distribution of the earnings and profits for the taxable year of such controlled foreign corporation;

(2) in the case of controlled foreign corporations described in subsection (c)(2), the United States shareholder receives a minimum distribution with respect to the consolidated earnings and profits for the taxable year of all such controlled foreign corporations; or

(3) in the case of controlled foreign corporations described in subsection (c)(3), the United States shareholder receives a minimum distribution of the consolidated earnings and profits for the taxable year of all such controlled foreign corporations.

(b) Minimum distribution.

For purposes of this section, a minimum distribution with respect to the earnings and profits for the taxable year of any controlled foreign corporation or corporations shall, in the case of any United States shareholder, be its pro rata share of an amount determined in accordance with whichever of the following tables applies to the taxable year:

(1) Taxable years beginning in 1963 and taxable years entirely within the surcharge period ending before January 1, 1970.

If the effective foreign tax rate is (percentage)—	The required minimum distribution of earnings and profits is (percentage)—
Under 10	90
10 or over but less than 20	86
20 or over but less than 28	82
28 or over but less than 34	75
34 or over but less than 39	68
39 or over but less than 42	55
42 or over but less than 44	40
44 or over but less than 46	27
46 or over but less than 47	14
47 or over	0

(2) Taxable years beginning in 1964 and taxable years beginning in 1969 and ending in 1970 to the extent subparagraph (B) applies.

If the effective foreign tax rate is (percentage)—	The required minimum distribution of earnings and profits is (percentage)—
Under 10	87
10 or over but less than 19	83
19 or over but less than 27	79
27 or over but less than 33	72
33 or over but less than 37	65
37 or over but less than 40	53
40 or over but less than 42	38
42 or over but less than 44	26
44 or over but less than 45	13
45 or over	0

(3) Taxable years beginning after 1964 (except taxable years which include any part of the surcharge period).

If the effective foreign tax rate is (percentage)—	The required minimum distribution of earnings and profits is (percentage)—
Under 9	83
9 or over but less than 18	79
18 or over but less than 26	76
26 or over but less than 32	69
32 or over but less than 36	63
36 or over but less than 39	51
39 or over but less than 41	37
41 or over but less than 42	25
42 or over but less than 43	13
43 or over	0

In the case of a taxable year beginning before the surcharge period and ending within the surcharge period, or beginning within the surcharge period and ending after the surcharge period, or beginning before January 1, 1970, and ending after December 31, 1969, the required minimum distribution shall be equal to the sum of—

(A) that portion of the minimum distribution which would be required if the provisions of paragraph (1) were applicable to the taxable year, which the number of days in such taxable year which are within the surcharge period and before January 1, 1970, bears to the total number of days in such taxable year,

(B) that portion of the minimum distribution which would be required if the provisions of paragraph (2) were applicable to such taxable year, which the number of days in such taxable year which are within the surcharge period and after December 31, 1969, bears to the total number of days in such taxable year, and

(C) that portion of the minimum distribution which would be required if the provisions of paragraph (3) were applicable to such taxable year, which the number of days in such taxable year which are not within the surcharge period bears to the total number of days in such taxable year.

As used in this subsection, the term "surcharge period" means the period beginning January 1, 1968, and ending June 30, 1970.

(c) Amounts to which section applies.

(1) Foreign subsidiaries.

Subsection (a)(1) shall apply to amounts which (but for the provisions of this section) would be included in the gross income of the United States shareholder under section 951(a)(1)(A)(i) by reason of its ownership, within the meaning of section 958(a)(1)(A), of stock of a controlled foreign corporation.

(2) Chain of controlled foreign corporations.

Subsection (a)(2) shall apply to amounts which (but for the provisions of this section) would be included in the gross income of the United States shareholder under section 951(a)(1)(A)(i)—

(A) by reason of its ownership, within the meaning of section 958(a)(1)(A), of stock of a controlled foreign corporation, and

(B) to the extent that the United States shareholder so elects, by reason of its ownership, within the meaning of section 958(a)(2), of stock of any other controlled foreign corporation (on account of its ownership of the stock described in subparagraph (A) or of stock described in this subparagraph), but only if there is taken into account the earnings and profits of each foreign corporation, whether or not a controlled foreign corporation, by reason of which the United States shareholder owns, within the meaning of section 958(a)(2), stock of such controlled foreign corporation.

(3) All controlled foreign corporations.

Except as provided in paragraph (4), subsection (a)(3) shall apply to amounts which (but for the provisions of this section) would be included in the gross income of the United States shareholder under section 951(a)(1)(A)(i)—

(A) by reason of its ownership, within the meaning of section 958(a)(1)(A), of stock of all controlled foreign corporations in which it owns stock within the meaning of such section, and

(B) by reason of its ownership, within the meaning of section 958(a)(2), of stock of all controlled foreign corporations in which it owns stock within the meaning of such section, but only if there is taken into account the earnings and profits of each foreign corporation, whether or not a controlled foreign corporation, by reason of which the United States shareholder owns, within the meaning of section 958(a), stock of any of such controlled foreign corporations.

(4) Exceptions and special rules.

(A) Less developed country corporations.

If the United States shareholder so elects, subsection (a)(3) and paragraph (3) of this subsection shall not apply to amounts which would be included in the gross income of such shareholder under section 951(a)(1)(A)(i) by reason of its ownership, within the meaning of section 958(a), of stock of controlled foreign corporations which are less developed country corporations (as defined in section 955(c)). This subparagraph shall not apply with respect to a less developed country corporation if, by reason of the ownership of the stock of such corporation, the United States shareholder owns, within the meaning of section 958(a)(2), stock of any other controlled foreign corporation which is not a less developed country corporation. Except as provided in the preceding sentence, an election under this subparagraph may be made only with respect to all controlled foreign corporations which are less developed country corporations and with respect to which the domestic corporation making the election is a United States shareholder.

(B) Foreign branches.

In applying subsection (a)(3) and paragraph (3) of this subsection, if a United States shareholder so elects, all branches maintained by such shareholder in foreign countries, the Commonwealth of Puerto Rico, or possessions of the United States shall, under regulations prescribed by the Secretary or his delegate, be treated as wholly owned subsidiary corporations of such shareholder organized under the laws of such foreign countries, the Commonwealth of Puerto Rico, or possessions of the United States, as the case may be. Each branch so treated shall, for purposes of this section, be considered to have distributed to the United States shareholder all of its earnings and profits for the taxable year. This subparagraph shall not apply to a branch maintained by a United States shareholder in the Commonwealth of Puerto Rico or a possession of the United States unless—

(i) such branch would be a controlled foreign corporation (as defined in section 957) if it were incorporated under the laws of the Commonwealth of Puerto Rico or the possession of the United States, as the case may be, and

(ii) the gross income of the United States shareholder for the taxable year includes income derived from sources within the Commonwealth of Puerto Rico and possessions of the United States.

(C) Blocked foreign income.

If a United States shareholder so elects, the provisions of subsection (a)(3) and of paragraph (3) of this subsection shall not apply with respect to any foreign corporation, if it is established to the satisfaction of the Secretary or his delegate that the earnings and profits of such foreign corporation could not have been distributed to United States shareholders who own (within the meaning of section 958(a)) stock of such foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(d) Effective foreign tax rate.

For purposes of this section, the term "effective foreign tax rate" means—

(1) with respect to a single controlled foreign corporation, the percentage which—

(A) the income, war profits, or excess profits taxes paid or accrued to foreign countries or possessions of the United States by the controlled foreign corporation for the taxable year on or with respect to its earnings and profits for the taxable year, is of

(B) the sum of (i) the earnings and profits of the controlled foreign corporation described in subparagraph (A) and (ii) and the taxes described in subparagraph (A); and

(2) with respect to two or more foreign corporations, the percentage which—

(A) the total income, war profits, or excess profits taxes paid or accrued to foreign countries or possessions of the United States by such foreign corporations for the taxable year on or with respect to the consolidated earnings and profits of such foreign corporations for the taxable year, is of

(B) the sum of (i) the consolidated earnings and profits of such foreign corporations described in subparagraph (A) and (ii) the taxes described in subparagraph (A).

For purposes of the preceding sentence, in the case of any United States shareholder, the computation of the effective foreign tax rate applicable with respect to any controlled foreign corporation or corporations shall be made without regard to distributions made by such controlled foreign corporation or corporations to such United States shareholder.

(e) Special rules.

(1) Year from which distributions are made.

For purposes of this section, the second sentence of section 902(c)(1) shall apply in determining from the earnings and profits of what year distributions are made by any foreign corporation, except that the Secretary or his delegate may by regulations provide a period in excess of 60 days in lieu of the 60-day period prescribed in such section.

(2) Insufficient distributions.

If—

(A) a United States shareholder, in making its return of the tax imposed by this chapter for any taxable year, applies the provisions of this section with respect to any controlled foreign corporation,

(B) it is subsequently determined that this section did not apply with respect to such controlled foreign corporation for such taxable year due to the failure of the United States shareholder to receive a minimum distribution with respect to such controlled foreign corporation, and

(C) such failure is due to reasonable cause,

then a subsequent distribution made with respect to such controlled foreign corporation may, if made at a time and in a manner prescribed by the Secretary or his delegate by regulations, be treated, for purposes of this chapter, as having been made for, and received in, the taxable year of the United States shareholder for which such shareholder applied the provisions of this section.

(3) Affiliated groups of corporations.

An affiliated group of corporations which makes a consolidated return under section 1501 for the taxable year, may, if it so elects, be treated as a single United States shareholder for purposes of applying this section for the taxable year.

(f) Regulations.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to carry out the provisions of this section, including regulations for the determination of the amount of foreign tax credit in the case of distributions with respect to the earnings and profits of two or more foreign corporations. (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1023, and amended Pub. L. 88-272, title I, § 123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90-364, title I, § 102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91-53, § 5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91-172, title VII, § 701(b), Dec. 30, 1969, 83 Stat. 659.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-53, § 5(b), substituted "December 31, 1969" for "June 30, 1969", in the last sentence.

Subsec. (b)(1). Pub. L. 91-172, § 701(b)(1), added reference to Jan. 1, 1970 in the heading preceding the table.

Subsec. (b)(2). Pub. L. 91-172, § 701(b)(2), added references to taxable years beginning in 1969 and ending in 1970, and to subpar. (B) in the heading preceding the table.

Subsec. (b)(3). Pub. L. 91-172, § 701(b)(3), added reference to taxable years beginning before Jan. 1, 1970 and ending after Dec. 31, 1969 in the material immediately following the table, and added provisions for the apportioning of minimum distribution with reference to the taxable years within the surcharge period after Dec. 31, 1969 and before Jan. 1, 1970, and extended the surcharge period from Dec. 31, 1969 to June 30, 1970.

1968—Subsec. (b)(1). Pub. L. 90-364, § 102(b)(1), inserted "and taxable years entirely within the surcharge period" following "beginning in 1963" in the catchline.

Subsec. (b)(3). Pub. L. 90-364, § 102(b)(2), (3), substituted "after 1964 (except taxable years which include any part of the surcharge period)" for "after December 31, 1964" in the catchline and added provisions following the table covering the required minimum distribution in the case of a taxable year beginning before the surcharge period and ending within the surcharge period, or beginning within the surcharge period and ending after the surcharge period.

1964—Subsec. (b). Pub. L. 88-272 limited existing provisions to taxable years beginning in 1963, and inserted provisions relating to taxable years beginning in 1964 and beginning after Dec. 31, 1964.

EFFECTIVE DATE OF 1969 AMENDMENTS

Amendment by Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, and beginning before July 1, 1970, see section 701(c) of Pub. L. 91-172, set out as a note under section 51 of this title.

Amendment of subsec. (b) of this section by Pub. L. 91-53 applicable to taxable years ending after June 30, 1969, and beginning before Jan. 1, 1970, see section 5(c) of Pub. L. 91-53, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment Pub. L. 90-364 applicable, insofar as they relate to taxpayers other than corporations, to taxable years ending after Mar. 31, 1968, and beginning before July 1, 1969, and, insofar as they relate to corporations, to taxable years ending after Dec. 31, 1967, and beginning before July 1, 1969, except as provided in section 104 of Pub. L. 90-364, see section 102(e) of Pub. L. 90-364, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 951 of this title.

§ 964. Miscellaneous provisions.

(a) Earnings and profits.

Except as provided in section 312(m)(3), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable

year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary or his delegate.

(b) Blocked foreign income.

Under regulations prescribed by the Secretary or his delegate, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of sections 952, 955, and 956, if it is established to the satisfaction of the Secretary or his delegate that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders.

(1) Records and accounts to be maintained.

The Secretary or his delegate may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation.

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may by regulations be required under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary or his delegate may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1027, and amended Pub. L. 91-172, title IV, § 442(b)(1), Dec. 30, 1969, 83 Stat. 628.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172 added reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SUBPART G.—EXPORT TRADE CORPORATIONS

Sec.
970. Reduction of subpart F income of export trade corporations.
971. Definitions.
972. Consolidation of group of export trade corporations.

AMENDMENTS

1962—Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1027, added the heading of subpart G, and items 970—972.

§ 970. Reduction of subpart F income of export trade corporations.

(a) Export trade income constituting foreign base company income.

(1) In general.

In the case of a controlled foreign corporation (as defined in section 957) which for the taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) an amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is probably allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) an amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year.

The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary or his delegate.

(2) Overall limitation.

The reduction under paragraph (1) for any taxable years shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section 971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

(b) Inclusion of certain previously excluded amounts.

Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such

year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

(1) his pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the application of section 972, reduced by

(2) the sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.

(c) Investments in export trade assets.

(1) Amount of investments.

For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) Increase in investments in export trade assets.

For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the taxable year, exceeds

(B) the amount of such investments at the close of the preceding taxable year.

(3) Decrease in investments in export trade assets.

For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) the amount of such investments at the close of the taxable year.

(4) Special rule.

A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary or his delegate, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary or his delegate, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary or his delegate consents to the revocation of such election.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1027.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

§ 971. Definitions.

(a) Export trade corporations.

For purposes of this subpart, the term "export trade corporation" means—

(1) In general.

A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) Special rule.

If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(b) Export trade income.

For the purposes of this subpart, the term "export trade income" means net income from—

(1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;

(2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of

export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total cost and expenses attributable to such aggregate income.

(c) Export trade assets.

For purposes of this subpart, the term "export trade assets" means—

(1) working capital reasonably necessary for the production of export trade income,

(2) inventory of export property held for use, consumption, or disposition outside the United States,

(3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b) (2) and (3).

(d) Export promotion expenses.

For purposes of this subpart, the term "export promotion expenses" means the following expenses paid or incurred in the receipt or production of export trade income—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(2) rentals or other payments for the use of property actually used for such purpose,

(3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and

(4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

(e) Export property.

For purposes of this subpart, the term "export property" means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

(f) Unrelated person.

For purposes of this subpart, the term "unrelated person" means a person other than a related person as defined in section 954(d)(3). (Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1029.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 970 of this title.

§ 972. Consolidation of group of export trade corporations.

For purposes of this subpart and subpart F of this part, a United States shareholder of a controlled foreign corporation which is an export trade corporation may, under regulations prescribed by the Secretary or his delegate, treat as a single controlled foreign corporation—

(1) such controlled foreign corporation,

(2) all controlled foreign corporations which are export trade corporations and 80 percent or more of the total combined voting power of all classes of stock entitled to vote of which is owned by such controlled foreign corporation; and

(3) all controlled foreign corporations which are export trade corporations and 80 percent or more of the total combined voting power of all classes of stock entitled to vote of which is owned by controlled foreign corporations described in paragraph (2).

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1031.)

EFFECTIVE DATE

Section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as a note under section 951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 970 of this title.

SUBPART H.—INCOME OF CERTAIN NONRESIDENT UNITED STATES CITIZENS SUBJECT TO FOREIGN COMMUNITY PROPERTY LAWS

Sec.
981. Election as to treatment of income subject to foreign community property laws.

AMENDMENTS

1966—Pub. L. 89-809, title I, § 105(e)(1), Nov. 13, 1966, 80 Stat. 1565, added the heading of Subpart H and item 981.

§ 981. Election as to treatment of income subject to foreign community property laws.

(a) General rule.

In the case of any taxable year beginning after December 31, 1966, if—

(1) an individual is (A) a citizen of the United States, (B) a bona fide resident of a foreign country or countries during the entire taxable year, and (C) married at the close of the taxable year to a spouse who is a nonresident alien during the entire taxable year, and

(2) such individual and his spouse elect to have subsection (b) apply to their community income under foreign community property laws,

then subsection (b) shall apply to such income of such individual and such spouse for the taxable year and for all subsequent taxable years for which the requirements of paragraph (1) are met, unless the Secretary or his delegate consents to a termination of the election.

(b) Treatment of community income.

For any taxable year to which an election made under subsection (a) applies, the community income under foreign community property laws of the husband and wife making the election shall be treated as follows:

(1) Earned income (within the meaning of the first sentence of section 911(b)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services.

(2) Trade or business income, and a partner's distributive share of partnership income, shall be treated as provided in section 1402(a)(5).

(3) Community income not described in paragraph (1) or (2) which is derived from the separate property (as determined under the applicable foreign community property law) of one spouse shall be treated as the income of such spouse.

(4) All other such community income shall be treated as provided in the applicable foreign community property law.

(c) Election for pre-1967 years.

(1) Election.

If an individual meets the requirements of subsections (a)(1) (A) and (C) for any taxable year beginning before January 1, 1967, and if such individual and the spouse referred to in subsection (a)(1)(C) elect under this subsection, then paragraph (2) of this subsection shall apply to their community income under foreign community property laws for all open taxable years beginning before January 1, 1967 (whether under this chapter, the corresponding provisions of the Internal Revenue Code of 1939, or the corresponding provisions of prior revenue laws), for which the requirements of subsection (a)(1) (A) and (C) are met.

(2) Effect of election.

For any taxable year to which an election made under this subsection applies, the community income under foreign community property laws of the husband and wife making the election shall be treated as provided by subsection (b), except that the other community income described in paragraph (4) of subsection (b) shall be treated as the income of the spouse who, for such taxable year, had gross income under paragraphs (1), (2), and (3) of subsection (b), plus separate gross income, greater than that of the other spouse.

(d) Time for making elections; period of limitations; etc.

(1) Time.

An election under subsection (a) or (c) for a taxable year may be made at any time while such year is still open, and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe.

(2) Extension of period for assessing deficiencies and making refunds.

If any taxable year to which an election under subsection (a) or (c) applies is open at the time such election is made, the period for assessing a deficiency against, and the period for filing claim for credit or refund of any overpayment by, the husband and wife for such taxable year, to the extent such deficiency or overpayment is attributable to such an election, shall not expire before 1 year after the date of such election.

(3) Alien spouse need not join in subsection (c) election in certain cases.

If the Secretary or his delegate determines—

(A) that an election under subsection (c) would not affect the liability for Federal income tax of the spouse referred to in subsection (a)(1)(C) for any taxable year, or

(B) that the effect on such liability for tax cannot be ascertained and that to deny the election to the citizen of the United States would be inequitable and cause undue hardship,

such spouse shall not be required to join in such election, and paragraph (2) of this subsection shall not apply with respect to such spouse.

(4) Interest.

To the extent that any overpayment or deficiency for a taxable year is attributable to an election made under this section, no interest shall be allowed or paid for any period before the day which is 1 year after the date of such election.

(e) Definitions and special rules.

For purposes of this section—

(1) Deductions.

Deductions shall be treated in a manner consistent with the manner provided by this section for the income to which they relate.

(2) Open years.

A taxable year of a citizen of the United States and his spouse shall be treated as "open" if the period for assessing a deficiency against such citizen for such year has not expired before the date of the election under subsection (a) or (c), as the case may be.

(3) Elections in case of decedents.

If a husband or wife is deceased his election under this section may be made by his executor, administrator, or other person charged with his property.

(4) Death of spouse during taxable year.

In applying subsection (a)(1)(C), and in determining under subsection (c)(2) which spouse has the greater income for a taxable year, if a husband or wife dies the taxable year of the surviving spouse shall be treated as ending on the date of such death.

(Added Pub. L. 89-809, title I, § 105(e)(1), Nov. 13, 1966, 80 Stat. 1565.)

Subchapter O.—Gain or Loss on Disposition of Property

Part
I. Determination of amount of and recognition of gain or loss.
II. Basis rules of general application.
III. Common nontaxable exchanges.
IV. Special rules.
V. Changes to effectuate F. C. C. policy.
VI. Exchanges in obedience to S. E. C. orders.
VII. Wash sales of stock or securities.
VIII. Distributions pursuant to Bank Holding Company Act of 1956
IX. Distributions pursuant to orders enforcing the antitrust laws.

AMENDMENTS

1962—Pub. L. 87-403, § 1(b), Feb. 2, 1962, 76 Stat. 5, added the heading of Part IX.

1956—Act May 9, 1956, ch. 240, § 10 (b), 70 Stat. 146, added Part VIII.

PART I.—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

Sec.
1001. Determination of amount of and recognition of gain or loss.
1002. Recognition of gain or loss.

§ 1001. Determination of amount of and recognition of gain or loss.

(a) Computation of gain or loss.

The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount realized.

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized—

(1) there shall not be taken into account any amount received as reimbursement for real property taxes which are treated under section 164 (d) as imposed on the purchaser, and

(2) there shall be taken into account amounts representing real property taxes which are treated under section 164 (d) as imposed on the taxpayer if such taxes are to be paid by the purchaser.

(c) Recognition of gain or loss.

In the case of a sale or exchange of property, the extent to which the gain or loss determined under this section shall be recognized for purposes of this subtitle shall be determined under section 1002.

(d) Installment sales.

Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

(e) Certain term interests.

(1) In general.

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014 or 1015 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

(2) Term interest in property defined.

For purposes of paragraph (1), the term "term interest in property" means—

(A) a life interest in property,

(B) an interest in property for a term of years, or

(C) an income interest in a trust.

(3) Exception.

Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

(f) Cross reference.

For treatment of certain expenses incident to the sale of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 295; Dec. 30, 1969, Pub. L. 91-172, title II, § 231(c)(2), title V, § 516(a), 83 Stat. 579, 646.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91-172, § 516(a), added subsec. (e).

Subsec. (f). Pub. L. 91-172, § 231(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 516(d) of Pub. L. 91-172 provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to sales or other dispositions after October 9, 1969.

"(2) The amendment made by subsection (b) [amending section 1231 of this title] shall apply to taxable years beginning after December 31, 1969.

"(3) The amendments made by subsection (c) [enacting section 1253 and amending sections 162 and 1016 of this title] shall apply to transfers after December 31, 1969, except that section 1253(d)(1) of the Internal Revenue Code of 1954 [section 1253(d)(1) of this title] (as added by subsection (c) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before January 1, 1970, but only with respect to payments made in taxable years ending after December 31, 1969, and beginning before January 1, 1980."

Amendment of section by section 231(c)(2) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91-172, set out as a note under section 217 of this title.

CROSS REFERENCES

Gain or loss to shareholders in corporate liquidations, see section 331 of this title.

Installment method of accounting, see section 453 of this title.

Recognition of gain or loss on transfer of obsolete vessels under Merchant Marine Act, section 1101 et seq. of Title 46, see section 1160 (e) of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1002 of this title.

§ 1002. Recognition of gain or loss.

Except as otherwise provided in this subtitle, on the sale or exchange of property the entire amount of the gain or loss, determined under section 1001, shall be recognized. (Aug. 16, 1954, ch. 736, 68A Stat. 295.)

CROSS REFERENCES

Gain or loss to shareholders in corporate liquidations, see section 331 of this title.

Liquidation of certain foreign personal holding companies, see section 342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 342, 1002 of this title.

PART II.—BASIS RULES OF GENERAL APPLICATION

Sec.
1011. Adjusted basis for determining gain or loss.
1012. Basis of property—cost.
1013. Basis of property included in inventory.
1014. Basis of property acquired from a decedent.
1015. Basis of property acquired by gifts and transfers in trust.
1016. Adjustments to basis.
1017. Discharge of indebtedness.
1018. Adjustment of capital structure before September 22, 1938.
1019. Property on which lessee has made improvements.
1020. Election in respect of depreciation, etc., allowed before 1952.
1021. Sale of annuities.
1022. Increase in basis with respect to certain foreign personal holding company stock or securities.
1023. Cross references.

AMENDMENTS

1964—Pub. L. 88-272, title II, § 225(j)(3), Feb. 26, 1964, 78 Stat. 93, added item 1022, and redesignated former item 1022 as 1023.

CROSS REFERENCES

Basis of transferee partner's interest, see section 742 of this title.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 742 of this title.

§ 1011. Adjusted basis for determining gain or loss.

(a) General rule.

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

(b) Bargain sale to a charitable organization.

If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property. (Aug. 16, 1954, ch. 736, 68A Stat. 296; Dec. 30, 1969, Pub. L. 91-172, title II, § 201(f), 83 Stat. 564.)

AMENDMENTS

1969—Pub. L. 91-172 redesignated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to sales made after Dec. 19, 1969, see section 201(g)(6) of Pub. L. 91-172, set out as a note under section 170 of this title.

CROSS REFERENCES

Bad debt deduction determined by reference to adjusted basis provided in this section, see section 166 of this title.

Basis for determining gain or loss on new vessel acquired in exchange for obsolete vessel under Merchant Marine Act, section 1101 et seq. of Title 46, see section 1160 (e) of Title 46, Shipping.

Computation of gain or loss by reference to adjusted basis provided in this section, see section 1001 of this title.

Cost depletion basis as the adjusted basis provided in this section, see section 612 of this title.

Depreciation basis as the adjusted basis provided in this section, see section 167 of this title.

Loss deduction determined by reference to adjusted basis provided in this section, see section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165, 166, 612, 1001, 4914 of this title.

§ 1012. Basis of property—cost.

The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164 (d) as imposed on the taxpayer. (Aug. 16, 1954, ch. 736, 68A Stat. 296.)

CROSS REFERENCES

Involuntary conversions, see section 1033 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 172, 1011, 1033, 1039 of this title.

§ 1013. Basis of property included in inventory.

If the property should have been included in the last inventory, the basis shall be the last inventory value thereof. (Aug. 16, 1954, ch. 736, 68A Stat. 296.)

CROSS REFERENCES

Capital assets as not including property includible in inventory if on hand at close of taxable year, see section 1221 of this title.

Character of gain or loss on disposition by distributee partner of inventory items, see section 735 of this title.

General rules for inventories, see section 471 of this title.

Inventory carryovers, see section 381 of this title.

LIFO inventories—

Generally, see section 472 of this title.

Involuntary liquidation, see section 1321 of this title.

Property includible within inventories as not property used in trade or business, see section 1231 of this title.

Taxability of corporation on distribution of inventories, see section 311 of this title.

§ 1014. Basis of property acquired from a decedent.

(a) In general.

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death,

or, in the case of an election under either section 2032 or section 811 (j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections.

(b) Property acquired from the decedent.

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(c) Property representing income in respect of a decedent.

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691. (Aug. 16, 1954, ch. 736, 68A Stat. 296; Feb. 11, 1958, Pub. L. 85–320, § 2, 72 Stat. 5.)

AMENDMENTS

1958—Subsec. (d). Pub. L. 85–320 repealed subsec. (d), which made section inapplicable to restricted stock options described in section 421 which the employee has not exercised at death.

EFFECTIVE DATE OF 1958 AMENDMENT

Repeal of subsec. (d) of this section applicable with respect to taxable years ending after Dec. 31, 1956, but only in the case of employees dying after such date, see section 3 of Pub. L. 85–320, set out as a note under section 421 of this title.

CROSS REFERENCES

Definition of purchase for purpose of determining basis of property received in liquidation of subsidiary as excluding a determination of basis under this section, see section 334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 179, 334, 1001, 1022, 1223, 1232, 1246 of this title.

§ 1015. Basis of property acquired by gifts and transfers in trust.

(a) Gifts after December 31, 1920.

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary or his delegate shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary or his delegate finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary or his delegate as of the date or approximate date at which, according to the best information that the Secretary or his delegate is able to obtain, such property was acquired by such donor or last preceding owner.

(b) Transfer in trust after December 31, 1920.

If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

(c) Gift or transfer in trust before January 1, 1921.

If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(d) Increased basis for gift tax paid.

(1) In general.

If—

(A) the property is acquired by gift on or after the date of the enactment of the Technical Amendments Act of 1958, the basis shall be the basis determined under subsection (a), increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gift, or

(B) the property was acquired by gift before the date of the enactment of the Technical Amendments Act of 1958 and has not been sold, exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(2) Amount of tax paid with respect to gift.

For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in section 2503 (a) but computed without the deduction allowed by section 2521) made by the donor during such calendar quarter or year. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503 (a)) the total amount of gifts made during the calendar quarter or year, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

(3) Gifts treated as made one-half by each spouse.

For purposes of paragraph (1), where the donor and his spouse elected, under section 2513 to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under chapter 12 shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in paragraph (2)).

(4) Treatment as adjustment to basis.

For purposes of section 1016 (b), an increase in basis under paragraph (1) shall be treated as an adjustment under section 1016 (a).

(5) Application to gifts before 1955.

With respect to any property acquired by gift before 1955, references in this subsection to any provision of this title shall be deemed to refer to the corresponding provision of the Internal Revenue Code of 1939 or prior revenue laws which was effective for the year in which such gift was made.

(Aug. 16, 1954, ch. 736, 68A Stat. 298; Sept. 2, 1958, Pub. L. 85–866, title I, § 43 (a), 72 Stat. 1640; Dec. 31, 1970, Pub. L. 91–614, title I, § 102(d)(1), 84 Stat. 1841.)

REFERENCES IN TEXT

Date of the enactment of the Technical Amendments Act of 1958, referred to in subsec. (d) (1) (A), (B), was Sept. 2, 1958.

AMENDMENTS

1970—Subsec. (d)(2). Pub. L. 91–614 substituted "calendar quarter (or calendar year if the gift was made before January 1, 1971)" for "calendar year" the first place it appears and "calendar quarter or year" for "calendar year" every other place it appears therein.

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Subsec. (d) of this section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Basis of property after erroneous treatment of a prior transaction, see section 1312 of this title.

Gift tax, see section 2501 et seq. of this title.

Gifts specifically excluded from gross income, see section 102 of this title.

Valuation of gifts, see section 2512 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1001, 1312 of this title.

§ 1016. Adjustments to basis.

(a) General rule.

Proper adjustment in respect of the property shall in all cases be made—

(1) for expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made—

(A) for taxes or other carrying charges described in section 266, or

(B) for expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years;

(2) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(A) allowed as deductions in computing taxable income under this subtitle or prior income tax laws, and

(B) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this subtitle (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this subtitle or prior income tax laws. Where no method has been adopted under section 167 (relating to depreciation deduction), the amount allowable shall be determined under section 167 (b) (1). Subparagraph (B) of this paragraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under section 1020. Where for any taxable year before the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(3) in respect of any period—

(A) before March 1, 1913,

(B) since February 28, 1913, during which such property was held by a person or an organization not subject to income taxation under this chapter or prior income tax laws,

(C) since February 28, 1913, and before January 1, 1958, during which such property was held by a person subject to tax under part I of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply, and

(D) since February 28, 1913, during which such property was held by a person subject to tax under part II of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply,

for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(4) in the case of stock (to the extent not provided for in the foregoing paragraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057), or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(5) in the case of any bond (as defined in section 171 (d)) the interest on which is wholly exempt from the tax imposed by this subtitle, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 171 (a) (2), and in the case of any other bond (as defined in section 171 (d)) to the extent of the deductions allowable pursuant to section 171 (a) (1) with respect thereto;

(6) in the case of any municipal bond (as defined in section 75 (b)), to the extent provided in section 75 (a) (2);

(7) in the case of a residence the acquisition of which resulted, under section 1034, in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, to the extent provided in section 1034 (e);

(8) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 77, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability;

(9) for amounts allowed as deductions as deferred expenses under section 616 (b) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(10) for amounts allowed as deductions as deferred expenses under section 615 (b) (relating to certain pre-1970 exploration expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle but not less than the amounts allowable under such section for the taxable year and prior years;

(11) for deductions to the extent disallowed under section 268 (relating to sale of land with unharvested crops), notwithstanding the provisions of any other paragraph of this subsection;

(12) to the extent provided in section 28 (h) of the Internal Revenue Code of 1939 in the case of amounts specified in a shareholder's consent made under section 28 of such code;

(13) to the extent provided in section 551 (f) in the case of the stock of United States shareholders in a foreign personal holding company;

(14) for amounts allowed as deductions as deferred expenses under section 174 (b) (1) (relating to research and experimental expenditures) and resulting in a reduction of the taxpayers' taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(15) for deductions to the extent disallowed under section 272 (relating to disposal of coal or domestic iron ore), notwithstanding the provisions of any other paragraph of this subsection;

(16) for amounts allowed as deductions for expenditures treated as deferred expenses under section 177 (relating to trademark and trade name expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years.

(17) in the case of any evidence of indebtedness referred to in section 818(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to the extent of the adjustments required under section 818(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years;

(18) to the extent provided in section 1376 in the case of stock of, and indebtedness owing, shareholders of an electing small business corporation (as defined in section 1371(b));

(19) to the extent provided in section 48(g) and in section 203(a)(2) of the Revenue Act of 1964, in the case of property which is or has been section 38 property (as defined in section 48(a));

(20) to the extent provided in section 961 in the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock;

(21) to the extent provided in section 1022, relating to increase in basis for certain foreign personal holding company stock or securities;

(22) for amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under section 1253(d)(2).

(b) Substituted basis.

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases. The term "substituted basis" as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(1) by reference to the basis in the hands of a transferor, donor, or grantor, or

(2) by reference to other property held at any time by the person for whom the basis is to be determined.

(c) Cross references.

(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

(2) For treatment of separate mineral interests as one property, see section 614.

(Aug. 16, 1954, ch. 736, 68A Stat. 299; June 29, 1956, ch. 464, § 4(c), 70 Stat. 407; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 2(b), 64(d)(2), 72 Stat. 1607, 1656; June 25, 1959, Pub. L. 86-69, § 3(d), 73 Stat. 139; Oct. 16, 1962, Pub. L. 87-834, §§ 2(f), 8(g)(2), 12(b)(4), 76 Stat. 972, 998, 1031; Feb. 26, 1964, Pub. L. 88-272, title II, §§ 203(a)(3)(C), 225(j)(2), 227(b)(5), 78 Stat. 34, 93, 98; Dec. 30, 1969, Pub. L. 91-172, title II, § 231(c)(3), title V, §§ 504(c)(4), 516(c)(2)(B), 83 Stat. 580, 633, 648.)

REFERENCES IN TEXT

Section 203(a)(2), of the Revenue Act of 1964, referred to in subsec. (a)(19), is set out as a note under section 48 of this title.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 516(c)(2)(B), added par. (22).

Subsec. (a)(10). Pub. L. 91-172, § 504(c)(4), limited exploration expenditures referred to in this par. to pre-1970 exploration expenditures.

Subsec. (c). Pub. L. 91-172, § 231(c)(3) redesignated existing provisions as par. (2) and added par. (1).

1964—Subsec. (a)(15) Pub. L. 88-272, § 227(b)(5), inserted "or domestic iron ore" in par. (15).

Subsec. (a)(19). Pub. L. 88-272, § 203(a)(3)(C), inserted "and in section 203(a)(2) of the Revenue Act of 1964."

Subsec. (a)(21). Pub. L. 88-272, § 225(j)(2), added subsec. (a)(21).

1962—Subsec. (a)(3)(D). Pub. L. 87-834, § 8(g)(2), added subsec. (a)(3)(D).

Subsec. (a)(19). Pub. L. 87-834, § 2(f), added subsec. (a)(19).

Subsec. (a)(20). Pub. L. 87-834, § 12(b)(4), added subsec. (a)(20).

1959—Subsec. (a)(3)(C). Pub. L. 86-69, § 3(d)(1), added subsec. (a)(3)(C).

Subsec. (a)(17). Pub. L. 86-69, § 3(d)(2), added subsec. (a)(17).

1958—Subsec. (a)(6). Pub. L. 85-866, § 2(b), eliminated "short-term" preceding "municipal bond."

Subsec. (a)(18). Pub. L. 85-866, § 64(d)(2), added subsec. (a)(18).

1956—Subsec. (a)(16). Act June 29, 1956, added subsec. (a)(16).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a) by section 516(c)(2)(B) of Pub. L. 91-172 applicable to transfers after Dec. 31, 1969, see section 561(d)(3) of Pub. L. 91-172, set out as a note under section 1001 of this title.

Amendment of subsec. (a)(10) by section 504(c)(4) of Pub. L. 91-172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91-172, set out as a note under section 615 of this title.

Amendment of subsec. (c) by section 231(c)(3) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (a)(15) by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

Amendment of subsec. (a)(19) by Pub. L. 88–272 applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963, see section 203(a)(4) of Pub. L. 88–272, set out as a note under section 48 of this title.

Amendment of subsec. (a)(21) by Pub. L. 88–272 applicable in respect of decedents dying after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Subsec. (a)(3)(D) of this section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 821 of this title.

Subsec. (a)(19) of this section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 38 of this title.

Subsec. (a)(20) of this section applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a)(6) by Pub. L. 85–866 applicable with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date, see section 2 (c) of Pub. L. 85–866, set out as a note under section 75 of this title.

Subsec. (a) (18) of this section added by Pub. L. 85–866, applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85–866, set out as a note under section 172 of this title.

CHANGE FROM RETIREMENT TO STRAIGHT LINE METHOD OF COMPUTING DEPRECIATION IN CERTAIN CASES

Section 94 of Pub. L. 85–866 provided that:

"**(a) Short title.**—This section may be cited as the 'Retirement-Straight Line Adjustment Act of 1958'.

"**(b) Making of election.**—Any taxpayer who held retirement-straight line property on his 1956 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Secretary shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided in this section (including such property for periods when held by predecessors of the taxpayer).

"**(c) Retirement-straight line property defined.**—For purposes of this section, the term 'retirement-straight line property' means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for him by the Commissioner) for any taxable year beginning after December 31, 1940, and before January 1, 1956, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation.

"**(d) Basis adjustments as of 1956 adjustment date.**—If the taxpayer has made an election under this section, then in determining the adjusted basis on his 1956 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustments for depreciation provided in section 1016 (a) (2) and (3) of the Internal Revenue Code of 1954, the following adjustments shall be made (effective as of his 1956 adjustment date) in respect of all periods before the 1956 adjustment date:

"**(1) Depreciation sustained before March 1, 1913.**—For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either—

"**(A) Retired before changeover.**—Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under the Internal Revenue Code of 1954 or prior income, war-profits, or excess-profits tax laws.

"**(B) Held on changeover date.**—Was held by the taxpayer or a predecessor on the changeover date. This subparagraph shall not apply to property to which paragraph (2) applies.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary) among all retirement-straight line property held by the taxpayer on his 1956 adjustment date.

"**(2) Property disposed of after changeover and before 1956 adjustment date.**—For that portion of the reserve prescribed by the Commissioner in connection with the changeover which was applicable to property—

"(A) sold, or

"(B) with respect to which a deduction was allowed for Federal income tax purposes by reason of casualty or 'abnormal' retirement in the nature of special obsolescence,

if such sale occurred in, or such deduction was allowed for, a period on or after the changeover date and before the taxpayer's 1956 adjustment date.

"**(3) Depreciation allowable from changeover to 1956 adjustment date.**—For depreciation allowable, under the terms and conditions prescribed by the Commissioner in connection with the changeover, for all periods on and after the changeover date and before the taxpayer's 1956 adjustment date.

This subsection shall apply only with respect to taxable years beginning after December 31, 1955.

"**(e) Effect on period from changeover to 1956 adjustment date.**—If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1956 adjustment date, in lieu of the adjustments for depreciation provided in section 1016 (a) (2) and (3) of the Internal Revenue Code of 1954 and the corresponding provisions of prior revenue laws, the following adjustments shall be made:

"**(1) For prescribed reserve.**—For the amount of the reserve prescribed by the Commissioner in connection with the changeover.

"**(2) For allowable depreciation.**—For the depreciation allowable under the terms and conditions prescribed by the Commissioner in connection with the changeover.

This subsection shall not apply in determining adjusted basis for purposes of section 437 (c) of the Internal Revenue Code of 1939. This subsection shall apply only with respect to taxable years beginning on or after the changeover date and before the taxpayer's 1956 adjustment date.

"(f) **Equity invested capital, etc.**—If an election is made under this section, then (not withstanding the terms and conditions prescribed by the Commissioner in connection with the changeover)—

"(1) **Equity invested capital.**—In determining equity invested capital under sections 458 and 718 of the Internal Revenue Code of 1939, accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, as computed under subsection (d) (1) (B); and

"(2) **Definition of equity capital.**—In determining the adjusted basis of assets for the purpose of section 437 (c) of the Internal Revenue Code of 1939 (and in addition to any other adjustments required by such Code), the basis shall be reduced by depreciation sustained before March 1, 1913 (as computed under subsection (d)), together with any depreciation allowable under subsection (e) (2) for any period before the year for which the excess profits credit is being computed.

"(g) **Definitions.**—For purposes of this section—

"(1) **Depreciation.**—The term 'depreciation' means exhaustion, wear and tear, and obsolescence.

"(2) **Changeover.**—The term 'changeover' means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation.

"(3) **Changeover date.**—The term 'changeover date' means the first day of the first taxable year for which the changeover was effective.

"(4) **1956 adjustment date.**—The term '1956 adjustment date' means, in the case of any taxpayer, the first day of his first taxable year beginning after December 31, 1955.

"(5) **Predecessor.**—The term 'predecessor' means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

"(6) The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(7) The term 'Commissioner' means the Commissioner of Internal Revenue."

CROSS REFERENCES

Adjusted basis for determining gain or loss, see section 1011 of this title.

Distribution of proceeds of loan insured by United States, effect on earnings and profits, see section 312 of this title.

Election in respect of depreciation, etc., allowed before 1952, see section 1020 of this title.

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88-272, set out as a note under section 333 of this title.

Property acquired—

Before March 1, 1913, subject to adjustment provided in this section, see section 1053 of this title.

By gift, adjustment of basis for period antedating gift, see section 1015 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 75, 174, 177, 179, 312, 372, 615, 616, 817, 1011, 1015, 1020, 1034, 1053, 1250 of this title.

§ 1017. Discharge of indebtedness.

Where any amount is excluded from gross income under section 108 (a) (relating to income from discharge of indebtedness) on account of the discharge of indebtedness the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under section 108 (a)) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the Secretary or his delegate) in effect at the time of the filing of the consent by the taxpayer referred to in section 108 (a). The reduction shall be made as of the first day of the taxable year in which the discharge occurred, except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began. (Aug. 16, 1954, ch. 736, 68A Stat. 301.)

CROSS REFERENCES

Basis in connection with certain receivership and bankruptcy proceedings not subject to adjustment under this section, see section 372 of this title.

Rules and regulations, see section 7805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 372 of this title.

§ 1018. Adjustment of capital structure before September 22, 1938.

Where a plan of reorganization of a corporation. approved by the court in a proceeding under section 77B of the National Bankruptcy Act, as amended (48 Stat. 912), is consummated by adjustment of the capital or debt structure of such corporation without the transfer of its assets to another corporation, and a final judgment or decree in such proceeding has been entered before September 22, 1938, then the provisions of section 270 of the Bankruptcy Act, as amended (54 Stat. 709; 11 U. S. C. 670), shall not apply in respect of the property of such corporation. For purposes of this section, the term "reorganization" shall not be limited by the definition of such term in section 112 (g) of the Internal Revenue Code of 1939. (Aug. 16, 1954, ch. 736, 68A Stat. 301.)

§ 1019. Property on which lessee has made improvements.

Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under section 109 (relating to improvements by lessee on lessor's property). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income. (Aug. 16, 1954, ch. 736, 68A Stat. 301.)

§ 1020. Election in respect of depreciation, etc., allowed before 1952.

Any person may elect to have subparagraph (B) of section 1016 (a) (2) apply in respect of periods since February 28, 1913, and before January 1, 1952. Such an election shall be made in such manner as the Secretary or his delegate may by regulations prescribe and shall be irrevocable when made, except

that an election made on or before December 31, 1952, may be revoked at any time before January 1, 1955. A revocation of an election shall be made in such manner as the Secretary or his delegate may by regulations prescribe, and no election may be made by any person after he has so revoked an election. The election shall apply in respect of all property held by the person making the election at any time on or before December 31, 1952, and in respect of all periods since February 28, 1913, and before January 1, 1952, during which such person held such property or for which adjustments must be made under section 1016 (b). An election or a revocation of an election by a transferor, donor, or grantor made after the date of the transfer, gift, or grant of property shall not affect the basis of such property in the hands of the transferee, donee, or grantee. No election may be made under this section after December 31, 1954. (Aug. 16, 1954, ch. 736, 68A Stat. 302.)

CROSS REFERENCES

Rules and regulations, see section 7805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 1021. Sale of annuities.

In case of the sale of an annuity contract, the adjusted basis shall in no case be less than zero. (Aug. 16, 1954, ch. 736, 68A Stat. 302.)

CROSS REFERENCES

Annuities, see section 72 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 72 of this title.

§ 1022 Increase in basis with respect to certain foreign personal holding company stock or securities.

(a) General rule.

The basis (determined under section 1014(b)(5), relating to basis of stock or securities in a foreign personal holding company) of a share of stock or a security, acquired from a decedent dying after December 31, 1963, of a corporation which was a foreign personal holding company for its most recent taxable year ending before the date of the decedent's death shall be increased by its proportionate share of any Federal estate tax attributable to the net appreciation in value of all of such shares and securities determined as provided in this section.

(b) Proportionate share.

For purposes of subsection (a), the proportionate share of a share of stock or of a security is that amount which bears the same ratio to the aggregate increase determined under subsection (c)(2) as the appreciation in value of such share or security bears to the aggregate appreciation in value of all such shares and securities having appreciation in value.

(c) Special rules and definitions.

For purposes of this section—

(1) Federal estate tax.

The term "Federal estate tax" means only the tax imposed by section 2001 or 2101, reduced by any credit allowable with respect to a tax on prior transfers by section 2013 or 2102.

(2) Federal estate tax attributable to net appreciation in value.

The Federal estate tax attributable to the net appreciation in value of all shares of stock and securities to which subsection (a) applies is that amount which bears the same ratio to the Federal estate tax as the net appreciation in value of all of such shares and securities bears to the value of the gross estate as determined under chapter 11 (including section 2032, relating to alternate valuation).

(3) Net appreciation.

The net appreciation in value of all shares and securities to which subsection (a) applies is the amount by which the fair market value of all such shares and securities exceeds the adjusted basis of such property in the hands of the decedent.

(4) Fair market value.

For purposes of this section, the term "fair market value" means fair market value determined under chapter 11 (including section 2032, relating to alternate valuation).

(d) Limitations.

This section shall not apply to any foreign personal holding company referred to in section 342(a)(2). (Added Pub. L. 88–272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92.)

EFFECTIVE DATE

Section applicable in respect of decedents dying after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

CROSS REFERENCES

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

§ 1023. Cross references.

(1) For certain distributions by a corporation which are applied in reduction of basis of stock, see section 301 (c) (2).

(2) For basis of property in case of certain reorganizations and arrangements under the Bankruptcy Act, see sections 270, 396, and 522 of that Act, as amended (11 U. S. C. 670, 796, 922).

(3) For basis in case of construction of new vessels, see section 511 of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1161).

(4) For rules applicable in case of payments in violation of Defense Production Act of 1950, as amended, see section 405 of that Act.

(Aug. 16, 1954, ch. 736, 68A Stat. 302, formerly § 1022, renumbered Feb. 26, 1964, Pub. L. 88–272, title II, § 225(j)(1), 78 Stat. 92.)

REFERENCES IN TEXT

Section 405 of the Defense Production Act of 1950, referred to in par. (4), was classified to former section 2105 of Title 50, Appendix, War and National Defense, and was omitted from the Code. See note under former section 2105 of Title 50, Appendix.

PART III.—COMMON NONTAXABLE EXCHANGES

Sec.

1031. Exchange of property held for productive use or investment.
1032. Exchange of stock for property.
1033. Involuntary conversions.
1034. Sale or exchange of residence.
1035. Certain exchanges of insurance policies.
1036. Stock for stock of same corporation.
1037. Certain exchanges of United States obligations.
1038. Certain reacquisitions of real property.
1039. Certain sales of low-income housing projects.

AMENDMENTS

1969—Pub. L. 91–172, title IX, § 910(c), Dec. 30, 1969, 83 Stat. 722, added item 1039.

1964—Pub. L. 88–570, § 2(b), Sept. 2, 1964, 78 Stat. 856, added item 1038.

1959—Pub. L. 86–346, title II, § 201(b), Sept. 22, 1959, 73 Stat. 623, added item 1037.

§ 1031. Exchange of property held for productive use or investment.

(a) Nonrecognition of gain or loss from exchanges solely in kind.

No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(b) Gain from exchanges not solely in kind.

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind.

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis.

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035 (a), and section 1036 (a), where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

(e) Exchanges of livestock of different sexes.

For purposes of this section, livestock of different sexes are not property of a like kind. (Aug. 16, 1954, ch. 736, 68A Stat. 302; Sept. 2, 1958, Pub. L. 85–866, title I, § 44, 72 Stat. 1641; Sept. 22, 1959, Pub. L. 86–346, title II, § 201 (c)—(e), 73 Stat. 624; Dec. 30, 1969, Pub. L. 91–172, title II, § 212(c)(1), 83 Stat. 571.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1959—Pub. L. 86–346 inserted references to section 1037 (a) in subsecs. (b) and (c) and first two sentences of subsec. (d).

1958—Subsec. (d). Pub. L. 85–866 inserted in first sentence a comma between "exchanged" and "decreased" and the words "or decreased in the amount of loss", and substituted in the second sentence "subsection" for "paragraph".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(c)(2) of Pub. L. 91–172 provided that: "The amendment made by paragraph (1) [adding subsec. (e) of this section] shall apply to taxable years to which the Internal Revenue Code of 1954 applies."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–346, § 201(c)—(e), effective for taxable years ending after Sept. 22, 1959, see section 203 of Pub. L. 86–346, set out as a note under section 1037 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Stock for stock of same corporation, see section 1036 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81, 425, 454, 1037, 1245, 1250, 1251 of this title.

§ 1032. Exchange of stock for property.

(a) Nonrecognition of gain or loss.

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

(b) Basis.

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

(Aug. 16, 1954, ch. 736, 68A Stat. 303.)

§ 1033. Involuntary conversions.

(a) General rule.

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(1) Conversion into similar property.

Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Conversion into money where disposition occurred prior to 1951.

Into money, and the disposition of the converted property occurred before January 1, 1951, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the Secretary or his delegate, expended in the acquisition of other property similar or related in

service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For purposes of this paragraph and paragraph (3), the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation. For purposes of this paragraph and paragraph (3), the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(3) Conversion into money where disposition occurred after 1950.

Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1950, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of gain.

If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. For purposes of this paragraph—

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (c) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 1012.

(B) Period within which property must be replaced.

The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(i) 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the Secretary or his delegate, at the close of such later date as the Secretary or his delegate may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

(C) Time for assessment of deficiency attributable to gain upon conversion.

If a taxpayer has made the election provided in subparagraph (A), then—

(i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary or his delegate is notified by the taxpayer (in such manner as the Secretary or his delegate may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212 (c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) Time for assessment of other deficiencies attributable to election.

If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212 (c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(b) Residence of taxpayer.

Subsection (a) shall not apply, in the case of property used by the taxpayer as his principal residence, if the destruction, theft, seizure, requisition, or condemnation of the residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954.

(c) Basis of property acquired through involuntary conversion.

If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in subsection (a) (1) or (2),

the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This subsection shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954. In the case of property purchased by the taxpayer in a transaction described in subsection (a) (3) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(d) Property sold pursuant to reclamation laws.

For purposes of this subtitle, if property lying within an irrigation project is sold or otherwise disposed of in order to conform to the acreage limitation provisions of Federal reclamation laws, such sale or disposition shall be treated as an involuntary conversion to which this section applies.

(e) Livestock destroyed by disease.

For purposes of this subtitle, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(f) Livestock sold on account of drought.

For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought.

(g) Condemnation of real property held for productive use in trade or business or for investment.

(1) Special rule.

For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) Limitations.

(A) Purchase of stock.

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a) (3) (A).

(B) Conversions before January 1, 1958.

Paragraph (1) shall apply with respect to the compulsory or involuntary conversion of any real property only if the disposition of the converted property (within the meaning of subsection (a) (2)) occurs after December 31, 1957.

(h) Cross references.

(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.

(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231 (a).

(3) For exclusion from gross income of certain gain from involuntary conversion of residence of taxpayer who has attained age 65, see section 121.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; June 29, 1956, ch. 464, § 5(a), 70 Stat. 407; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 45, 46(a), 72 Stat. 1641; Feb. 26, 1964, Pub. L. 88-272, title II, § 206(b)(3), 78 Stat. 40; Dec. 30, 1969, Pub. L. 91-172, title IX, § 915(a), 83 Stat. 723.)

AMENDMENTS

1969—Subsec. (a)(3)(B). Pub. L. 91-172 substituted "2 years" for "one year".

1964—Subsec. (h)(3). Pub. L. 88-272 added par. (3).

1958—Subsec. (a)(2). Pub. L. 85-866, § 45, added provision defining "control".

Subsec. (g). Pub. L. 85-866, § 46(a), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h). Pub. L. 85-866, § 46(a), redesignated former subsec. (g) as (h).

1956—Subsec. (f). Act June 29, 1956, added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Act June 29, 1956, redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 915(b) of Pub. L. 91-172 provided that: "The amendment made by this section [amending subsec. (a)(3)(B) of this section] shall apply only if the disposition of the converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1954 [subsec. (a)(2) of this section]) occurs after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88-272 set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) (2) of this section by Pub. L. 85-866, and subsecs. (g), (h) and (i) (3) of this section, applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 5 (b) of act June 29, 1956, provided that: "The amendment made by this section [adding subsec. (f)] shall apply with respect to taxable years ending after December 31, 1955, but only in the case of sales and exchanges of livestock after December 31, 1955."

CROSS REFERENCES

Gain from sale or exchange to effectuate policies of F. C. C., see section 1071 of this title.

Gain or loss from involuntary conversion, see section 1231 of this title.

Holding period of property, see section 1223 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 121, 381, 1071, 1223, 1245, 1250, 1251, 1332, 1333, 1336, 1351 of this title.

§ 1034. Sale or exchange of residence.

(a) Nonrecognition of gain.

If property (in this section called "old residence") used by the taxpayer as his principal residence is sold by him after December 31, 1953, and, within a period beginning 1 year before the date of such sale and ending 1 year after such date, property (in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's adjusted sales price (as defined in subsection (b)) of the old residence exceeds the taxpayer's cost of purchasing the new residence.

(b) Adjusted sales price defined.

(1) In general.

For purposes of this section, the term "adjusted sales price" means the amount realized, reduced by the aggregate of the expenses for work performed on the old residence in order to assist in its sale.

(2) Limitations.

The reduction provided in paragraph (1) applies only to expenses—

(A) for work performed during the 90-day period ending on the day on which the contract to sell the old residence is entered into;

(B) which are paid on or before the 30th day after the date of the sale of the old residence; and

(C) which are—

(i) not allowable as deductions in computing taxable income under section 63 (a) (defining taxable income), and

(ii) not taken into account in computing the amount realized from the sale of the old residence.

(3) Effective date.

The reduction provided in paragraph (1) applies to expenses for work performed in any taxable year (whether beginning before, on, or after January 1, 1954), but only in the case of a sale or exchange of an old residence which occurs after December 31, 1953.

(c) Rules for application of section.

For purposes of this section:

(1) An exchange by the taxpayer of his residence for other property shall be treated as a sale of such residence, and the acquisition of a residence on the exchange of property shall be treated as a purchase of such residence.

(2) A residence any part of which was constructed or reconstructed by the taxpayer shall be treated as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction, and improvements made which are properly chargeable to capital account, during the period specified in subsection (a).

(3) If a residence is purchased by the taxpayer before the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him before the date of the sale of the old residence.

(4) If the taxpayer, during the period described in subsection (a), purchases more than one residence which is used by him as his principal residence at some time within 1 year after the date of the sale of the old residence, only the last of such residences so used by him after the date of such sale shall constitute the new residence.

(5) In the case of a new residence the construction of which was commenced by the taxpayer before the expiration of one year after the date of the sale of the old residence, the period specified in subsection (a), and the 1 year referred to in paragraph (4) of this subsection, shall be treated as including a period of 18 months beginning with the date of the sale of the old residence.

(d) Limitation.

Subsection (a) shall not apply with respect to the sale of the taxpayer's residence if within 1 year before the date of such sale the taxpayer sold at a gain other property used by him as his principal residence, and any part of such gain was not recognized by reason of subsection (a) or section 112 (n) of the Internal Revenue Code of 1939.

(e) Basis of new residence.

Where the purchase of a new residence results, under subsection (a) or under section 112 (n) of the Internal Revenue Code of 1939, in the nonrecognition of gain on the sale of an old residence, in determining the adjusted basis of the new residence as of any time following the sale of the old residence, the adjustments to basis shall include a reduction by an amount equal to the amount of the gain not so recognized on the sale of the old residence. For this purpose, the amount of the gain not so recognized on the sale of the old residence includes only so much of such gain as is not recognized by reason of the cost, up to such time, of purchasing the new residence.

(f) Tenant-stockholder in a cooperative housing corporation.

For purposes of this section, section 1016 (relating to adjustments to basis), and section 1223 (relating to holding period), references to property used by the taxpayer as his principal residence, and references to the residence of a taxpayer, shall include stock held by a tenant-stockholder (as defined in section 216, relating to deduction for amounts representing taxes and interest paid to a cooperative housing corporation) in a cooperative housing corporation (as defined in such section) if—

(1) in the case of stock sold, the house or apartment which the taxpayer was entitled to occupy as such stockholder was used by him as his principal residence, and

(2) in the case of stock purchased, the taxpayer used as his principal residence the house or apartment which he was entitled to occupy as such stockholder.

(g) Husband and wife.

If the taxpayer and his spouse, in accordance with regulations which shall be prescribed by the Secretary or his delegate pursuant to this subsection, consent to the application of paragraph (2) of this subsection, then—

(1) for purposes of this section—

(A) the taxpayer's adjusted sales price of the old residence is the adjusted sales price (of the taxpayer, or of the taxpayer and his spouse) of the old residence, and

(B) the taxpayer's cost of purchasing the new residence is the cost (to the taxpayer, his spouse, or both) of purchasing the new residence (whether held by the taxpayer, his spouse, or the taxpayer and his spouse); and

(2) so much of the gain on the sale of the old residence as is not recognized solely by reason of this subsection, and so much of the adjustment under subsection (e) to the basis of the new residence as results solely from this subsection shall be allocated between the taxpayer and his spouse as provided in such regulations.

This subsection shall apply only if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence. In case the taxpayer and his spouse do not consent to the application of paragraph (2) of this subsection then the recognition of gain on the sale of the old residence shall be determined under this section without regard to the rules provided in this subsection.

(h) Members of Armed Forces.

The running of any period of time specified in subsection (a) or (c) (other than the 1 year referred to in subsection (c) (4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence and during an induction period (as defined in section 112 (c) (5)) except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence. For purposes of this subsection, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(i) Special rule for involuntary conversions.

(1) In general.

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property, or the sale or exchange of property under threat or imminence thereof—

(A) if occurring after December 31, 1950, and before January 1, 1954, shall be treated as the sale of such property; and

(B) if occurring after December 31, 1953, shall not be treated as the sale of such property.

(2) Condemnations after December 31, 1957.

For purposes of this section, the seizure, requisition, or condemnation of property, or the sale or exchange of property under threat or imminence thereof, if occurring after December 31, 1957, shall, at the election of the taxpayer, be treated as the sale of such property. Such election shall be made at such time and in such manner as the Secretary or his delegate shall prescribe by regulations.

(3) Cross reference.

For treatment of residences involuntarily converted after December 31, 1953, see section 1033 (relating to involuntary conversions).

(j) Statute of limitations.

If after December 31, 1950, the taxpayer during a taxable year sells at a gain property used by him as his principal residence, then—

(1) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire before the expiration of 3 years from the date the Secretary or his delegate is notified by the taxpayer (in such manner as the Secretary or his delegate may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase a new residence within the period specified in subsection (a), or

(C) a failure to make such purchase within such period; and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Cross reference.

For exclusion from gross income of certain gain from sale or exchange of residence of taxpayer who has attained age 65, see section 121.

(Aug. 16, 1954, ch. 736, 68A Stat. 306; Sept. 2, 1958, Pub. L. 85–866, title I, § 46(b), 72 Stat. 1642; Feb. 26, 1964, Pub. L. 88–272, title II, § 206(b)(4), 78 Stat. 40.)

AMENDMENTS

1964—Subsec. (k). Pub. L. 88–272 added subsec. (k).

1958—Subsec. (i)(2). Pub. L. 85–866 added subsec. (i)(2) and redesignated former par. (2) as (3).

Subsec. (i)(3). Pub. L. 85–866, redesignated former par. (2) as (3).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88–272 set out as a note under section 121 of this title.

CROSS REFERENCES

Adjustments to basis, see section 1016 of this title.

Notice of deficiency, see section 6212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 121, 512, 1016, 1038, 1223, 1250 of this title.

§ 1035. Certain exchanges of insurance policies.

(a) General rules.

No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract; or

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date

not later than the date payments would have begun under the contract exchanged, or (B) for an annuity contract; or

(3) an annuity contract for an annuity contract.

(b) Definitions.

For the purpose of this section—

(1) Endowment contract.

A contract of endowment insurance is a contract with a life insurance company as defined in section 801 which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

(2) Annuity contract.

An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments.

(3) Life insurance contract.

A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured.

(c) Cross references.

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1031 of this title.

§ 1036. Stock for stock of same corporation.

(a) General rule.

No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(b) Cross references.

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309.)

CROSS REFERENCES

Exchange of stock and securities in certain reorganizations, see section 354 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81, 425, 1031 of this title.

§ 1037. Certain exchanges of United States obligations.

(a) General rule.

When so provided by regulations promulgated by the Secretary in connection with the issue of obligations of the United States, no gain or loss shall be recognized on the surrender to the United States of obligations of the United States issued under the Second Liberty Bond Act in exchange solely for other obligations issued under such Act.

(b) Application of section 1232.

(1) Exchanges involving obligations issued at a discount.

In any case in which gain has been realized but not recognized because of the provisions of subsection (a) (or so much of section 1031(b) as relates to subsection (a) of this section), to the extent such gain is later recognized by reason of a disposition or redemption of an obligation received in an exchange subject to such provisions, the first sentence of section 1232(a)(2)(A) shall apply to such gain as though the obligation disposed of or redeemed were the obligation surrendered to the Government in the exchange rather than the obligation actually disposed of or redeemed. For purposes of this paragraph and section 1232, if the obligation surrendered in the exchange is a nontransferable obligation described in subsection (a) or (c) of section 454—

(A) the aggregate amount considered, with respect to the obligation surrendered, as gain from the sale or exchange of property which is not a capital asset shall not exceed the difference between the issue price and the stated redemption price which applies at the time of the exchange, and

(B) the issue price of the obligation received in the exchange shall be considered to be the stated redemption price of the obligation surrendered in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(2) Exchanges of transferable obligations issued at not less than par.

In any case in which subsection (a) (or so much of section 1031 (b) or (c) as relates to subsection (a) of this section) has applied to the exchange of a transferable obligation which was issued at not less than par for another transferable obligation, the issue price of the obligation received from the Government in the exchange shall be considered for purposes of applying section 1232 to be the same as the issue price of the obligation surrendered to the Government in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(c) Cross references.

(1) For rules relating to the recognition of gain or loss in a case where subsection (a) would apply except for the fact that the exchange was not made solely for other obligations of the United States, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of obligations of the United States acquired in an exchange for other obligations described in subsection (a), see subsection (d) of section 1031.

(Added Pub. L. 86-346, title II, § 201(a), Sept. 22, 1959, 73 Stat. 622.)

REFERENCES IN TEXT

The Second Liberty Bond Act, referred to in subsec. (a), is classified to sections 745, 752—754b, 757, 757b—758, 760, 764—766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Such Act, referred to in subsec. (a), refers to the Second Liberty Bond Act.

EFFECTIVE DATE

Section 203 of Pub. L. 86-346 provided that: "The amendments made by this title [enacting this section and amending section 1031 of this title and section 742a of Title 31] shall be effective for taxable years ending after the date of enactment of this Act [Sept. 22, 1959]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 454, 1031 of this title.

§ 1038. Certain reacquisitions of real property.

(a) General rule.

If—

(1) a sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) the seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) Amount of gain resulting.

(1) In general.

In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) the amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) the amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) Limitation.

The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) the amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) the amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Gain recognized.

Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) Basis of reacquired real property.

If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) the amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) the amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) Indebtedness treated as worthless prior to reacquisition.

If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) the adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) Principal residences.

If—

(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

(A) an election under section 121 (relating to gain from sale or exchange of residence of an individual who has attained age 65) is in effect, or

(B) gain was not recognized under section 1034 (relating to sale or exchange of residence); and

(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary or his delegate, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

(f) Reacquisitions by domestic building and loan associations.

This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.). (Added Pub. L. 88–570, § 2(a), Sept. 2, 1964, 78 Stat. 854.)

EFFECTIVE DATE; ELECTION TO APPLY TO TAXABLE YEARS BEGINNING AFTER DEC. 31, 1957

Section 2(c) of Pub. L. 88–570 provided that:

"(1) The amendments made by this section [adding this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1964].

"(2) If the taxpayer makes an election under this paragraph, the amendments made by this section [adding this section] shall also apply to taxable years beginning after December 31, 1957, except that such amendments shall not apply with respect to any reacquisition of real property in a taxable year for which the assessment of a deficiency, or the credit or refund of an overpayment, is

prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law. An election under this paragraph shall be made within one year after the date of the enactment of this Act [Sept. 2, 1964] and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations.

"(3) If an election is made by the taxpayer under paragraph (2), and if the assessment of a deficiency, or the credit or refund of an overpayment, for any taxable year to which such election applies is not prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law—

"(A) the period within which a deficiency for such taxable year may be assessed (to the extent such deficiency is attributable to the application of the amendments made by this section) shall not expire prior to one year after the date of such election; and

"(B) the period within which a claim for credit or refund of an overpayment for such taxable year may be filed (to the extent such overpayment is attributable to the application of such amendments) shall not expire prior to one year after the date of such election.

No interest shall be payable with respect to any deficiency attributable to the application of such amendments, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such amendments, for any period prior to the date of the enactment of this Act [Sept. 2, 1964]. An election by a taxpayer under paragraph (2) shall be deemed a consent to the application of this paragraph."

§ 1039. Certain sales of low-income housing projects.

(a) Nonrecognition of gain.

If—

(1) a qualified housing project is sold or disposed of by the taxpayer in an approved disposition, and

(2) within the reinvestment period the taxpayer constructs, reconstructs, or acquires another qualified housing project,

then, at the election of the taxpayer, gain from such approved disposition shall be recognized only to the extent that the net amount realized on such approved disposition exceeds the cost of such other qualified housing project. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations.

(b) Definitions.

For purposes of this section—

(1) Qualified housing project.

The term "qualified housing project" means a project to provide rental or cooperative housing for lower income families—

(A) with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, and

(B) with respect to which the owner is, under such sections or regulations issued thereunder—

(i) limited as to the rate of return on his investment in the project, and

(ii) limited as to rentals or occupancy charges for units in the project.

(2) Approved disposition.

The term "approved disposition" means a sale or other disposition of a qualified housing project to the tenants or occupants of units in such project, or to a cooperative or other nonprofit organization formed solely for the benefit of such tenants or occupants, which sale or disposition is approved by the Secretary of Housing and Urban Development under section 221(d)(3) or 236 of the National Housing Act or regulations issued under such sections.

(3) Reinvestment period.

The reinvestment period, with respect to an approved disposition of a qualified housing project, is the period beginning one year before the date of such approved disposition and ending—

(A) one year after the close of the first taxable year in which any part of the gain from such approved disposition is realized, or

(B) subject to such terms and conditions as may be specified by the Secretary or his delegate, at the close of such later date as the Secretary or his delegate may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations.

(4) Net amount realized.

The net amount realized on an approved disposition of a qualified housing project is the amount realized reduced by—

(A) the expenses paid or incurred which are directly connected with such approved disposition, and

(B) the amount of taxes (other than income taxes) paid or incurred which are attributable to such approved disposition.

(c) Special rules.

For purposes of applying subsection (a)(2) with respect to an approved disposition—

(1) no property acquired by the taxpayer before the date of the approved disposition shall be taken into account unless such property is held by the taxpayer on such date, and

(2) no property acquired by the taxpayer shall be taken into account unless, except as provided in subsection (d), the unadjusted basis of such property is its cost within the meaning of section 1012.

(d) Basis of other qualified housing project.

If the taxpayer makes an election under subsection (a) with respect to an approved disposition, the basis of the qualified housing project described in subsection (a)(2) shall be its cost reduced by an amount equal to the amount of gain not recognized by reason of the application of subsection (a).

(e) Assessment of deficiencies.

(1) Deficiency attributable to gain.

If the taxpayer has made an election under subsection (a) with respect to an approved disposition—

(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such approved disposition is realized, attributable to the gain on such approved disposition shall not expire prior to the expiration of 3 years from the date the Secretary or his delegate is notified by the taxpayer (in such manner as the Secretary or his delegate may by regulations prescribe) of the construction, reconstruction, or acquisition of another

qualified housing project or of the failure to construct, reconstruct, or acquire another qualified housing project, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provision of any other law or rule of law which would otherwise prevent such assessment.

(2) Time for assessment of other deficiencies attributable to election.

If a taxpayer has made an election under subsection (a) with respect to an approved disposition and another qualified housing project is constructed, reconstructed, or acquired before the beginning of the last taxable year in which any part of the gain upon such approved disposition is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212 (c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(Added Pub. L. 91-172, title IX, § 910(a), Dec. 30, 1969, 83 Stat. 718.)

EFFECTIVE DATE

Section 910(d) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting this section and amending section 1250 of this title] shall apply to approved dispositions of qualified housing projects (within the meaning of section 1039 of the Internal Revenue Code of 1954 as added by subsection (a) [subsec. (a) of this section]) after October 9, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1250 of this title.

PART IV.—SPECIAL RULES

Sec.
1051. Property acquired during affiliation.
1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939.
1053. Property acquired before March 1, 1913.
1054. Certain stock of Federal National Mortgage Association.
1055. Redeemable ground rents.
1056. Cross references.

AMENDMENTS

1963—Pub. L. 88-9, § 1(d), Apr. 10, 1963, 77 Stat. 8, added item 1055 and renumbered former item 1055 as 1056.

1960—Pub. L. 86-779, § 8(c), Sept. 14, 1960, 74 Stat. 1003, renumbered former item 1054 as 1055 and added new item 1054.

§ 1051. Property acquired during affiliation.

In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Secretary or his delegate, without regard to inter-company transactions in respect of which gain or loss was not recognized. For purposes of this section, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return was made by such corporation under chapter 6 of this subtitle (sec. 1501 and following) or under section 141 of the Internal Revenue Code of 1939 or of the Revenue Act of 1938, 1936, 1934, 1932, or 1928 shall be determined in accordance with regulations prescribed under section 1502 or in accordance with regulations prescribed under the appropriate section 141, as the case may be. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return was made by such corporation under chapter 6 of this subtitle or such section 141 shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 1502 or in accordance with regulations prescribed under the appropriate section 141, as the case may be. (Aug. 16, 1954, ch. 736, 68A Stat. 310.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 617 of this title.

§ 1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939.

(a) Revenue Act of 1932.

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1934, and the basis thereof, for purposes of the Revenue Act of 1932 was prescribed by section 113 (a) (6), (7), or (9) of such Act (47 Stat. 199), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(b) Revenue Act of 1934.

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1936, and the basis thereof, for purposes of the Revenue Act of 1934, was prescribed by section 113 (a) (6), (7), or (8) of such Act (48 Stat. 706), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(c) Internal Revenue Code of 1939.

If the property was acquired, after February 28, 1913, in a transaction to which the Internal Revenue Code of 1939 applied, and the basis thereof, for purposes of the Internal Revenue Code of 1939, was prescribed by section 113 (a) (6), (7), (8), (13), (15), (18), (19), or (23) of such code, then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Internal Revenue Code of 1939. (Aug. 16, 1954, ch. 736, 68A Stat. 310.)

CROSS REFERENCES

Basis of—

Property contributed to partnership, see section 723 of this title.

Property received in corporate liquidations, see section 334 of this title.

Stock and stock rights acquired in corporate distributions, see section 307 of this title.

Basis to—

Corporations in corporate organizations and reorganizations, see section 362 of this title.

Distributees in corporate organizations and reorganizations, see section 358 of this title.
Partner of distributed property other than money, see section 732 of this title.
Exchange of property held for productive use or investment, basis, see section 1031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1223 of this title.

§ 1053. Property acquired before March 1, 1913.

In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subtitle, adjusted (for the period before March 1, 1913) as provided in section 1016, is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date. (Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85-866, title I, § 47, 72 Stat. 1642.)

AMENDMENTS

1958—Pub. L. 85-866 substituted "subtitle" for "part".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Basis—
Adjustments to, see section 1016 of this title.
Cost, see section 1012 of this title.
Distributed property other than money in partnerships, see section 732 of this title.
Distributees in certain corporate organization or reorganization, see section 358 of this title.
Exchange not solely in kind, see section 1031 (d) of this title.
Gift or transfer in trust after Jan. 1, 1921, see section 1015 (c) of this title.
Gifts after Dec. 31, 1920, see section 1015 (a) of this title.
Property acquired after Feb. 28, 1913, see section 1052 of this title.
Property acquired from decedent, see section 1014 of this title.
Property included in inventory, see section 1013 of this title.
Property received in corporate liquidations, see section 334 of this title.
Stock and stock right acquired in corporate distributions, see section 307 of this title.
Transfer in trust after Dec. 31, 1920, see section 1015 (b) of this title.
Fair market value of property received as amount realized on gain, see section 1001 (b) of this title.

§ 1054. Certain stock of Federal National Mortgage Association.

In the case of a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718), the basis of such share in the hands of the initial holder shall be an amount equal to the capital contributions evidenced by such share reduced by the amount (if any) required by section 162(d) to be treated (with respect to such share) as ordinary and necessary expenses paid or incurred in carrying on a trade or business. (Added Pub. L. 86-779, § 8(b), Sept. 14, 1960, 74 Stat. 1003.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1959, see section 8(d) of Pub. L. 86-779, set out as a note under section 162 of this title.

§ 1055. Redeemable ground rents.

(a) Character.

For purposes of this subtitle—

(1) a redeemable ground rent shall be treated as being in the nature of a mortgage, and

(2) real property held subject to liabilities under a redeemable ground rent shall be treated as held subject to liabilities under a mortgage.

(b) Application of subsection (a).

(1) In general.

Subsection (a) shall take effect on the day after the date of the enactment of this section and shall apply with respect to taxable years ending after such date of enactment.

(2) Basis of holder.

In determining the basis of real property held subject to liabilities under a redeemable ground rent, subsection (a) shall apply whether such real property was acquired before or after the enactment of this section.

(3) Basis of reserved redeemable ground rent.

In the case of a redeemable ground rent reserved or created on or before the date of the enactment of this section in connection with a transfer of the right to hold real property subject to liabilities under such ground rent, the basis of such ground rent after such date in the hands of the person who reserved or created the ground rent shall be the amount taken into account in respect of such ground rent for Federal income tax purposes as consideration for the disposition of such real property. If no such amount was taken into account, such basis shall be determined as if this section had not been enacted.

(c) Redeemable ground rent defined.

For purposes of this subtitle, the term "redeemable ground rent" means only a ground rent with respect to which—

(1) there is a lease of land which is assignable by the lessee without the consent of the lessor and which (together with periods for which the lease may be renewed at the option of the lessee) is for a term in excess of 15 years,

(2) the leaseholder has a present or future right to terminate, and to acquire the entire interest of of the lessor in the land, by payment of a determined or determinable amount, which right exists by virtue of State or local law and not because of any private agreement or privately created condition, and

(3) the lessor's interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease.

(d) Cross reference

For treatment of rentals under redeemable ground rents as interest, see section 163(c).

(Added Pub. L. 88-9, § 1(b), Apr. 10, 1963, 77 Stat. 7.)

REFERENCES IN TEXT

Date of the enactment of this section, referred to in subsec. (b) (1), (3), means Apr. 10, 1963, the date of approval of Pub. L. 88-9.

EFFECTIVE DATE

Section 2 of Pub. L. 88-9 provided that: "The amendments made by subsection (a) of the first section of this Act [to section 163 of this title] shall take effect as of January 1, 1962, and shall apply with respect to taxable years ending on or after such date. The amendments made by subsection (b) of the first section of this Act [adding this section] shall take effect on the day after the date of the enactment of this Act [Apr. 10, 1963] and shall apply with respect to taxable years ending after such date of enactment [Apr. 10, 1963]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7701 of this title.

§ 1056. Cross references.

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U. S. C. 1160).

(2) For recognition of gain or loss in connection with the construction of new vessels, see section 511 of such Act, as amended (46 U. S. C. 1161).

(3) For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U. S. C. App. 1741).

(Aug. 16, 1954, ch. 736, 68A Stat. 311, § 1056, formerly § 1054, renumbered § 1055, Sept. 14, 1960, Pub. L. 86-779, § 8(b), 74 Stat. 1003; renumbered § 1056, Apr. 10, 1963, Pub. L. 88-9, § 1(b), 77 Stat. 7.)

PART V.—CHANGES TO EFFECTUATE F. C. C. POLICY

Sec.
1071. Gain from sale or exchange to effectuate policies of F. C. C.

§ 1071. Gain from sale or exchange to effectuate policies of F. C. C.

(a) Nonrecognition of gain or loss.

If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of section 1033. For purposes of such section as made applicable by the provisions of this section, stock of a corporation operating a radio broadcasting station, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property so converted. The part of the gain, if any, on such sale or exchange to which section 1033 is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss on sale or exchange of property, of a character subject to the allowance for depreciation under section 167, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary or his delegate. Any election made by the taxpayer under this section shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place, and such election shall be binding for the taxable year and all subsequent taxable years.

(b) Basis.

For basis of property acquired on a sale or exchange treated as an involuntary conversion under subsection (a), see section 1033 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85-866, title I, § 48(a), 72 Stat. 1642.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-866 substituted "to effectuate a change in a policy of, or the adoption of a new policy by, the Commission" for "to effectuate the policies of the Commission".

EFFECTIVE DATE OF 1958 AMENDMENT

Section 48 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply with respect to any sale or exchange after December 31, 1957."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1245, 1250 of this title.

PART VI.—EXCHANGES IN OBEDIENCE TO S. E. C. ORDERS

Sec.
1081. Nonrecognition of gain or loss on exchanges or distributions in obedience to orders of S. E. C.
1082. Basis for determining gain or loss.
1083. Definitions.

§ 1081. Nonrecognition of gain or loss on exchanges or distributions in obedience to orders of S. E. C.

(a) Exchanges of stock or securities only.

No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the Securities and Exchange Commission.

(b) Exchanges and sales of property by corporations.

(1) General rule.

No gain shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the Securities and Exchange Commission, transfers property in exchange for property, and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. Any gain, to the extent that it cannot be applied in reduction of basis under section 1082 (a) (2), shall be recognized.

(2) Nonexempt property.

If any such property so received is nonexempt property, gain shall be recognized unless such nonexempt property or an amount equal to the fair market value of such property at the time of the transfer is, within 24 months of the transfer, under regulations prescribed by the Secretary or his delegate, and in accordance with an order of the Securities and Exchange Commission, expended for property other than nonexempt property or is invested as a contribution to the capital, or as paid-in surplus, of another corporation, and

such order recites that such expenditure or investment by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If the fair market value of such nonexempt property at the time of the transfer exceeds the amount expended and the amount invested, as required in the preceding sentence, the gain, if any, to the extent of such excess, shall be recognized.

(3) Cancellation or redemption of stock or securities.

For purposes of this subsection, a distribution in cancellation or redemption (except a distribution having the effect of a dividend) of the whole or a part of the transferor's own stock (not acquired on the transfer) and a payment in complete or partial retirement or cancellation of securities representing indebtedness of the transferor or a complete or partial retirement or cancellation of such securities which is a part of the consideration for the transfer shall be considered an expenditure for property other than nonexempt property, and if, on the transfer, a liability of the transferor is assumed, or property of the transferor is transferred subject to a liability, the amount of such liability shall be considered to be an expenditure by the transferor for property other than nonexempt property.

(4) Consents.

This subsection shall not apply unless the transferor corporation consents, at such time and in such manner as the Secretary or his delegate may by regulations prescribe to the regulations prescribed under section 1082 (a) (2) in effect at the time of filing its return for the taxable year in which the transfer occurs.

(c) Distribution of stock or securities only.

(1) In general.

If there is distributed, in obedience to an order of the Securities and Exchange Commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(2) Special rule.

If—

(A) there is distributed to a shareholder in a corporation rights to acquire common stock in a second corporation without the surrender by such shareholder of stock in the first corporation,

(B) such distribution is in accordance with an arrangement forming a ground for an order of the Securities and Exchange Commission issued pursuant to section 3 of the Public Utility Holding Company Act of 1935 (49 Stat. 810; 15 U. S. C. 79c) that such corporation is exempt from any provision or provisions of such Act, and

(C) before January 1, 1958, the first corporation disposes of all of the common stock in the second corporation which it owns,

then no gain to the distributee from the receipt of the rights so distributed shall be recognized. If the first corporation does not, before January 1, 1958, dispose of all of the common stock which it owns in the second corporation, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment or the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of such rights to acquire stock, include one year immediately following the date on which the first corporation notifies the Secretary or his delegate whether or not the requirements of subparagraph (C) of the preceding sentence have been met; and such assessment and collection may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment and collection.

(d) Transfers within system group.

(1) General rule.

No gain or loss shall be recognized to a corporation which is a member of a system group—

(A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the Securities and Exchange Commission, or

(B) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the Securities and Exchange Commission.

If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

(2) Sales of stock or securities.

If the property received on an exchange which is within any of the provisions of paragraph (1) consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the Securities and Exchange Commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation on the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock

or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) Exchanges not solely in kind.

(1) General rule.

If an exchange (not within any of the provisions of subsection (d)) would be within the provisions of subsection (a) if it were not for the fact that property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

(2) Distribution treated as dividend.

If an exchange is within the provisions of paragraph (1) and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such paragraph as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

(f) Conditions for application of section.

Except in the case of a distribution described in subsection (c) (2), the provisions of this section shall not apply to an exchange, expenditure, investment, distribution, or sale unless—

(1) the order of the Securities and Exchange Commission in obedience to which such exchange, expenditure, investment, distribution, or sale was made recites that such exchange, expenditure, investment, distribution, or sale is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935 (49 Stat. 820; 15 U. S. C. 79k (b)),

(2) such order specifies and itemizes the stock and securities and other property which are ordered to be acquired, transferred, received, or sold on such exchange, acquisition, expenditure, distribution, or sale, and, in the case of an investment, the investment to be made, and

(3) such exchange, acquisition, expenditure, investment, distribution, or sale was made in obedience to such order, and was completed within the time prescribed therefor.

(g) Nonapplication of other provisions.

If a distribution described in subsection (c) (2), or an exchange or distribution made in obedience to an order of the Securities and Exchange Commission, is within any of the provisions of this part and may also be considered to be within any of the other provisions of this subchapter or subchapter C (sec. 301 and following, relating to corporate distributions and adjustments), then the provisions of this part only shall apply. (Aug. 16, 1954, ch. 736, 68A Stat. 312.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1223, 1245, 1250 of this title.

§ 1082. Basis for determining gain or loss.

(a) Exchanges generally.

(1) Exchanges subject to the provisions of section 1081 (a) or (e).

If the property was acquired on an exchange subject to the provisions of section 1081 (a) or (e), or the corresponding provisions of prior internal revenue laws, the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer, and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 1081 (a) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(2) Exchanges subject to the provisions of section 1081 (b).

The gain not recognized on a transfer by reason of section 1081 (b) or the corresponding provisions of prior internal revenue laws shall be applied to reduce the basis for determining gain or loss on sale or exchange of the following categories of property in the hands of the transferor immediately after the transfer, and property acquired within 24 months after such transfer by an expenditure or investment to which section 1081 (b) relates on account of the acquisition of which gain is not recognized under such subsection, in the following order:

(A) property of a character subject to the allowance for depreciation under section 167;

(B) property (not described in subparagraph (A)) with respect to which a deduction for amortization is allowable under section 168, 169, 184, 185, or 187;

(C) property with respect to which a deduction for depletion is allowable under section 611 but not allowable under section 613;

(D) stock and securities of corporations not members of the system group of which the transferor is a member (other than stock or securities of a corporation of which the transferor is a subsidiary);

(E) securities (other than stock) of corporations which are members of the system group of which the transferor is a member (other than securities of the transferor or of a corporation of which the transferor is a subsidiary);

(F) stock of corporations which are members of the system group of which the transferor is a member (other than stock of the transferor or of a corporation of which the transferor is a subsidiary);

(G) all other remaining property of the transferor (other than stock or securities of the transferor or of a corporation of which the transferor is a subsidiary).

The manner and amount of the reduction to be applied to particular property within any of the categories described in subparagraphs (A) to (G), inclusive, shall be determined under regulations prescribed by the Secretary or his delegate.

(3) Basis in case of pre-1942 acquisition.

Notwithstanding the provisions of paragraph (1) or (2), if the property was acquired in a taxable year beginning before January 1, 1942, in any manner described in section 372 of the Internal Revenue Code of 1939 before its amendment by the Revenue Act of 1942, the basis shall be that prescribed in such section (before its amendment by such Act) with respect to such property.

(b) Transfers to corporations.

If, in connection with a transfer subject to the provisions of section 1081 (a), (b), or (e) or the corresponding provisions of prior internal revenue laws, the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor on such transfer under the law applicable to the year in which the transfer was made.

(c) Distributions of stock or securities.

If the stock or securities were received in a distribution subject to the provisions of section 1081 (c) or the corresponding provisions of prior internal revenue laws, then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under regulations prescribed by the Secretary or his delegate, between such stock and the stock or securities distributed.

(d) Transfers within system group.

If the property was acquired by a corporation which is a member of a system group on a transfer or distribution described in section 1081 (d) (1), then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued—

(1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either—

(A) the same as in the case of the property transferred therefor, or

(B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or

(2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either—

(A) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or

(B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower.

(Aug. 16, 1954, ch. 736, 68A Stat. 315; Dec. 30, 1969, Pub. L. 91–172, title VII, § 704(b)(3), 83 Stat. 699.)

AMENDMENTS

1969—Subsec. (f). Pub. L. 91–172 inserted reference to sections 184, 185 and 187 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as a note under section 169 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 617, 1081, 4382 of this title.

§ 1083. Definitions.

(a) Order of Securities and Exchange Commission.

For purposes of this part, the term "order of the Securities and Exchange Commission" means an order issued after May 28, 1938, by the Securities and Exchange Commission which requires, authorizes, permits, or approves transactions described in such order to effectuate section 11 (b) of the Public Utility Holding Company Act of 1935 (49 Stat. 820; 15 U. S. C. 79k (b)), which has become or becomes final in accordance with law.

(b) Registered holding company; holding company system; associate company.

For purposes of this part, the terms "registered holding company", "holding company system", and "associate company" shall have the meanings assigned to them by section 2 of the Public Utility Holding Company Act of 1935 (49 Stat. 804; 15 U. S. C. 79b (a)).

(c) Majority-owned subsidiary company.

For purposes of this part, the term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only on default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-

owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) System group.

For purposes of this part, the term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) at least 90 percent of each class of the stock (other than (A) stock which is preferred as to both dividends and assets, and (B) stock which is limited and preferred as to dividends but which is not preferred as to assets but only if the total value of such stock is less than 1 percent of the aggregate value of all classes of stock which are not preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) the common parent corporation owns directly at least 90 percent of each class of the stock (other than stock, which is preferred as to both dividends and assets) of at least one of the other corporations; and

(3) each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) Nonexempt property.

For purposes of this part, the term "nonexempt property" means—

(1) any consideration in the form of evidences of indebtedness owed by the transferor or a cancellation or assumption of debts or other liabilities of the transferor (including a continuance of encumbrances subject to which the property was transferred);

(2) short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

(3) securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

(4) stock or securities which were acquired from a registered holding company or an associate company of a registered holding company which acquired such stock or securities after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in paragraph (1), (2), or (3)) were acquired in obedience to an order of the Securities and Exchange Commission or were acquired with the authorization or approval of the Securities and Exchange Commission under any section of the Public Utility Holding Company Act of 1935 (49 Stat. 820; 15 U. S. C. 79k (b));

(5) money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in paragraph (2) or (3).

(f) Stock or securities.

For purposes of this part, the term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing). (Aug. 16, 1954, ch. 736, 68A Stat. 317.)

CROSS REFERENCES

Exemptions from documentary stamp tax, see section 4382 of this title.

PART VII.—WASH SALES OF STOCK OR SECURITIES

Sec.
1091. Loss from wash sales of stock or securities.

§ 1091. Loss from wash sales of stock or securities.

(a) Disallowance of loss deduction.

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under section 165 (c) (2); nor shall such deduction be allowed a corporation under section 165 (a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of its business.

(b) Stock acquired less than stock sold.

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under regulations prescribed by the Secretary or his delegate.

(c) Stock acquired not less than stock sold.

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary or his delegate.

(d) Unadjusted basis in case of wash sale of stock.

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of. (Aug. 16, 1954, ch. 736, 68A Stat. 319.)

CROSS REFERENCES

Losses between related taxpayers, see section 267 (d) of this title.

Losses deductible from gross income by corporations and individuals, see section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1223 of this title.

PART VIII.—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

Sec.
1101. Distributions pursuant to Bank Holding Company Act of 1956.
1102. Special rules.
1103. Definitions.

§ 1101. Distributions pursuant to Bank Holding Company Act of 1956.

(a) Distributions of certain non-banking property.

(1) Distributions of prohibited property.

If—

(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c) (2) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) to a shareholder, in exchange for its preferred stock; or

(iii) to a security holder, in exchange for its securities; and

(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) Distributions of stock and securities received in an exchange to which subsection (c) (2) applies.

If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c) (2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) common stock received in an exchange to which subsection (c) (2) applies to a shareholder, in exchange for its common stock; or

(iii) preferred stock or common stock received in an exchange to which subsection (c) (2) applies to a shareholder, in exchange for its preferred stock; or

(iv) securities or preferred or common stock received in an exchange to which subsection (c) (2) applies to a security holder, in exchange for its securities; and

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) Non pro rata distributions.

Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

(4) Exception.

This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

(5) Distributions involving gift or compensation.

In the case of a distribution to which paragraph (1) or (2) applies, but which—

(A) results in a gift, see section 2501, and following, or

(B) has the effect of the payment of compensation, see section 61 (a) (1).

(b) Corporation ceasing to be a bank holding company.

(1) Distributions of property which cause a corporation to be a bank holding company.

If—

(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c) (3) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) to a shareholder, in exchange for its preferred stock; or

(iii) to a security holder, in exchange for its securities; and

(B) the Board has, before the distribution, certified that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c) (3); and

(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) Distributions of stock and securities received in an exchange to which subsection (c) (3) applies.

If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c) (3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) common stock received in an exchange to which subsection (c) (3) applies to a shareholder, in exchange for its common stock; or

(iii) preferred stock or common stock received in an exchange to which subsection (c) (3) applies to a shareholder, in exchange for its preferred stock; or

(iv) securities or preferred or common stock received in an exchange to which subsection (c) (3) applies to a security holder, in exchange for its securities; and

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) Non pro rata distributions.

Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

(4) Exception.

This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

(5) Distributions involving gift or compensation.

In the case of a distribution to which paragraph (1) or (2) applies, but which—

(A) results in a gift, see section 2501, and following, or

(B) has the effect of the payment of compensation, see section 61 (a) (1).

(c) Property acquired after May 15, 1955.

(1) In general.

Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

(A) any property acquired by the distributing corporation after May 15, 1955, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 with respect to a reorganization described in section 368 (a) (1) (E) or (F), or

(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 with respect to a reorganization described in section 368 (a) (1) (E) or (F), or

(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a) (1) or (b) (1).

(2) Exchanges involving prohibited property.

If—

(A) Any qualified bank holding corporation exchanges (i) property, which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b) (1) (B) (i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a) (2) (A); and

(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a) (1) such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then paragraph (1) shall not apply with respect to such distribution.

(3) Exchanges involving interests in banks.

If—

(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b) (2) (A); and

(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a

bank holding company before any property of the same kind was distributed under subsection (b) (1) or exchanged under this paragraph; and

(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

(d) Distributions to avoid Federal income tax.

(1) Prohibited property.

Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(2) Banking property.

Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b) (1) (B) (i) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(3) Certain contributions to capital.

In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

(e) Final certification.

(1) For subsection (a).

Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4 (a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such section 4 (a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

(2) For subsection (b).

(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

(f) Certain exchanges of securities.

In the case of an exchange described in subsection (a) (2) (A) (iv) or subsection (b) (2) (A) (iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged. (Added May 9, 1956, ch. 240, § 10 (a), 70 Stat. 139.)

REFERENCES IN TEXT

The Banking Holding Company Act of 1956, referred to in the text, is classified to chapter 17 of Title 12, Banks and Banking.

Section 4 of the Bank Holding Company Act of 1956, referred to in subsecs. (a), (c) and (e), is classified to section 1843 of Title 12, Banks and Banking.

Section 2 (a) of the Bank Holding Company Act of 1956, referred to in subsec. (c) (3), is classified to section 1841 (a) of Title 12, Banks and Banking.

"Such Act", referred to in subsec. (c) (3) (C) (ii), means the Banking Holding Company Act of 1956.

"The date of enactment of this part", referred to in subsecs. (d) (3) and (e) (2), is May 9, 1956.

EFFECTIVE DATE

Section 10(c) of act May 9, 1956, provided that sections 1101–1103 of this title shall apply with respect to taxable years ending after May 9, 1956.

SAVINGS CLAUSE

See section 11 of act May 9, 1956, set out as a note under section 1841 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1103 of this title.

§ 1102. Special rules.

(a) Basis of property acquired in distributions.

If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

(1) if the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock; or

(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

(A) the amount of the property received which was treated as a dividend, and

(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

(b) Periods of limitation.

The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until five years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4 (a) of the Bank Holding Company Act of 1956, or section 1101 (e) (2) (B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) Allocation of earnings and profits.

(1) Distribution of stock in a controlled corporation.

In the case of a distribution by a qualified bank holding corporation under section 1101 (a) (1) or (b) (1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

(2) Exchanges described in section 1101 (c) (2) or (3).

In the case of any exchange described in section 1101 (c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

(3) Definition of controlled corporation.

For purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

(d) Itemization of property.

In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

(e) Certain bank holding companies.

This part shall apply in respect of any company which becomes a bank holding company as a result of the enactment of the Act entitled "An Act to amend the Bank Holding Company Act of 1956", approved July 1, 1966 (Public Law 89–485), with the following modifications:

(1) Subsections (a) (3) and (b) (3) of section 1101 shall not apply.

(2) Subsections (a) (1) and (2) and (b) (1) and (2) of section 1101 shall apply in respect of distributions to shareholders of the distributing bank holding corporation only if all distributions to each class of shareholders which are made—

(A) after April 12, 1965, and

(B) on or before the date on which the Board of Governors of the Federal Reserve System makes its final certification under section 1101 (e),

are pro rata. For purposes of the preceding sentence, any redemption of stock made in whole or in part with property other than money shall be treated as a distribution.

(3) In applying subsections (c) and (d) of section 1101 and subsection (b) of section 1103, the date "April 12, 1965" shall be substituted for the date "May 15, 1955".

(4) In applying subsection (d) (3) of section 1101, the date of the enactment of this subsection shall be treated as being the date of the enactment of this part.

(5) In applying subsection (b) (2) (A) of section 1103, the reference to the Bank Holding Company Act of 1956 shall be treated as referring to such Act as amended by Public Law 89–485.

(Added May 9, 1956, ch. 240, § 10(a), 70 Stat. 143, and amended Dec. 27, 1967, Pub. L. 90–225, § 1, 81 Stat. 730.)

REFERENCES IN TEXT

Section 4 (a) of the Bank Holding Company Act of 1956, referred to in subsec. (b), is classified to section 1843 (b) of Title 12, Banks and Banking.

The Act entitled "An Act to amend the Bank Holding Company Act of 1956", approved July 1, 1966 (Public Law 89–485), referred to in subsec. (e), is Pub. L. 89–485, July 1, 1966, 80 Stat. 236, classified to sections 1841—1843, 1848, and 1849 of Title 12, Banks and Banking.

The date of enactment of this part, referred to in subsec. (e) (4), is May 9, 1956.

The Bank Holding Company Act of 1956, referred to in subsec. (e) (5), is classified to chapter 17 of Title 12, Banks and Banking.

AMENDMENTS

1967—Subsec. (e). Pub. L. 90–225 added subsec. (e).

EFFECTIVE DATE OF 1967 AMENDMENT

Section 1 of Pub. L. 90–225 provided in part that: "The amendment made by this section [which added subsec. (e) of this section] shall apply with respect to distributions made after the date of the enactment of this Act [Dec. 27, 1967] in taxable years ending after such date."

EFFECTIVE DATE

See note under section 1101 of this title.

SAVINGS CLAUSE

See section 11 of act May 9, 1956, set out as a note under section 1841 of Title 12, Banks and Banking.

§ 1103. Definitions.

(a) Bank holding company.

For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

(b) Qualified bank holding corporation.

(1) In general.

Except as provided in paragraph (2), for purposes of this part the term "qualified bank holding corporation" means any corporation (as defined in section 7701 (a) (3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) on or before May 15, 1955,

(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(C) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (c) (3).

(2) Limitations.

(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1956 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

(i) property acquired by it on or before May 15, 1955,

(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and

(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) on or before May 15, 1955,

(ii) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(c) Prohibited property.

For the purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101 (e) (2) (B) of this part, as the case may be. The term "prohibited property" does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c) (5) of such section.

(d) Nonexempt property.

For purposes of this part, the term "nonexempt property" means—

(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision; or

(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

(e) Board.

For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System. (Added May 9, 1956, ch. 240, § 10 (a), 70 Stat. 144.)

REFERENCES IN TEXT

Section 2 of the Bank Holding Company Act of 1956, referred to in subsec. (a), is classified to section 1841 of Title 12, Banks and Banking.

The Bank Holding Company Act of 1956, referred to in subsec. (b), is classified to chapter 17 of Title 12, Banks and Banking.

Section 4 of the Bank Holding Company Act of 1956, referred to in subsec. (c), is classified to section 1843 of Title 12, Banks and Banking.

EFFECTIVE DATE

See note under section 1101 of this title.

SAVINGS CLAUSE

See section 11 of act May 9, 1956, set out as a note under section 1841 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1102 of this title.

PART IX.—DISTRIBUTIONS PURSUANT TO ORDERS ENFORCING THE ANTITRUST LAWS

Sec.
1111. Distribution of stock pursuant to order enforcing the antitrust laws.

§ 1111. Distribution of stock pursuant to order enforcing the antitrust laws.

(a) General rule.

Notwithstanding sections 301, 312, and 316, a distribution of divested stock (as defined in subsection

(e)), to a qualifying shareholder (as defined in subsection (b)), to which section 301(c)(1) would, but for this section, apply, shall be a distribution which is not out of the earnings and profits of the distributing corporation for purposes of this subtitle.

(b) Qualifying shareholder.

For purposes of this section, the term "qualifying shareholder" means any shareholder other than a corporation which may be allowed a deduction under section 243, 244, or 245 with respect to dividends received.

(c) Special rules.

(1) Distributions to avoid federal income tax.

Subsection (a) shall not apply to any transaction one of the principal purposes of which is the distribution of the earnings and profits of the distributing corporation or of the corporation whose stock is distributed, or both.

(2) Stock.

For purposes of this section, the term "stock" includes rights to fractional shares.

(d) Definition of antitrust order.

For purposes of this section, the term "antitrust order" means, in the case of any corporation, a final judgment rendered after January 1, 1961, by a court with respect to such corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1—7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12—27), or both, to which the United States is a party, if such proceeding was commenced on or before January 1, 1959.

(e) Definition of divested stock.

For purposes of this section, the term "divested stock" means stock meeting the following requirements:

(1) the stock is the subject of an antitrust order entered after January 1, 1961, which—

(A) directs the distributing corporation to divest itself of such stock by distributing it to its shareholders (or requires such distribution as an alternative to other action by any person);

(B) specifies and itemizes the stock to be divested; and

(C) fixes the period of time within which the distributing corporation must divest itself of all stock to be disposed of by it by reason of the suit, and such period expires not later than 3 years from the date on which such order becomes final (appeal time having run or appeal having been completed); and

(2) the court finds—

(A) that the divestiture of such stock, in the manner described in paragraph (1)(A), is necessary or appropriate to effectuate the policies of the Sherman Act, or the Clayton Act, or both;

(B) that the application of subsection (a) is required to reach an equitable antitrust order in such suit or proceeding; and

(C) that the period of time for the complete divestiture fixed in the order is the shortest period within which such divestiture can be executed with due regard to the circumstances of the particular case;

but no stock shall be divested stock if the court finds that its divestiture is required because of an intentional violation of the Sherman Act, or the Clayton Act, or both.

(Added Pub. L. 87-403, § 1(a), Feb. 2, 1962, 76 Stat. 4.)

EFFECTIVE DATE

Section 1(c) of Pub. L. 87-403 provided that: "The amendments made by this section [adding this section] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 535, 543, 545, 553, 556 of this title.

Subchapter P.—Capital Gains and Losses

Part

I. Treatment of capital gains.
II. Treatment of capital losses.
III. General rules for determining capital gains and losses.
IV. Special rules for determining capital gains and losses.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 822, 832 of this title.

PART I.—TREATMENT OF CAPITAL GAINS

Sec.

1201. Alternative tax.
1202. Deduction for capital gains.

§ 1201. Alternative tax.

(a) Corporations.

If for any taxable year a corporation has a net section 1201 gain, then, in lieu of the tax imposed by sections 11, 511, 821 (a) or (c), and 831(a), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of a tax computed on the taxable income reduced by the amount of the net section 1201 gain, at the rates and in the manner as if this subsection had not been enacted, plus—

(1) in the case of a taxable year beginning before January 1, 1975—

(A) a tax of 25 percent of the lesser of—

(i) the amount of the subsection (d) gain, or

(ii) the amount of the net section 1201 gain, and

(B) a tax of 30 percent (28 percent in the case of a taxable year begining after December 31, 1969, and before January 1, 1971) of the excess (if any) of the net section 1201 gain over the subsection (d) gain; and

(2) in the case of a taxable year beginning after December 31, 1974, a tax of 30 percent of the net section 1201 gain.

(b) Other taxpayers.

If for any taxable year a taxpayer other than a corporation has a net section 1201 gain, then, in lieu of the tax imposed by sections 1 and 511, there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

(1) a tax computed on the taxable income reduced by an amount equal to 50 percent of the net section 1201 gain, at the rates and in the manner as if this subsection had not been enacted,

(2) a tax of 25 percent of the lesser of—

(A) the amount of the subsection (d) gain, or

(B) the amount of the net section 1201 gain, and

(3) if the amount of the net section 1201 gain exceeds the amount of the subsection (d) gain, a tax computed as provided in subsection (c) on such excess.

(c) Computation of tax on capital gain in excess of subsection (d) gain.

(1) In general.

The tax computed for purposes of subsection (b)(3) shall be the amount by which a tax determined under section 1 or 511 on an amount equal to the taxable income (but not less than 50 percent of the net section 1201 gain) for the taxable year exceeds a tax determined under section 1 or 511 on an amount equal to the sum of (A) the amount subject to tax under subsection (b)(1) plus (B) an amount equal to 50 percent of the subsection (d) gain.

(2) Limitation.

Notwithstanding paragraph (1), the tax computed for purposes of subsection (b)(3) shall not exceed an amount equal to the following percentage of the excess of the net section 1201 gain over the subsection (d) gain:

(A) 29½ percent, in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971, or

(B) 32½ percent, in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972.

(d) Subsection (d) gain defined.

For purposes of this section, the term "subsection (d) gain" means the sum of the long-term capital gains for the taxable year arising—

(1) in the case of amounts received before January 1, 1975, from sales or other dispositions pursuant to binding contracts (other than any gain from a transaction described in section 631 or 1235) entered into on or before October 9, 1969, including sales or other dispositions the income from which is returned on the basis and in the manner prescribed in section 453(a)(1),

(2) in respect of distributions from a corporation made prior to October 10, 1970, which are pursuant to a plan of complete liquidation adopted on or before October 9, 1969, and

(3) in the case of a taxpayer other than a corporation, from any other source, but the amount taken into account from such other sources for the purposes of this paragraph shall be limited to an amount equal to the excess (if any) of $50,000 ($25,000 in the case of a married individual filing a separate return) over the sum of the gains to which paragraphs (1) and (2) apply.

(e) Cross references.

For computation of the alternative tax—

(1) in the case of life insurance companies, see section 802(a)(2);

(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3) (A) and (D); and

(3) in the case of real estate investment trusts, see section 857(b)(3)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 320; Mar. 13, 1956, ch. 83, § 5(7), 70 Stat. 49; June 25, 1959, Pub. L. 86–69, § 3(f)(2), 73 Stat. 140; Oct. 16, 1962, Pub. L. 87–834, § 8(g)(3), 76 Stat. 999; Dec. 30, 1969, Pub. L. 91–172, title V, § 511(b), 83 Stat. 635.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted reference to net section 1201 gain for reference to the excess of the net long-term capital gain of a corporation over the net short-term capital loss, substituted "a tax computed on the taxable income reduced by the amount of the net section 1201 gain" for "a partial tax computed on the taxable income reduced by the taxable income reduced by the amount of such excess," struck out reference to tax of an amount equal to 25 percent of excess or in the case of a taxable year beginning before Apr. 1, 1954 an amount equal to 26 percent of such excess without regard to section 21 of this title, and added in the case of a taxable year beginning Jan. 1, 1975 a tax of 25 percent of the lesser of the amount of the subsec. (d) gain, or the amount of the net section 1201 gain, and a tax of 30 percent (28 percent in the case of a taxable year beginning after Dec. 31,1969 and before Jan. 1, 1971) of the excess (if any) of the net section 1201 gain over the subsec. (d) gain, and in case of a taxable year beginning after Dec. 31, 1974, a tax of 30 percent of the net section 1201 gain.

Subsec. (b). Pub. L. 91–172 substituted reference to net section 1201 gain for reference to the excess of the net long-term capital gain over the net short-term capital loss, substituted "a tax computed on the taxable income reduced by an amount equal to 50 percent of the net section 1201 gain" for "a partial tax computed on the taxable income reduced by an amount equal to 50 percent of such excess," struck out reference to tax of an amount equal to 25 percent of the excess of the net long-term capital gain over the net short-term capital loss, and added reference to a tax of 25 percent of the lesser of the amount of the subsec. (d) gain, or the amount of the net section 1201 gain, and if the amount of the net section 1201 gain exceeds the amount of the subsec. (d) gain, a tax computed as provided in subsec. (c) on such excess.

Subsec. (c). Pub. L. 91–172 added subsec. (c). Former subsec. (c) was redesignated as subsec. (e)(1).

Subsec (d). Pub. L. 91–172 added subsec. (d).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (c) as par. (1) and added pars. (2) and (3).

1962—Subsec. (a). Pub. L. 87–834 substituted "section 821 (a) or (c)" for section 821 (a)(1) or (b)."

1959—Subsec. (a). Pub. L. 86–69 eliminated reference to section 802(a).

Subsec. (c). Pub. L. 86–69 added subsec. (c).

1956—Subsec. (a). Act Mar. 13, 1956, inserted reference to section 802(a).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 511(d) of Pub L. 91–172 provided that: "The amendments made by this section [amending this section and sections 802, 852, 857 and 1378 of this title] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

CROSS REFERENCES

Alternative tax for mutual savings banks, see section 594 (a) of this title.

Corporate estimated tax defined, see sections 6154 and 6655(e) of this title.

Definitions—

Net long term capital gain, see section 1222 (7) of this title.

Net short term capital loss, see section 1222 (6) of this title.

Normal tax and surtax on corporations, see section 11 of this title.

Rates of income tax on individuals, see section 1 of this title.

Tax or nonresident alien individuals, see section 871 (b) (1) of this title.

Unincorporated business enterprises subject to this section, see section 1361 (h) (3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 57, 163, 594, 802, 822, 852, 857, 871, 877, 882, 1304, 1378, 1381, 6016, 6154, 6425, 6655 of this title.

§ 1202. Deduction for capital gains.

In the case of a taxpayer other than a corporation, if for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 percent of the amount of such excess shall be a deduction from gross income. In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any), of the gains for the taxable year from sales or exchanges of capital assets, which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital asets. (Aug. 16, 1954, ch. 736, 68A Stat. 320.)

CROSS REFERENCES

Adjusted gross income as gross income minus, among others, deduction for capital gains, see section 62 of this title.

Corporations not allowed deduction under this section for net operating loss deduction, see section 172 (d) (2) (B) of this title.

Deductions from gross income for individuals generally, see section 141 et seq. of this title.

Estates and trusts allowed benefit of this section, see section 642 (c) of this title.

Gains derived from dealings in property as gross income, see section 61 (a) (3) of this title.

Nonresident alien's gains not subject to this section, see section 871(a) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 163, 172, 642, 643, 665, 871 of this title.

PART II.—TREATMENT OF CAPITAL LOSSES

Sec.
1211. Limitation on capital losses.
1212. Capital loss carrybacks and carryovers.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 512(f) (2), Dec. 30, 1969, 83 Stat. 641, substituted "carrybacks and carryovers" for "carryover" in item 1212.

§ 1211. Limitation on capital losses.

(a) Corporations.

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers.

(1) In general.

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) whichever of the following is smallest:

(A) the taxable income for the taxable year,

(B) $1,000, or

(C) the sum of—

(i) the excess of the net short-term capital loss over the net long-term capital gain, and

(ii) one-half of the excess of the net long-term capital loss over the net short-term capital gain.

(2) Married individuals.

In the case of a husband or wife who files a separate return, the amount specified in paragraph (1) (B) shall be $500 in lieu of $1,000.

(3) Computation of taxable income.

For purposes of paragraph (1), taxable income shall be computed without regard to gains or losses from sales or exchanges of capital assets and without regard to the deductions provided in section 151 (relating to personal exemptions) or any deduction in lieu thereof. If the taxpayer elects to pay the optional tax imposed by section 3, "taxable income" as used in this subsection shall read as "adjusted gross income".

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Dec. 30, 1969, Pub. L. 91–172, title V, § 513(a), 83 Stat. 642.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 provided for only 50 percent of an individual's long-term capital losses to be offset against his ordinary income up to the $1,000 limit although short-term capital losses continue to be fully deductible within the $1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to $500 for each spouse rather than the $1,000 formerly allowed.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 513(d) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section and sections 1212 and 1222 of this title] shall apply to taxable years beginning after December 31, 1969."

CROSS REFERENCES

Capital losses—

Allowed to certain insurance companies, see section 832 (c) (5) of this title.

Deductible from gross income, see section 165 (f) of this title.

Corporations improperly accumulating income, capital losses, see section 535 (b) (5) of this title.

Gross investment income defined for mutual insurance companies, see section 822 (b) of this title.

Losses from compulsory or involuntary conversions, see section 1231 (a) (2) of this title.

Other terms relating to capital losses, see section 1222 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165, 535, 832, 1212, 1222, 1231 of this title.

§ 1212. Capital loss carrybacks and carryovers.

(a) Corporations.

(1) In general.

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the "loss year"), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) such loss is not attributable to a foreign expropriation capital loss, and

(ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back; and

(B) a capital loss carryover to each of the 5 taxable years (10 taxable years to the extent such loss is attributable to a foreign expropriation capital loss) succeeding the loss year,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the net capital gains for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the net capital gain for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the net capital gain for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(2) Definitions and special rules.

(A) Foreign expropriation capital loss defined.

For purposes of this subsection, the term "foreign expropriation capital loss" means, for any taxable year, the sum of the losses taken into account in computing the net capital loss for such year which are—

(i) losses sustained directly by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, or

(ii) losses (treated under section 165(g)(1) as losses from the sale or exchange of capital assets) from securities which become worthless by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

(B) Portion of loss attributable to foreign expropriation capital loss.

For purposes of paragraph (1), the portion of any net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital loss for such year (but not in excess of the net capital loss for such year).

(C) Priority of application.

For purposes of paragraph (1), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

(3) Electing small business corporations.

Paragraph (1)(A) shall not apply to the net capital loss of a corporaton for any taxable year for which it is an electing small business corporation under subchapter S, and a net capital loss of a corporation (for a year for which it is not such an electing small business corporation) shall not be carried back under paragraph (1)(A) to a taxable year for which it is an electing small business corporation.

(4) Special rules on carrybacks.

A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

(A) for which it is a foreign personal holding company (as defined in section 552);

(B) for which it is a regulated investment company (as defined in section 851);

(C) for which it is a real estate investment trust (as defined in section 856); or

(D) for which an election made by it under section 1247 is applicable (relating to election by foreign investment companies to distribute income currently).

(b) Other taxpayers.

(1) In general.

If a taxpayer other than a corporation has a net capital loss for any taxable year—

(A) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(B) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(2) Special rules.

(A) For purposes of determining the excess referred to in paragraph (1)(A), an amount equal to the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C) shall be treated as a short-term capital gain in such year.

(B) For purposes of determining the excess referred to in paragraph (1)(B), an amount equal to the sum of—

(i) the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C), and

(ii) the excess of the amount described in clause (i) over the net short-term capital loss (determined without regard to this subsection) for such year,

shall be treated as a short-term capital gain in such year.

(3) Transitional rule.

In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years

beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Feb. 26, 1964, Pub. L. 88–272, title II, § 230(a), 78 Stat. 99; Sept. 2, 1964, Pub. L. 88–571, § 7(a), 78 Stat. 860; Dec. 30, 1969, Pub. L. 91–172, title V, §§ 512 (a), (b), (f)(1), 513(b), 83 Stat. 638, 639, 641, 642.)

REFERENCES IN TEXT

Before the enactment of the Revenue Act of 1964, referred to in subsec. (b)(2), means before the enactment of Pub. L. 88–272, approved Feb. 26, 1964.

AMENDMENTS

1969—Pub. L. 91–172, § 512(f)(1), substituted "carrybacks and carryovers" for "carryover" in section catchline.

Subsec. (a)(1). Pub. L. 91–172, § 512(a), provided for a 3-year capital loss carryback for corporations, not available for foreign expropriation capital losses for which a special 10-year carryforward is presently available, in addition to the 5-year capital loss carryforward presently allowed corporations, to the extent the carryback of such loss does not increase or produce a net operating loss for the taxable year to which it is being carried back.

Subsec. (a)(3), (4). Pub. L. 91–172, § 512(b), added subsec. (a)(3), (4).

Subsec. (b). Pub. L. 91–172, § 513(b), struck out reference to Dec. 31, 1963, struck out determination of a short-term capital gain as an amount equal to the excess allowed for the taxable year under former section 1211(b) over the gains from sales or exchanges of capital assets, struck out par. (2) treating as a short-term capital loss in the first taxable year beginning after Dec. 31, 1963, any amount which is treated as a short-term capital loss in such year under this subchapter as in effect immediately before the enactment of the Revenue Act of 1964, added new par. (2) dealing with special rules for determining the excesses referred to in par. (1)(A) and par. (1)(B) and added par. (3).

1964—Subsec. (a). Pub. L. 88–571 provided that if any portion of a net capital loss is attributable to a foreign expropriation capital loss, such portion shall be a short-term capital loss in each of the 10 succeeding taxable years, defined foreign expropriation capital loss, stated what portion of loss is attributable to foreign expropriation capital loss and the priority of application of the net capital loss, and eliminated provisions that net capital losses for taxable years beginning before Oct. 20, 1951, were to be determined under the applicable law relating to the computation of capital gains and losses in effect before such date.

Pub. L. 88–272 designated existing provisions as subsec. (a), limited such subsection to corporations, and added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 512(g) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section and sections 246, 381, 481, 535, 1314, 6411, 6501, 6511, 6601 and 6611 of this title] shall apply with respect to net capital losses sustained in taxable years beginning after December 31, 1969."

Amendment of subsec. (b) by section 513(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 7(b) of Pub. L. 88–571 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to net capital losses (to the extent attributable to foreign expropriation capital losses, as defined in section 1212(a)(2)(A) of the Internal Revenue Code of 1954) sustained in taxable years ending after December 31, 1958."

Section 230(c) of Pub. L. 88–272 provided that: "The amendments made by this section [to this section, and section 1222 of this title] shall apply to taxable years beginning after December 31, 1963."

ELECTION NOT TO CARRYBACK CERTAIN NET CAPITAL LOSSES

Pub. L. 91–688, § 3, Jan. 12, 1971, 84 Stat. 2073, provided that:

"(a) For purposes of applying section 1212(a) of the Internal Revenue Code of 1954 [this section] (as amended by section 512 of the Tax Reform Act of 1969) in the case of a corporation which makes an election under subsection (b), any net capital loss sustained in a taxable year beginning after December 31, 1969, may not be carried back to any taxable year beginning before January 1, 1970, for which it was subject to taxation under section 802 of such Code [section 802 of this title], if the carryback of such loss would result in an increase in such corporation's income tax liability for any such taxable year.

"(b) An election to have the provisions of subsection (a) apply shall be made by a corporation—

"(1) in such form and manner as the Secretary of the Treasury or his delegate may prescribe, and

"(2) not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for the first taxable year beginning after December 31, 1969, in which such corporation sustains a net capital loss.

"(c) The Secretary of the Treasury or his delegate shall prescribe such regulations as he determines necessary to carry out the purposes of this section."

CROSS REFERENCES

Accumulated taxable income of corporations improperly accumulating surplus, see section 535 (b) (6) of this title.

Adjustments required by changes in method of accounting, see section 481 (b) (3) (A) of this title.

Ascertainment of amount of adjustment, see section 1314 (a) of this title.

Capital loss carryovers of estates or trusts, see section 642 (h) (1) of this title.

Capital losses of nonresident alien not subject to this section, see section 871 (a) (2) of this title.

Net capital loss computed without regard to this section, see section 1222 (10) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165, 246, 381, 481, 514, 535, 642, 822, 832, 871, 877, 1222, 1247, 1314, 1341, 1351, 6411 of this title.

PART III.—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1221. Capital asset defined.
1222. Other items relating to capital gains and losses.
1223. Holding period of property.

§ 1221. Capital asset defined.

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1); or

(5) an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Dec. 30, 1969, Pub. L. 91–172, title V, § 514(a), 83 Stat. 643.)

AMENDMENTS

1969—Par. (3). Pub. L. 91–172 added reference to a letter or memorandum, added subpar. (B) dealing with a letter or memorandum, and redesignated former subpar. (B) as subpar. (C).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 514(c) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section and sections 341 and 1231 of this title] shall apply to sales and other dispositions occurring after July 25, 1969."

CROSS REFERENCES

Gross income defined, see section 61 of this title.

Inventory items of partnership as including stock in trade of taxpayer, see section 751 (d) (2) (A) of this title.

Sale or exchange of residence as nontaxable, see section 1034 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 341, 595, 707, 751, 817, 864, 1223, 1231, 1234, 1248 of this title.

§ 1222. Other terms relating to capital gains and losses.

For purposes of this subtitle—

(1) Short-term capital gain.

The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent such gain is taken into account in computing gross income.

(2) Short-term capital loss.

The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent that such loss is taken into account in computing taxable income.

(3) Long-term capital gain.

The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such gain is taken into account in computing gross income.

(4) Long-term capital loss.

The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 6 months, if and to the extent that such loss is taken into account in computing taxable income.

(5) Net short-term capital gain.

The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year.

(6) Net short-term capital loss.

The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year.

(7) Net long-term capital gain.

The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year.

(8) Net long-term capital loss.

The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(9) Net capital gain.

The term "net capital gain" means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

(10) Net capital loss.

The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under section 1211. In the case of a corporation, for the purpose of determining losses under this paragraph, amounts which are short-term capital losses under section 1212 shall be excluded.

(11) Net section 1201 gain.

The term "net section 1201 gain" means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

(Aug. 16, 1954, ch. 736, 68A Stat. 322; Feb. 26, 1964, Pub. L. 88–272, title II, § 230(b), 78 Stat. 100; Dec. 30, 1969, Pub. L. 91–172, title V, §§ 511(a), 513(c), 83 Stat. 635, 643.)

AMENDMENTS

1969—Par. (9). Pub. L. 91–172, § 513(c), substituted "The" for "In the case of a corporation, the."

Par. (11). Pub. L. 91–172, § 511(a), added par. (11).

1964—Pars. (9), (10). Pub. L. 88–272 eliminated provisions from par. (9) relating to taxpayers other than corporations, and inserted "In the case of a corporation" in par. (10).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 513(c) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 230(c) of Pub. L. 88–272, set out as a note under section 1212 of this title.

CROSS REFERENCES

Amount of deduction for long-term capital gains, see section 1202 of this title.

Gains derived from dealings in property as gross income, see section 61 (a) (3) of this title.

Limitation of capital losses, see section 1211 of this title.

Losses by corporations and individuals deductible from gross income, see section 165 of this title.

Rate of income tax on individuals, see section 1 of this title.

§ 1223. Holding period of property.

For purposes of this subtitle—

(1) In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which he held the property exchanged if, under this chapter, the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after March 1, 1954, the property exchanged at the time of such exchange was a capital asset as defined in section 1221 or property described in section 1231. For purposes of this paragraph—

(A) an involuntary conversion described in section 1033 shall be considered an exchange of the property converted for the property acquired, and

(B) a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under section 1081 (c) (or under section 112 (g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705), there shall be included the period for which he held the stock or securities in the distributing corporation before the receipt of the stock or securities on such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 1091 relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(5) In determining the period for which the taxpayer has held stock or rights to acquire stock received on a distribution, if the basis of such stock or rights is determined under section 307 (or under so much of section 1052 (c) as refers to section 113 (a) (23) of the Internal Revenue Code of 1939), there shall (under regulations prescribed by the Secretary or his delegate) be included the period for which he held the stock in the distributing corporation before the receipt of such stock or rights upon such distribution.

(6) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date on which the right to acquire was exercised.

(7) In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under section 1034 in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, there shall be included the period for which such other residence had been held as of the date of such sale or exchange. For purposes of this paragraph, the term "sale or exchange" includes an involuntary conversion occurring after December 31, 1950, and before January 1, 1954.

(8) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands.

(9) Any reference in this section to a provision of this title shall, where applicable, be deemed a reference to the corresponding provision of the Internal Revenue Code of 1939, or prior internal revenue laws.

(10) In determining the period for which the taxpayer has held trust certificates of a trust to which subsection (d) of section 1246 applies, or the period for which the taxpayer has held stock in a corporation to which subsection (d) of section 1246 applies, there shall be included the period for which the trust or corporation (as the case may be) held the stock of foreign investment companies.

(11) In the case of a person acquiring property from a decedent or to whom property passed from a decedent (within the meaning of section 1014(b)), if—

(A) the basis of such property in the hands of such person is determined under section 1014, and

(B) such property is sold or otherwise disposed of by such person within 6 months after the decedent's death,

then such person shall be considered to have held such property for more than 6 months.

(12) Cross reference.

For special holding period provision relating to certain partnership distributions, see section 735(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 323; Oct. 16, 1962, Pub. L. 87-834, § 14(b)(3), 76 Stat. 1041; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(g), 84 Stat. 1838.)

AMENDMENTS

1970—Par. (11). Pub. L. 91-614 added par. (11). Former par. (11) redesignated par. (12).

Par. (12). Pub. L. 91-614 redesignated former par. (11) as par. (12).

1962—Pub. L. 87-834 added par. (10) and redesignated former par. (10) as (11).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Par. (10) of this section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 1246 of this title.

CROSS REFERENCES

Short-term gains and holding periods, see section 1233 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 246, 341, 735, 1034, 1233, 1246, 1250 of this title.

PART IV.—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1231. Property used in the trade or business and involuntary conversions.
1232. Bonds and other evidences of indebtedness.
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1244. Losses on small business stock.
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1251. Gain from disposition of property used in farming where farm losses offset nonfarm income.
1252. Gain from the disposition of farm land.
1253. Transfers of franchises, trademarks, and trade names.

AMENDMENTS

1969—Pub. L. 91–172, title II, §§ 211(b)(7), 214(b), title V, § 516(c)(2)(C), Dec. 30, 1969, 83 Stat. 570, 573, 648, added items 1251 to 1253.

1964—Pub. L. 88–272, title II, § 231(b)(7), Feb. 26, 1964, 78 Stat. 105, added item 1250.

1962—Pub. L. 87–834, §§ 13(a)(2), 14(a)(2), 15(b), 16(b), Oct. 16, 1962, 76 Stat. 1033, 1040, 1044, 1045, added items 1245—1249.

1958—Pub. L. 85–866, title I, § 57(c)(3), title II, § 202 (c), Sept. 2, 1958, 72 Stat. 1646, 1678, added items 1242—1244.

§ 1231. Property used in the trade or business and involuntary conversions.

(a) General rule.

If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 6 months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 6 months shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) Definition of property used in the trade or business.

For purposes of this section—

(1) General rule.

The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221.

(2) Timber, coal, or domestic iron ore.

Such term includes timber, coal, and iron ore with respect to which section 631 applies.

(3) Livestock.

Such term includes—

(A) cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

(4) Unharvested crop.

In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(Aug. 16, 1954, ch. 736, 68A Stat. 325; Sept. 2, 1958, Pub. L. 85-866, title I, § 49(a), 72 Stat. 1642; Feb. 26, 1964, Pub. L. 88-272, title II, § 227(a)(2), 78 Stat. 97; Dec. 30, 1969, Pub. L. 91-172, title II, § 212(b)(1), title V, §§ 514(b)(2), 516(b), 83 Stat. 571, 643, 646.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 516(b), provided that casualty (or theft) losses with respect to depreciable property and real estate used in trade or business and capital assets held for the production of income as well as personal assets are to be consolidated with casualty (or theft) gains with respect to this type of property and if the casualty losses exceed the casualty gains, the net loss is treated as an ordinary loss without regard to whether there may be noncasualty gains under this section, but, if the casualty gains exceed the casualty losses, the net gain is treated as a gain under this section and must be consolidated with other gains and losses under this section.

Subsec. (b)(1)(C). Pub. L. 91-172, § 514(b)(2), added reference to a letter or memorandum.

Subsec. (b)(3). Pub. L. 91-172, § 212(b)(1), redesignated existing provisions as subpar. (B) and added subpar. (A).

1964—Subsec. (b)(2). Pub. L. 88-272 inserted the reference to iron ore in the text, and to domestic iron ore, in the paragraph catchline.

1958—Subsec. (a). Pub. L. 85-866 added provisions respecting casualty losses sustained upon certain uninsured property.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a) by section 516(b) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 516(d)(2) of Pub. L. 91-172, set out as a note under section 1001 of this title.

Amendment of subsec. (b)(1)(C) of section 514(b)(2) of Pub. L. 91-172 applicable to sales and other dispositions occurring after July 25, 1969, see section 514(c) of Pub. L. 91-172, set out as a note under section 1221 of this title.

Section 212(b)(2) of Pub. L. 91-172 provided that: "The amendments made by paragraph (1) [amending subsec. (b)(3) of this section] shall apply to livestock acquired after December 31, 1969."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88-272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 49 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply to taxable years beginning after December 31, 1957."

CROSS REFERENCES

Amount of gain and recognition of gain or loss, see section 1001 of this title.

Computation of income of each partner, gains or losses described in this section, see section 702 (a) (3) of this title.

Denial of deduction attributable to production of crop, see section 268 of this title.

Disposal of coal or domestic iron ore, denial of deduction, see section 272 of this title.

Involuntary conversions as nontaxable exchange, see section 1033 of this title.

Limitation on capital losses, see section 1211 of this title.

Loss from wash sales of stock or securities, see section 1091 of this title.

Rules for allocation of basis of partnership, see section 755 (h) (1) of this title.

Sale of land with unharvested crop as nondeductible item from gross income, see section 268 of this title.

Sale or exchange of residence as nontaxable, see section 1034 of this title.

Section 341 assets as including property described in subsection (b) of this section, see section 341 (b) (3) (D) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 80, 163, 170, 172, 268, 272, 341, 483, 543, 613, 617, 751, 755, 817, 1223, 1238, 1239, 1245, 1249, 1250, 1251, 1252 of this title.

§ 1232. Bonds and other evidences of indebtedness.

(a) General rule.

For purposes of this subtitle, in the case of bonds, debentures, notes, or certificates or other evidences of indebtedness, which are capital assets in the hands of the taxpayer, and which are issued by any corporation, or by any government or political subdivision thereof—

(1) Retirement.

Amounts received by the holder on retirement of such bonds or other evidences of indebtedness shall be considered as amounts received in exchange therefor (except that in the case of bonds or other evidences of indebtedness issued before January 1, 1955, this paragraph shall apply only to those issued with interest coupons or in registered form, or to those in such form on March 1, 1954).

(2) Sale or exchange.

(A) Corporate bonds issued after May 27, 1969.

Except as provided in subparagraph (C), on the sale or exchange of bonds or other evidences of indebtedness issued by a corporation after May 27, 1969, held by the taxpayer more than 6 months, any gain realized shall (except as provided in the following sentence) be considered gain from the sale or exchange of a capital asset held for more than 6 months. If at the time of original issue there was an intention to call the bond or other evidence of indebtedness before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to the original issue discount (as defined in subsection (b)) reduced by the portion of original issue discount previously includible in the gross income of any holder (as provided in paragraph (3)(B)) shall be considered as gain from the sale or exchange of property which is not a capital asset.

(B) Corporate bonds issued on or before May 27, 1969, and government bonds.

Except as provided in subparagraph (C), on the sale or exchange of bonds or other evidences of indebtedness issued by a government or political subdivision thereof after December 31, 1954, or by a corporation after December 31,

1954, and on or before May 27, 1969, held by the taxpayer more than 6 months, any gain realized which does not exceed—

(i) an amount equal to the original issue discount (as defined in subsection (b)), or

(ii) if at the time of original issue there was no intention to call the bond or other evidence of indebtedness before maturity, an amount which bears the same ratio to the original issue discount (as defined in subsection (b)) as the number of complete months that the bond or other evidence of indebtedness was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as gain from the sale or exchange of property which is not a capital asset. Gain in excess of such amount shall be considered gain from the sale or exchange of a capital asset held more than 6 months.

(C) Exceptions.

This paragraph shall not apply to—

(i) obligations the interest on which is not includible in gross income under section 103 (relating to certain governmental obligations), or

(ii) any holder who has purchased the bond or other evidence of indebtedness at a premium.

(D) Double inclusion in income not required.

This section shall not require the inclusion of any amount previously includible in gross income.

(3) Inclusion in income of original issue discount on corporate bonds issued after May 27, 1969.

(A) General rule.

There shall be included in the gross income of the holder of any bond or other evidence of indebtedness issued by a corporation after May 27, 1969, the ratable monthly portion of original issue discount multiplied by the number of complete months (plus any fractional part of a month determined in accordance with the last sentence of this subparagraph) such holder held such bond or other evidence of indebtedness during the taxable year. Except as provided in subparagraph (B), the ratable monthly portion of original issue discount shall equal the original issue discount (as defined in subsection (b)) divided by the number of complete months from the date of original issue to the stated maturity date of such bond or other evidence of indebtedness. For purposes of this section, a complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day); and, in any case where a bond or other evidence of indebtedness is acquired on any other day, the ratable monthly portion of original issue discount for the complete month in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete month each held the bond or other evidence of indebtedness.

(B) Reduction in case of any subsequent holder.

For purposes of this paragraph, the ratable monthly portion of original issue discount shall not include an amount, determined at the time of any purchase after the original issue of such bond or other evidence of indebtedness, equal to the excess of—

(i) the cost of such bond or other evidence of indebtedness incurred by such holder, over

(ii) the issue price of such bond or other evidence of indebtedness increased by the portion of original discount previously includible in the gross income of any holder (computed without regard to this subparagraph),

divided by the number of complete months (plus any fractional part of a month commencing with the date of purchase) from the date of such purchase to the stated maturity date of such bond or other evidence of indebtedness.

(C) Purchase defined.

For purposes of subparagraph (B), the term "purchase" means any acquisition of a bond or other evidence of indebtedness, but only if the basis of the bond or other evidence of indebtedness is not determined in whole or in part by reference to the adjusted basis of such bond or other evidence of indebtedness in the hands of the person from whom acquired, or under section 1014(a) (relating to property acquired from a decedent).

(D) Exceptions.

This paragraph shall not apply to any holder—

(i) who has purchased the bond or other evidence of indebtedness at a premium, or

(ii) which is a life insurance company to which section 818(b) applies.

(E) Basis adjustments.

The basis of any bond or other evidence of indebtedness in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to subparagraph (A).

(b) Definitions.

(1) Original issue discount.

For purposes of subsection (a), the term "original issue discount" means the difference between the issue price and the stated redemption price at maturity. If the original issue discount is less than one-fourth of 1 percent of the redemption price at maturity multiplied by the number of complete years to maturity, then the issue discount shall be considered to be zero. For purposes of this paragraph, the term "stated redemption price at maturity" means the amount fixed by the last modification of the purchase agreement and includes dividends payable at that time.

(2) Issue price.

In the case of issues of bonds or other evidences of indebtedness registered with the Securities and Exchange Commission, the term "issue price"

means the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such bonds or other evidences of indebtedness were sold. In the case of privately placed issues of bonds or other evidence of indebtedness, the issue price of each such bond or other evidence of indebtedness is the price paid by the first buyer of such bond increased by the amount, if any, of tax paid under section 4911 (and not credited, refunded, or reimbursed) on the acquisition of such bond or evidence of indebtedness by the first buyer. For purposes of this paragraph, the terms "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof. In the case of a bond or other evidence of indebtedness and an option or other security issued together as an investment unit, the issue price for such investment unit shall be determined in accordance with the rules stated in this paragraph. Such issue price attributable to each element of the investment unit shall be that portion thereof which the fair market value of such element bears to the total fair market value of all the elements in the investment unit. The issue price of the bond or other evidence of indebtedness included in such investment unit shall be the portion so allocated to it. In the case of a bond or other evidence of indebtedness, or an investment unit as described in this paragraph (other than a bond or other evidence of indebtedness or an investment unit issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) or an insolvency reorganization within the meaning of section 371, 373, or 374), which is issued for property and which—

(A) is part of an issue a portion of which is traded on an established securities market, or

(B) is issued for stock or securities which are traded on an established securities market,

the issue price of such bond or other evidence of indebtedness or investment unit, as the case may be, shall be the fair market value of such property. Except in cases to which the preceding sentence applies, the issue price of a bond or other evidence of indebtedness (whether or not issued as a part of an investment unit) which is issued for property (other than money) shall be the stated redemption price at maturity.

(3) Issue date.

In the case of issues of bonds or other evidences of indebtedness registered with the Securities and Exchange Commission, the term "date of original issue" means the date on which the issue was first sold to the public at the issue price. In the case of privately placed issues of bonds or other evidences of indebtedness, the term "date of original issue" means the date on which each such bond or other evidence of indebtedness was sold by the issuer.

(c) Bond with unmatured coupons detached.

If a bond or other evidence of indebtedness issued at any time with interest coupons—

(1) is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(2) is purchased after December 31, 1957, and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such evidence of indebtedness by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as gain from the sale or exchange of property which is not a capital asset to the extent that the fair market value (determined as of the time of the purchase) of the evidence of indebtedness with coupons attached exceeds the purchase price. If this subsection and subsection (a) (2) (A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then subsection (a) (2) (A) shall apply with respect to that part of the gain to which this subsection does not apply.

(d) Cross reference.

For special treatment of face-amount certificates on retirement, see section 72.

(Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 50 (a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86–69, § 3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88–563, § 5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91–172, title IV, § 413 (a), (b), 83 Stat. 609, 611.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 413(a), added pars. (2)(A) and (3) and redesignated former pars. (2)(A), (B), and (C), as pars. (2)(B), (C), and (D), respectively, and in par. (2)(B), as so redesignated, extended its application to corporate bonds issued on or before May 27, 1969, and to government bonds.

Subsec. (b)(2). Pub. L. 91–172, § 413(b), added provisions for the determination of the issue price in the case of a bond or other evidence of indebtedness and an option or other security issued together as an investment unit.

1964—Subsec. (b)(2). Pub. L. 88–563 inserted provisions requiring the issue price of privately placed issues of bonds or other evidence of indebtedness to be increased by the amount, if any, of tax paid under section 4911 (and not credited, refunded, or reimbursed) on the acquisition of such bond or evidence by the first buyer.

1959—Subsec. (a)(2)(C). Pub. L. 86–69 substituted "Double inclusion in income not required" for "Election as to inclusion" in the catchline, and eliminated provisions which related to obligations with respect to which the taxpayer has made an election provided by section 454 (a) and (c) of this title.

1958—Subsec. (a) (2) (A). Pub. L. 85–866, § 50(a), substituted "which does not exceed—" for "which does not exceed", added clause (1) and designated existing provisions as clause (2), inserting the conditional clause therein.

Subsec. (c). Pub. L. 85–866, § 51, substituted "unmatured" for "excess number of" in the catchline and "sale or exchange of any evidence of indebtedness" for "retirement of any bond", consolidated formed clauses (1) and (2) into present clause (1) with limitation to purchases made before Jan. 1, 1958, added present clause (2), and inserted parenthetical phrase "(or by a person whose basis is determined by reference to the basis in the hands of such purchaser)" and the word "fair" before "market value".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 413(e) of Pub. L. 91–172 provided that: "The amendments made by this section [amending subsecs. (a) and (b) of this section and section 6049 of this title] shall apply with respect to bonds and other evidences of indebtedness issued after May 27, 1969 (other than evidences of indebtedness issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter)."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 50 (b) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [to subsec. (a) (2) (A) of this section] shall apply to taxable years ending after December 31, 1957, but only with respect to dispositions after such date."

Amendment of subsec. (c) of this section by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 249, 405, 818, 871, 881, 1037, 1351, 6049 of this title.

§ 1233. Gains and losses from short sales.

(a) Capital assets.

For purposes of this subtitle, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

(b) Short-term gains and holding periods.

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 6 months (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 6 months (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding section 1223, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(c) Certain options to sell.

Subsection (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This subsection shall apply only to options acquired after the date of enactment of this title.

(d) Long-term losses.

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 6 months, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 6 months (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section.

(1) Subsection (b) (1) or (d) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable subsection.

(2) For purposes of subsections (b) and (d)—

(A) the term "property" includes only stocks and securities (including stocks and securities dealt with on a "when issued" basis), and commodity futures, which are capital assets in the hands of the taxpayer;

(B) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in 1 calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month; and

(C) in the case of a short sale of property by an individual, the term "taxpayer", in the application of this subsection and subsections (b) and (d), shall be read as "taxpayer or his spouse"; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer.

(3) Where the taxpayer enters into 2 commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, subsections (b) and (d) shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

(4) (A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236)—

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 6 months, and

(ii) if such short sale is closed more than 20 days after the date on which it was made, subsection (b) (2) shall apply in respect of the holding period of such substantially identical property.

(B) For purposes of subparagraph (A)—

(i) the last sentence of subsection (b) applies; and

(ii) the term "stock" means any share or certificate of stock in a corporation, any bond or other evidence of indebtedness which is convertible into any such share or certificate, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing.

(f) Arbitrage operations in securities.

In the case of a short sale which had been entered in to as an arbitrage operation, to which sale the rule of subsection (b) (2) would apply except as otherwise provided in this subsection—

(1) subsection (b) (2) shall apply first to substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, and only to the extent that the quantity sold short exceeds the substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, shall the holding period of any other such identical assets held by the taxpayer be affected;

(2) in the event that assets acquired for arbitrage operations are disposed of in such manner as to create a net short position in assets acquired for arbitrage operations, such net short position shall be deemed to constitute a short sale made on that day;

(3) for the purpose of paragraphs (1) and (2) of this subsection the taxpayer will be deemed as of the close of any business day to hold property which he is or will be entitled to receive or acquire by virtue of any other asset acquired for arbitrage operations or by virtue of any contract he has entered into in an arbitrage operation; and

(4) for the purpose of this subsection arbitrage operations are transactions involving the purchase and sale of assets for the purpose of profiting from a current difference between the price of the asset purchased and the price of the asset sold, and in which the asset purchased, if not identical to the asset sold, is such that by virtue thereof the taxpayer is, or will be, entitled to acquire assets identical to the assets sold. Such operations must be clearly identified by the taxpayer in his records as arbitrage operations on the day of the transaction or as soon thereafter as may be practicable. Assets acquired for arbitrage operations will include stocks and securities and the right to acquire stocks and securities.

(g) Hedging transactions.

This section shall not apply in the case of a hedging transaction in commodity futures. (Aug. 16, 1954, ch. 736, 68A Stat. 327; Aug. 12, 1955, ch. 871, § 1, 69 Stat. 717; Sept. 2, 1958, Pub. L. 85–866, title I, § 52 (a), (b), 72 Stat. 1643, 1644.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–866, § 52(b), deleted ", other than a hedging transaction in commodity futures," following "sale of property."

Subsec. (e)(4). Pub. L. 85–866, § 52(a), added subsec. (e)(4).

Subsec. (g). Pub. L. 85–866, § 52(b), added subsec. (g).

1955—Subsec. (f). Act Aug. 12, 1955, added subsec. (f).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 85–866, and subsec. (g) of this section, applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 52 (c) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [adding subsec. (e) (4) of this section] shall apply with respect to short sales made after December 31, 1957."

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 12, 1955, provided that: "The amendment made by the first section of this Act [adding subsec. (f) of this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Aug. 12, 1955] and only in the case of a short sale of property made by the taxpayer after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1234 of this title.

§ 1234. Options to buy or sell.

(a) Treatment of gain or loss.

Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, a privilege or option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option or privilege relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by him).

(b) Special rule for loss attributable to failure to exercise option.

For purposes of subsection (a), if loss is attributable to failure to exercise a privilege or option, the privilege or option shall be deemed to have been sold or exchanged on the day it expired.

(c) Special rule for grantors of straddles.

(1) Gain on lapse.

In the case of gain on lapse of an option granted by the taxpayer as part of a straddle, the gain shall be deemed to be gain from the sale or exchange of a capital asset held for not more than 6 months on the day that the option expired.

(2) Exception.

This subsection shall not apply to any person who holds securities for sale to customers in the ordinary course of his trade or business.

(3) Definitions.

For purposes of this subsection—

(A) The term "straddle" means a simultaneously granted combination of an option to buy, and an option to sell, the same quantity of a security at the same price during the same period of time.

(B) The term "security" has the meaning assigned to such term by section 1236(c).

(d) Non-application of section.

This section shall not apply to—

(1) a privilege or option which constitutes property described in paragraph (1) of section 1221;

(2) in the case of gain attributable to the sale or exchange of a privilege or option, any income derived in connection with such privilege or option which, without regard to this section, is treated as other than gain from the sale or exchange of a capital asset;

(3) a loss attributable to failure to exercise an option described in section 1233 (c); or

(4) gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before March 1, 1954, if in the hands of the taxpayer such privilege or option is a capital asset.

(Aug. 16, 1954, ch. 376, 68A Stat. 329; Sept. 2, 1958, Pub. L. 85-866, title I, § 53, 72 Stat. 1644; Nov. 13, 1966, Pub. L. 89-809, title II, § 210(a), 80 Stat. 1580.)

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-809 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 89-809 redesignated former subsec. (c) as (d).

1958—Pub. L. 85-866 amended section generally and among other changes provided in subsec. (a) that gain or loss resulting from option to buy or sell property is to be considered gain or loss arising from property which has the same character as the property underlying the option, incorporated existing provisions in subsecs. (b) and (c) (3), and added provisions set out in subsec. (c) (1), (2), (4).

EFFECTIVE DATE OF 1966 AMENDMENT

Section 210(b) of Pub. L. 89-809 provided that: "The amendments made by subsection (a) [adding subsec. (c) and redesignating former subsec. (c) as (d)] shall apply to straddle transactions entered into after January 25, 1965, in taxable years ending after such date."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1233 of this title.

§ 1235. Sale or exchange of patents.

(a) General.

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 6 months, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) "Holder" defined.

For purposes of this section, the term "holder" means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (d)).

(c) Effective date.

This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.

(d) Related persons.

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267 (b); except that, in applying section 267 (b) and (c) for purposes of this section—

(1) the phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267 (b), and

(2) paragraph (4) of section 267 (c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(e) Cross reference.

For special rule relating to nonresident aliens, see section 871 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 329; Sept. 2, 1958, Pub. L. 85-866, title I, § 54 (a), 72 Stat. 1644.)

AMENDMENTS

1958—Subsec. (d). Pub. L. 85-866 substituted the provisions set out as subsec. (d) for provisions reading "Subsection (a) shall not apply to any sale or exchange between an individual and any other related person (as defined in section 267 (b)), except brothers and sisters, whether by the whole or half blood."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 54 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [to subsec. (d) of this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to transfers after such date."

CROSS REFERENCES

Withholding tax on nonresident aliens, see section 1441 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 483, 871, 1201, 1441 of this title.

§ 1236. Dealers in securities.

(a) Capital gains.

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the expiration of the 30th day after the date of its acquisition, clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and

(2) the security was not, at any time after the expiration of such 30th day, held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(b) Ordinary losses.

Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in section 582 (c), (relating to bond, etc., losses of banks), in no event be considered as loss from the sale or exchange of property which is not a capital asset if at any time after November 19, 1951, the security was clearly identified in the dealer's records as a security held for investment.

(c) Definition of security.

For purposes of this section, the term "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing. (Aug. 16, 1954, ch. 736, 68A Stat. 330.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1233, 1234 of this title.

§ 1237. Real property subdivided for sale.

(a) General.

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale, if—

(1) such tract, or any lot or parcel thereof, had not previously been held by such taxpayer primarily for sale to customers in the ordinary course of trade or business (unless such tract at such previous time would have been covered by this section) and, in the same taxable year in which the sale occurs, such taxpayer does not so hold any other real property; and

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer or is made pursuant to a contract of sale entered into between the taxpayer and the buyer. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

(A) the taxpayer or members of his family (as defined in section 267 (c) (4)), by a corporation controlled by the taxpayer, or by a partnership which included the taxpayer as a partner; or

(B) a lessee, but only if the improvement constitutes income to the taxpayer; or

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

(b) Special rules for application of section.

(1) Gains.

If more than 5 lots or parcels contained in the same tract of real property are sold or exchanged, gain from any sale or exchange (which occurs in or after the taxable year in which the sixth lot or parcel is sold or exchanged) of any lot or parcel which comes within the provisions of paragraphs (1), (2) and (3) of subsection (a) of this section shall be deemed to be gain from the sale of property held primarily for sale to customers in the ordinary course of the trade or business to the extent of 5 percent of the selling price.

(2) Expenditures of sale.

For the purpose of computing gain under paragraph (1) of this subsection, expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) of this subsection to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

(3) Necessary improvements.

No improvement shall be deemed a substantial improvement for purposes of subsection (a) if the lot or parcel is held by the taxpayer for a period of 10 years and if—

(A) such improvement is the building or installation of water, sewer, or drainage facilities or roads (if such improvement would except for this paragraph constitute a substantial improvement);

(B) it is shown to the satisfaction of the Secretary or his delegate that the lot or parcel, the value of which was substantially enhanced by such improvement, would not have been marketable at the prevailing local price for similar building sites without such improvement; and

(C) the taxpayer elects, in accordance with regulations prescribed by the Secretary or his delegate, to make no adjustment to basis of the lot or parcel, or of any other property owned by the taxpayer, on account of the expenditures for such improvements. Such election shall not make any item deductible which would not otherwise be deductible.

(c) Tract defined.

For purposes of this section, the term "tract of real property" means a single piece of real property, except that 2 or more pieces of real property shall be considered a tract if at any time they were contiguous in the hands of the taxpayer or if they would be contiguous except for the interposition of a road, street, railroad, stream, or similar property. If, following the sale or exchange of any lot or parcel from a tract of real property, no further sales or exchanges of any other lots or parcels from the remainder of such tract are made for a period of 5 years, such remainder shall be deemed a tract.

(d) Effective date.

This section shall apply only with respect to sales of property occurring after December 31, 1953, except that, for purposes of subsection (c) (defining tract of real property) and for determining the number of sales under paragraph (1) of subsection (b), all sales of lots and parcels from any tract of real property during the period of 5 years before December 31, 1953, shall be taken into account, except as provided in subsection (c). (Aug. 16, 1954, ch. 736, 68A Stat. 330; Apr. 27, 1956, ch. 214, §§ 1, 2, 70 Stat. 118; Sept. 2, 1958, Pub. L. 85-866, title I, § 55, 72 Stat. 1645; Jan. 12, 1971, Pub. L. 91-686, § 2 (a), 84 Stat. 2071.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 91-686, § 2(a)(1), substituted "other than a corporation" for "(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))."

Subsec. (b). Pub. L. 91-686, § 2(a)(2), eliminated sentence which made subpars. (B) and (C) inapplicable in the case of property acquired through the foreclosure of a lien thereon which secured the payment of an indebtedness to the taxpayer or (in the case of a corporation) to a creditor who has transferred the foreclosure bid to the taxpayer in exchange for all of its stock and other consideration and in the case of property adjacent to such property if 80 percent of the real property owned by the taxpayer was property described in the first part of the sentence.

1958—Subsec. (a) (1). Pub. L. 85-866 substituted "and, in the same taxable year" for "or, in the same taxable year".

1956—Subsec. (a). Act Apr. 27, 1956, § 1, substituted for the words "other than a corporation" the parenthetical clause "(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b) (3))".

Subsec. (b) (3). Act Apr. 27, 1956, § 2, substituted "water, sewer, or drainage facilities" for "water or sewer facilities" in subpar. (A), and inserted at the end of said subsec. (b) (3) provision that requirements of subpars. (B) and (C) do not apply to certain specified property.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(b) of Pub. L. 91-686 provided that: "The amendments made by subsection (a) [to subsecs. (a) and (b) of this section] shall be effective for taxable years beginning after the date of enactment of this Act [Jan. 12, 1971]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) (1) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act Apr. 27, 1956, provided it shall apply to all taxable years beginning after Dec. 31, 1954.

SALES OR EXCHANGES BY CORPORATIONS OF REAL PROPERTY HELD MORE THAN 25 YEARS

Section 1 of Pub. L. 91-686 provided:

"That (a) for purposes of the Internal Revenue Code of 1954 any lot or parcel of real property sold or exchanged by a corporation which would, but for this Act, be treated as property held primarily for sale to customers in the ordinary course of trade or business shall not, except to the extent provided in (b), be so treated if—

"(1) no shareholder of the corporation directly or indirectly holds real property primarily for sale to customers in the ordinary course of trade or business; and

"(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

"(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

"(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

"(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after December 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

"(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—

"(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

"(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

"(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities."

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1954 [section 1504(a) of this title], such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

"(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

"(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

"(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984."

CROSS REFERENCES

Real property used in trade or business—

As not capital asset, see section 1221 (2) of this title.

Held for more than six months, see section 1231 (b)(1) of this title.

§ 1238. Amortization in excess of depreciation.

Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is

less than its adjusted basis determined without regard to section 168 (relating to amortization deduction of emergency facilities), shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. (Aug. 16, 1954, ch. 736, 68A Stat. 332.)

§ 1239. Gain from sale of certain property between spouses or between an individual and a controlled corporation.

(a) Treatment of gain as ordinary income.

In the case of a sale or exchange, directly or indirectly, of property described in subsection (b)—

(1) between a husband and wife; or

(2) between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren;

any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

(b) Section applicable only to sales or exchanges of depreciable property.

This section shall apply only in the case of a sale or exchange by a transferor of property which in the hands of the transferee is property of a character which is subject to the allowance for depreciation provided in section 167.

(c) Section not applicable with respect to sales or exchanges made on or before May 3, 1951.

This section shall apply only in the case of a sale or exchange made after May 3, 1951. (Aug. 16, 1954, ch. 736, 68A Stat. 332; Sept. 2, 1958, Pub. L. 85-866, title I, § 56, 72 Stat. 1645.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-866 added subsec. (c).

§ 1240. Taxability to employee of termination payments.

Amounts received from the assignment or release by an employee, after more than 20 years' employment, of all his rights to receive, after termination of his employment and for a period of not less than 5 years (or for a period ending with his death), a percentage of future profits or receipts of his employer shall be considered an amount received from the sale or exchange of a capital asset held for more than 6 months if—

(1) such rights were included in the terms of the employment of such employee for not less than 12 years,

(2) such rights were included in the terms of the employment of such employee before the date of enactment of this title, and

(3) the total of the amounts received for such assignment or release is received in one taxable year and after the termination of such employment.

(Aug. 16, 1954, ch. 736, 68A Stat. 332.)

§ 1241. Cancellation of lease or distributor's agreement.

Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement. (Aug. 16, 1954, ch. 736, 68A Stat. 333.)

CROSS REFERENCES

Computation for services as gross income, see section 61 (a) (1) of this title.

§ 1242. Losses on small business investment company stock.

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as a loss from the sale or exchange of property which is not a capital asset. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as a loss from the sale or exchange of property which is not a capital asset shall be treated as attributable to a trade or business of the taxpayer. (Added Pub. L. 85-866, title I, § 57 (a), Sept. 2, 1958, 72 Stat. 1645.)

REFERENCES IN TEXT

Small Business Investment Act of 1958, referred to in clause (1), is classified to chapter 14B of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57 (d) of Pub. L. 85-866, set out as a note under section 243 of this title.

§ 1243. Loss of small business investment company.

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

(1) a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as a loss from the sale or exchange of property which is not a capital asset. (Added Pub. L. 85-866, title I, § 57 (a), Sept. 2, 1958, 72 Stat. 1645, and amended Pub. L. 91-172, title IV, § 433(b), Dec. 30, 1969, 83 Stat. 624.)

REFERENCES IN TEXT

Small Business Investment Act of 1958, referred to in text, is classified to chapter 14B of Title 15, Commerce and Trade.

Section 304 of the Small Business Investment Act of 1958, referred to in text, is classified to section 684 of Title 15, Commerce and Trade.

AMENDMENTS

1969—Par. (1). Pub. L. 91-172 substituted "stock received pursuant to the conversion privilege of convertible debentures" for "convertible debentures (including stock received pursuant to the conversion privilege)".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after July 11, 1969, see section 433(d) of Pub. L. 91-172, set out as a note under section 582 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57 (d) of Pub. L. 85–866, set out as a note under section 243 of this title.

§ 1244. Losses on small business stock.

(a) General rule.

In the case of an individual, a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in this section, be treated as a loss from the sale or exchange of an asset which is not a capital asset.

(b) Maximum amount for any taxable year.

For any taxable year the aggregate amount treated by the taxpayer by reason of this section as a loss from the sale or exchange of an asset which is not a capital asset shall not exceed—

(1) $25,000, or

(2) $50,000, in the case of a husband and wife filing a joint return for such year under section 6013.

(c) Section 1244 stock defined.

(1) In general.

For purposes of this section, the term "section 1244 stock" means common stock in a domestic corporation if—

(A) such corporation adopted a plan after June 30, 1958, to offer such stock for a period (ending not later than two years after the date such plan was adopted) specified in the plan,

(B) at the time such plan was adopted, such corporation was a small business corporation,

(C) at the time such plan was adopted, no portion of a prior offering was outstanding,

(D) such stock was issued by such corporation, pursuant to such plan, for money or other property (other than stock and securities), and

(E) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock is sustained (or if such corporation has not been in existence for 5 taxable years ending before such date, during the period of its taxable years ending before such date, or if such corporation has not been in existence for one taxable year ending before such date, during the period such corporation has been in existence before such date), derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account for purposes of this subparagraph only to the extent of gains therefrom); except that this subparagraph shall not apply with respect to any corporation if, for the period referred to, the amount of the deductions allowed by this chapter (other than by sections 172, 242, 243, 244, and 245) exceed the amount of gross income.

Such term does not include stock if issued (pursuant to the plan referred to in subparagraph (A)) after a subsequent offering of stock has been made by the corporation.

(2) Small business corporation defined.

For purposes of this section, a corporation shall be treated as a small business corporation if at the time of the adoption of the plan—

(A) the sum of—

(i) the aggregate amount which may be offered under the plan, plus

(ii) the aggregate amount of money and other property (taken into account in an amount, as of the time received by the corporation, equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liabilities to which the property was subject or which were assumed by the corporation at such time) received by the corporation after June 30, 1958, for stock, as a contribution to capital, and as paid-in surplus,

does not exceed $500,000; and

(B) the sum of—

(i) the aggregate amount which may be offered under the plan, plus

(ii) the equity capital of the corporation (determined on the date of the adoption of the plan),

does not exceed $1,000,000.

For purposes of subparagraph (B), the equity capital of a corporation is the sum of its money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders).

(d) Special rules.

(1) Limitations on amount of ordinary loss.

(A) Contributions of property having basis in excess of value.

If—

(i) section 1244 stock was issued in exchange for property,

(ii) the basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) the adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) Increases in basis.

In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary or his delegate, common stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c) (1) (other than subparagraph

(E) thereof), or which is received in a reorganization described in section 368 (a) (1) (F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1) (E) and (2) (A) of subsection (c), a successor corporation in a reorganization described in section 368 (a) (1) (F) shall be treated as the same corporation as its predecessor.

(3) Relationship to net operating loss deduction.

For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as a loss from the sale or exchange of an asset which is not a capital asset shall be treated as attributable to a trade or business of the taxpayer.

(4) Individual defined.

For purposes of this section, the term "individual" does not include a trust or estate.

(e) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 85-866, title II, § 202 (b), Sept. 2, 1958, 72 Stat. 1676.)

CROSS REFERENCES

Section as part of the Small Business Tax Revision Act of 1958, see section 201 of Pub. L. 85-866, set out as a note under section 165 of this title.

§ 1245. Gain from dispositions of certain depreciable property.

(a) General rule.

(1) Ordinary income.

Except as otherwise provided in this section, if section 1245 property is disposed of during a taxable year beginning after December 31, 1962, the amount by which the lower of—

(A) the recomputed basis of the property, or

(B) (i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recomputed basis.

For purposes of this section, the term "recomputed basis" means—

(A) with respect to any property referred to in paragraph (3) (A) or (B), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) with respect to any property referred to in paragraph (3) (C), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after June 30, 1963,

(C) with respect to livestock, its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969, or

(D) with respect to any property referred to in paragraph (3) (D), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under section 169 or 185

reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168, 169, 184, 185, or 187. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under section 168, 169, 184, 185, or 187, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(3) Section 1245 property.

For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in section 185) and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) constituted research or storage facilities used in connection with any of the activities referred to in clause (i),

(C) an elevator or an escalator, or

(D) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169 or 185.

(b) Exceptions and limitations.

(1) Gifts.

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death.

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions.

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), 374(a), 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) (1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an

organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the sum of—

(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

(B) the fair market value of property acquired which is not section 1245 property and which is not taken into account under subparagraph (A).

(5) Sections 1071 and 1081 transactions.

Under regulations prescribed by the Secretary or his delegate, rules consistent with paragraphs (3) and (4) of this subsection shall apply in the case of transactions described in section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or section 1081 (relating to exchanges in obedience to SEC orders).

(6) Property distributed by a partnership to a partner.

(A) In general.

For purposes of this section, the basis of section 1245 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Adjustments added back.

In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(ii) the amount of such gain to which section 751(b) applied.

(c) Adjustments to basis.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) Application of section.

This section shall apply notwithstanding any other provision of this subtitle. (Added Pub. L. 87–834, § 13(a)(1), Oct. 16, 1962, 76 Stat. 1032, and amended Pub. L. 88–272, title II, § 203(d), Feb. 26, 1964, 78 Stat. 35; Pub. L. 91–172, title II, § 212(a)(1), (2), title VII, § 704(b)(4), Dec. 30, 1969, 83 Stat. 571, 670.)

AMENDMENTS

1969—Subsec. (a)(2). Pub. L. 91–172, §§ 212(a)(1), 704(b)(4)(A), (B), added subpar. (C) and inserted references to sections 169, 185, and 187, and added subpar. (D).

Subsec. (a)(3). Pub. L. 91–172, §§ 212(a)(2), 704(b)(4)(C)–(F), struck out "(other than livestock)" following "means any property" and substituted "section 167 (or subject to the allowance of amortization provided in section 185)" for "section 167" and added subpar. (D).

1964—Subsec. (a)(2), (3)(C). Pub. L. 88–272 redefined "recomputed basis" with respect to elevators or escalators in par. (2), and inserted subpar. (C) in par. (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(a)(3) of Pub. L. 91–172 provided that: "The amendments made by paragraphs (1) and (2) [to this section] shall apply with respect to taxable years beginning after December 31, 1969."

Amendment of section by section 704(b)(4) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as a note under section 169 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable with respect to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 203(f)(3) of Pub. L. 88–272, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 13(g) of Pub. L. 87–834 provided that: "The amendments made by this section [enacting this section and amending sections 167(e), 170, 301, 312, 341, 453, 613 and 751 of this title] (other than the amendments made by subsection (c) [enacting section 167(f) of this title, amending sections 179 and 642 of this title, and redesignating former subsecs. (f)—(h) of section 167 of this title as subsecs. (g)—(i)]) shall apply to taxable years beginning after December 31, 1962. The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1961, and ending after the date of the enactment of this Act [Oct. 16, 1962]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 166, 170, 301, 312, 341, 453, 512, 617, 751, 1250, 1251, 1252 of this title.

§ 1246. Gain on foreign investment company stock.

(a) Treatment of gain as ordinary income.

(1) General rule.

In the case of a sale or exchange (or a distribution which, under section 302 or 331, is treated as an exchange of stock) after December 31, 1962, of stock in a foreign corporation which was a foreign investment company (as defined in subsection (b)) at any time during the period during which the taxpayer held such stock, any gain shall be treated as gain from the sale or exchange of property which is not a capital asset, to the extent of the taxpayer's ratable share of the earnings and profits of such corporation accumulated for taxable years beginning after December 31, 1962.

(2) Ratable share.

For purposes of this section, the taxpayer's ratable share shall be determined under regulations prescribed by the Secretary or his delegate, but shall include only his ratable share of the accumulated earnings and profits of such corporation—

(A) for the period during which the taxpayer held such stock, but

(B) excluding such earnings and profits attributable to any amount previously included in the gross income of such taxpayer under section 951 (but only to the extent the inclusion of such amount did not result in an exclusion of any other amount from gross income under section 959).

(3) Taxpayer to establish earnings and profits.

Unless the taxpayer establishes the amount of the accumulated earnings and profits of the foreign investment company and the ratable share thereof for the period during which the taxpayer held such stock, all the gain from the sale or exchange of stock in such company shall be considered as gain from the sale or exchange of property which is not a capital asset.

(4) Holding period of stock must be more than 6 months.

This section shall not apply with respect to the sale or exchange of stock where the holding period of such stock as of the date of such sale or exchange is 6 months or less.

(b) Definition of foreign investment company.

For purposes of this section, the term "foreign investment company" means any foreign corporation which, for any taxable year beginning after December 31, 1962, is—

(1) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), either as a management company or as a unit investment trust, or

(2) engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (within the meaning of section 3(a)(1) of such Act, as limited by paragraphs (2) through (10) (except paragraph (6)(C)) and paragraphs (12) through (15) of section 3(c) of such Act) at a time when more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or of the total value of shares of all classes of stock, was held, directly or indirectly (within the meaning of section 958(a)), by United States persons (as defined in section 7701(a)(30)).

(c) Stock having transferred or substituted basis.

To the extent provided in regulations prescribed by the Secretary or his delegate, stock in a foreign corporation, the basis of which (in the hands of the taxpayer selling or exchanging such stock) is determined by reference to the basis (in the hands of such taxpayer or any other person) of stock in a foreign investment company, shall be treated as stock of a foreign investment company and held by the taxpayer throughout the holding period for such stock (determined under section 1223).

(d) Rules relating to entities holding foreign investment company stock.

To the extent provided in regulations prescribed by the Secretary or his delegate—

(1) trust certificates of a trust to which section 677 (relating to income for benefit of grantor) applies, and

(2) stock of a domestic corporation,

shall be treated as stock of a foreign investment company and held by the taxpayer throughout the holding period for such certificates or stock (determined under section 1223) in the same proportion that the investment in stock in a foreign investment company by the trust or domestic corporation bears to the total assets of such trust or corporation.

(e) Rules relating to stock acquired from a decedent.

(1) Basis.

In the case of stock of a foreign investment company acquired by bequest, devise, or inheritance (or by the decedent's estate) from a decedent dying after December 31, 1962, the basis determined under section 1014 shall be reduced (but not below the adjusted basis of such stock in the hands of the decedent immediately before his death) by the amount of the decedent's ratable share of the earnings and profits of such company accumulated after December 31, 1962. Any stock so acquired shall be treated as stock described in subsection (c).

(2) Deduction for estate tax.

If stock to which subsection (a) applies is acquired from a decedent, the taxpayer shall, under regulations prescribed by the Secretary or his delegate, be allowed (for the taxable year of the sale or exchange) a deduction from gross income equal to that portion of the decedent's estate tax deemed paid which is attributable to the excess of (A) the value at which such stock was taken into account for purposes of determining the value of the decedent's gross estate, over (B) the value at which it would have been so taken into account if such value had been reduced by the amount described in paragraph (1).

(f) Information with respect to certain foreign investment companies.

Every United States person who, on the last day of the taxable year of a foreign investment company beginning after December 31, 1962, owns 5 percent or more in value of the stock of such company shall furnish with respect to such company such information as the Secretary or his delegate shall by regulations prescribe.

(g) Cross reference.

For special rules relating to the earnings and profits of foreign investment companies, see section 312(*l*).

(Added Pub. L. 87–834, § 14(a)(1), Oct. 16, 1962, 76 Stat. 1036.)

REFERENCES IN TEXT

Sections 3(a)(1) and 3(c) of such Act, referred to in subsec. (b), mean sections 3(a)(1) and 3(c) of the Investment Company Act of 1940, and are classified to section 80a–3(a)(1) and 80a–3(c) of Title 15, respectively.

EFFECTIVE DATE

Section 14(c) of Pub. L. 87–834 provided that: "The amendments made by this section [adding this section and section 1247 and amending sections 312, 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 751, 1223, 1247, 1248 of this title.

§ 1247. Election by foreign investment companies to distribute income currently.

(a) Election by foreign investment company.

(1) In general.

If a foreign investment company which is described in section 1246(b)(1) elects (in the manner provided in regulations prescribed by the Secretary or his delegate) on or before December 31, 1962, with respect to each taxable year beginning after December 31, 1962, to—

(A) distribute to its shareholders 90 percent or more of what its taxable income would be if it were a domestic corporation;

(B) designate in a written notice mailed to its shareholders at any time before the expiration of 45 days after the close of its taxable year the pro rata amount of the excess (determined as if such corporation were a domestic corporation) of the net long-term capital gain over the net short-term capital loss of the taxable year; and the portion thereof which is being distributed; and

(C) provide such information as the Secretary or his delegate deems necessary to carry out the purposes of this section,

then section 1246 shall not apply with respect to the qualified shareholders of such company during any taxable year to which such election applies.

(2) Special rules.

(A) Computation of taxable income.

For purposes of paragraph (1)(A), the taxable income of the company shall be computed without regard to—

(i) the excess of the net long-term capital gain over the net short-term capital loss referred to in paragraph (1)(B),

(ii) section 172 (relating to net operating losses), and

(iii) any deduction provided by part VIII of subchapter B (other than the deduction provided by section 248, relating to organizational expenditures).

(B) Distributions after the close of the taxable year.

For purposes of paragraph (1)(A), a distribution made after the close of the taxable year and on or before the 15th day of the third month of the next taxable year shall be treated as distributed during the taxable year to the extent elected by the company (in accordance with regulations prescribed by the Secretary or his delegate) on or before the 15th day of such third month.

(C) Carryover of capital losses from nonelection years denied.

In computing the excess of the net long-term capital gain over the net short-term capital loss referred to in paragraph (1)(B), section 1212 shall not apply to losses incurred in or with respect to taxable years before the first taxable year to which the election applies.

(b) Years to which election applies.

The election of any foreign investment company under this section shall terminate as of the close of the taxable year preceding its first taxable year in which any of the following occurs:

(1) the company fails to comply with the provisions of subparagraph (A), (B), or (C) of subsection (a)(1), unless it is shown that such failure is due to reasonable cause and not due to willful neglect,

(2) the company is a foreign personal holding company, or

(3) the company is not a foreign investment company which is described in section 1246(b)(1).

(c) Qualified shareholders.

For purposes of this section—

(1) In general.

The term "qualified shareholder" means any shareholder who is a United States person (as defined in section 7701(a)(30)), other than a shareholder described in paragraph (2).

(2) Certain United States persons excluded from definition.

A United States person shall not be treated as a qualified shareholder for the taxable year if for such taxable year (or for any prior taxable year) he did not include, in computing his long-term capital gains in his return for such taxable year, the amount designated by such company pursuant to subsection (a)(1)(B) as his share of the undistributed capital gains of such company for its taxable year ending within or with such taxable year of the taxpayer. The preceding sentence shall not apply with respect to any failure by the taxpayer to treat an amount as provided therein if the taxpayer shows that such failure was due to reasonable cause and not due to willful neglect.

(d) Treatment of distributed and undistributed capital gains by a qualified shareholder.

Every qualified shareholder of a foreign investment company for any taxable year of such company with respect to which an election pursuant to subsection (a) is in effect shall include, in computing his long-term capital gains—

(1) for his taxable year in which received, his pro rata share of the distributed portion of the excess of the net long-term capital gain over the net short-term capital loss for such taxable year of such company, and

(2) for his taxable year in which or with which the taxable year of such company ends, his pro rata share of the undistributed portion of the excess of the net long-term capital gain over the net short-term capital loss for such taxable year of such company.

(e) Adjustments.

Under regulations prescribed by the Secretary or his delegate, proper adjustments shall be made—

(1) in the earnings and profits of the electing foreign investment company and a qualified shareholder's ratable share thereof, and

(2) in the adjusted basis of stock of such company held by such shareholder,

to reflect such shareholder's inclusion in gross income of undistributed capital gains.

(f) Election by foreign investment company with respect to foreign tax credit.

A foreign investment company with respect to which an election pursuant to subsection (a) is in effect and more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations may, for such taxable year, elect the application of this subsection with respect to income, war profits, and excess profits taxes described in section 901(b)(1) which are paid by the foreign investment company during

such taxable year to foreign countries and possessions of the United States. If such election is made—

(1) the foreign investment company—

(A) shall compute its taxable income, for purposes of subsection (a)(1)(A), without any deductions for income, war profits, or excess profits taxes paid to foreign countries or possessions of the United States, and

(B) shall treat the amount of such taxes, for purposes of subsection (a)(1)(A), as distributed to its shareholders;

(2) each qualified shareholder of such foreign investment company—

(A) shall include in gross income and treat as paid by him his proportionate share of such taxes, and

(B) shall treat, for purposes of applying subpart A of part III of subchapter N, his proportionate share of such taxes as having been paid to the country in which the foreign investment company is incorporated, and

(C) shall treat as gross income from sources within the country in which the foreign investment company is incorporated, for purposes of applying subpart A of part III of subchapter N, the sum of his proportionate share of such taxes and any dividend paid to him by such foreign investment company.

(g) Notice to shareholders.

The amounts to be treated by qualified shareholders, for purposes of subsection (f)(2), as their proportionate share of the taxes described in subsection (f)(1)(A) paid by a foreign investment company shall not exceed the amounts so designated by the foreign investment company in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year.

(h) Manner of making election and notifying shareholders.

The election provided in subsection (f) and the notice to shareholders required by subsection (g) shall be made in such manner as the Secretary or his delegate may prescribe by regulations.

(i) Loss on sale or exchange of certain stock held less than 6 months.

If—

(1) under this section, any qualified shareholder treats any amount designated under subsection (a)(1)(B) with respect to a share of stock as long-term capital gain, and

(2) such share is held by the taxpayer for less than 6 months,

then any loss on the sale or exchange of such share shall, to the extent of the amount described in paragraph (1), be treated as loss from the sale or exchange of a capital asset held for more than 6 months. (Added Pub. L. 87–834, § 14(a)(1), Oct. 16, 1962, 76 Stat. 1037.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 1246 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 951, 1212, 1248 of this title.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations.

(a) General rule.

If—

(1) a United States person sells or exchanges stock in a foreign corporation, or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock, and

(2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary or his delegate) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation.

(b) Limitation on tax applicable to individuals.

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 6 months, the tax attributable to an amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

(1) a pro rata share of the excess of—

(A) the taxes that would have been paid by the foreign corporation with respect to its income had it been taxed under this chapter as a domestic corporation (but without allowance for deduction of, or credit for, taxes described in subparagraph (B)), for the period or periods the stock sold or exchanged was held by the United States person in taxable years beginning after December 31, 1962, while the foreign corporation was a controlled foreign corporation, adjusted for distributions and amounts previously included in gross income of a United States shareholder under section 951, over

(B) the income, war profits, or excess profits taxes paid by the foreign corporation with respect to such income; and

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 6 months, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits.

(1) In general.

Except as provided in section 312(m)(3), for purposes of this section, the earnings and profits of any foreign corporation for any taxable

year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary or his delegate.

(2) Earnings and profits of subsidiaries of foreign corporations.

If—

(A) subsection (a) applies to a sale or exchange by a United States person of stock of a foreign corporation and, by reason of the ownership of the stock sold or exchanged, such person owned within the meaning of section 958(a)(2) stock of any other foreign corporation; and

(B) such person owned, within the meaning of section 958(a), or was considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such other foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such other foreign corporation was a controlled foreign corporation (as defined in section 957),

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

(C) are attributable (under regulations prescribed by the Secretary or his delegate) to the stock of such other foreign corporation which such person owned within the meaning of section 958(a)(2) (by reason of his ownership within the meaning of section 958(a)(1)(A) of the stock sold or exchanged) on the date of such sale or exchange; and

(D) were accumulated in taxable years of such other corporation beginning after December 31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a)(2) the stock of such other foreign corporation.

(d) Exclusions from earnings and profits.

For purposes of this section, the following amounts shall be excluded, with respect to any United States person, from the earnings and profits of a foreign corporation:

(1) Amounts included in gross income under section 951.

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959.

(2) Gain realized from the sale or exchange of property in pursuance of a plan of complete liquidation.

If a foreign corporation adopts a plan of complete liquidation in a taxable year of a foreign corporation beginning after December 31, 1962, and if section 337(a) would apply if such foreign corporation were a domestic corporation, earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary or his delegate) to any net gain from the sale or exchange of property.

(3) Less developed country corporations.

Earnings and profits accumulated by a foreign corporation while it was a less developed country corporation (as defined in section 902(d)), if the stock sold or exchanged was owned for a continuous period of at least 10 years, ending with the date of the sale or exchange, by the United States person who sold or exchanged such stock. In the case of stock sold or exchanged by a corporation, if United States persons who are individuals, estates, or trusts (each of whom owned within the meaning of section 958(a), or were considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation) owned, or were considered as owning, at any time during the 10-year period ending on the date of the sale or exchange more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation, this paragraph shall apply only if such United States persons owned, or were considered as owning, at all times during the remainder of such 10-year period more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation. For purposes of this paragraph, stock owned by a United States person who is an individual, estate, or trust which was acquired by reason of the death of the predecessor in interest of such United States person shall be considered as owned by such United States person during the period such stock was owned by such predecessor in interest, and during the period such stock was owned by any other predecessor in interest if between such United States person and such other predecessor in interest there was no transfer other than by reason of the death of an individual.

(4) United States income.

Any item includible in gross income of the foreign corporation under this chapter—

(A) for any taxable year beginning before January 1, 1967, as income derived from sources within the United States of a foreign corporation engaged in trade or business within the United States, or

(B) for any taxable year beginning after December 31, 1966, as income effectively connected with the conduct by such corporation of a trade or business within the United States.

This paragraph shall not apply with respect to any item which is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(5) Amounts included in gross income under section 1247.

If the United States person whose stock is sold or exchanged was a qualified shareholder (as defined in section 1247(c)) of a foreign corporation

which was a foreign investment company (as described in section 1246(b)(1)), the earnings and profits of the foreign corporation for taxable years in which such person was a qualified shareholder.

(e) Sales or exchanges of stock in certain domestic corporations.

Under regulations prescribed by the Secretary or his delegate, if—

(1) a United States person sells or exchanges stock of a domestic corporation, or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock, and

(2) such domestic corporation was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations,

such sale or exchange shall, for purposes of this section, be treated as a sale or exchange of the stock of the foreign corporation or corporations held by the domestic corporation.

(f) Exceptions.

This section shall not apply to—

(1) distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies;

(2) gain realized on exchanges to which section 356 (relating to receipt of additional consideration in certain reorganizations) applies; or

(3) any amount to the extent that such amount is, under any other provision of this title, treated as—

(A) a dividend,

(B) gain from the sale of an asset which is not a capital asset, or

(C) gain from the sale of an asset held for not more than 6 months.

(g) Taxpayer to establish earnings and profits.

Unless the taxpayer establishes the amount of the earnings and profits of the foreign corporation to be taken into account under subsection (a), all gain from the sale or exchange shall be considered a dividend under subsection (a), and unless the taxpayer establishes the amount of foreign taxes to be taken into account under subsection (b), the limitation of such subsection shall not apply. (Added Pub. L. 87–834, § 15(a), Oct. 16, 1962, 76 Stat. 1041, and amended Pub. L. 89–809, title I, § 104(k), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 91–172, title IV, § 442(b)(2), Dec. 30, 1969, 83 Stat. 628.)

AMENDMENTS

1969—Subsec. (c)(1). Pub. L. 91–172 added reference to the exception provided for in section 312(m)(3).

1966—Subsec. (d)(4). Pub. L. 89–809 provided that for taxable years beginning after December 31, 1966, the earnings and profits of the foreign corporation, for purposes of this section, is not to include income effectively connected with the conduct of a trade or business within the United States, and added provision that the exclusion does not apply to income which is exempt from tax or subject to a reduced rate of tax pursuant to a treaty.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (d)(4) of this section by Pub. L. 89–809 applicable with respect to sales or exchanges occurring after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section 15(c) of Pub. L. 87–834 provided that: "The amendments made by this section [enacting this section] shall apply with respect to sales or exchanges occurring after December 31, 1962."

ECONOMICALLY LESS DEVELOPED COUNTRIES

Designation of certain foreign countries as economically less developed countries, see Ex. Ord. No. 11071, Dec. 27, 1962, 27 F.R. 12875, set out as a note under section 955 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4916 of this title.

§ 1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations.

(a) General rule.

Gain from the sale or exchange after December 31, 1962, of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation shall, if such gain would (but for the provisions of this subsection) be gain from the sale or exchange of a capital asset or of property described in section 1231, be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

(b) Control.

For purposes of subsection (a), control means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this subsection, the rules for determining ownership of stock prescribed by section 958 shall apply. (Added Pub. L. 87–834, § 16(a), Oct. 16, 1962, 76 Stat. 1045, and amended Pub. L. 89–809, title I, § 104(m)(3), Nov. 13, 1966, 80 Stat. 1563.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–809 substituted "Gain" at the beginning of the subsec. for "Except as provided in subsection (c), gain".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section 16(c) of Pub. L. 87–834 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1962."

§ 1250. Gain from dispositions of certain depreciable realty.

(a) General rule.

Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1969.

If section 1250 property is disposed of after December 31, 1969, the applicable percentage of the lower of—

(A) that portion of the additional depreciation (as defined in subsection (b)(1) or (4)) attributable to periods after December 31, 1969, in respect of the property, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(C) Applicable percentage.

For purposes of paragraph (1), the term "applicable percentage" means—

(i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) in the case of section 1250 property constructed, reconstructed, or acquired by the taxpayer before January 1, 1975, with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing is financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B), 100 percent minus one percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(2) Additional depreciation before January 1, 1970.

(A) In general.

If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(B) exceeds the amount determined under paragraph (1)(A), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(B) over the amount determined under paragraph (1)(A),

shall also be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage.

For purposes of subparagraph (A) the term "applicable percentage" means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(b) Additional depreciation defined.

For purposes of this section—

(1) In general.

The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment. For purposes of the preceding sentence, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) shall be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

(2) Property held by lessee.

In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) the term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) the inclusion of renewal periods shall not extend the period taken into account by more than ⅔ of the period on the basis of which the depreciation adjustments were allowed.

(3) Depreciation adjustments.

The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescene, or amortization (other than amortization under section 168, 169, or 185). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) Additional depreciation attributable to rehabilitation expenditures.

The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), the depreciation adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k).

(c) Section 1250 property.

For purposes of this section, the term "section 1250 property" means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

(d) Exceptions and limitations.

(1) Gifts.

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death.

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions.

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), 374(a), 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

(A) Recognition limit.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the greater of the following:

(i) the amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or

(ii) the amount determined under subparagraph (C).

(B) Increase for certain stock.

With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 1033 (a)(3)(A).

(C) Adjustment where insufficient section 1250 property is acquired.

With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(ii) the fair market value (or cost in the case of a transaction described in section 1033(a)(3)) of the section 1250 property acquired in the transaction.

(D) Basis of property acquired.

In the case of property purchased by the taxpayer in a transaction described in section 1033 (a)(3), in applying the last sentence of section 1033(c), such sentence shall be applied—

(i) first solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and

(ii) then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (i).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary or his delegate.

(E) Additional depreciation with respect to property disposed of.

In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.

(5) Section 1071 and 1081 transactions.

Under regulations prescribed by the Secretary or his delegate, rules consistent with paragraphs (3) and (4) of this subsection and with subsections (e) and (f) shall apply in the case of transactions described in section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or section 1081 (relating to exchanges in obedience to SEC orders).

(6) Property distributed by a partnership to a partner.

(A) In general.

For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Additional depreciation.

In respect of any property described in subparagraph (A), the additional depreciation at-

tributable to periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by

(ii) if section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if the applicable percentage for the property had been 100 percent.

(7) Disposition of principal residence.

Subsection (a) shall not apply to a disposition of—

(A) property to the extent used by the taxpayer as his principal residence (within the meaning of section 1034, relating to sale or exchange of residence), and

(B) property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to gains from sale or exchange of residence of individual who has attained the age of 65) but only to the extent that he meets the use requirements of such section in respect of such property.

(8) Disposition of qualified low-income housing.

If section 1250 property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1039, then—

(A) Recognition limit.

The amount of gain recognized by the transferor under subsection (a) shall not exceed the greater of—

(i) the amount of gain recognized on the disposition (determined without regard to this section), or

(ii) the amount determined under subparagraph (B).

(B) Adjustment where insufficient section 1250 property is acquired.

With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(ii) the cost of the section 1250 property acquired in the transaction.

(C) Basis of property acquired.

The basis of property acquired by the taxpayer, determined under section 1039(d), shall be allocated—

(i) first to the section 1250 property described in subparagraph (E)(i), in the amount determined under such subparagraph, reduced by the amount of gain not recognized attributable to the section 1250 property disposed of,

(ii) then to any property (other than section 1250 property) to which section 1039 applies, in the amount of its cost, reduced by the amount of gain not recognized except to the extent taken into account under clause (i), and

(iii) then to the section 1250 property described in subparagraph (E)(ii), in the amount determined thereunder, reduced by the amount of gain not recognized except to the extent taken into account under classes (i) and (ii).

(D) Additional depreciation with respect to property disposed of.

The additional depreciation with respect to any property acquired shall include the additional depreciation with respect to the corresponding section 1250 property disposed of, reduced by the amount of gain recognized attributable to such property.

(E) Property consisting of more than one element.

There shall be treated as a separate element of section 1250 property—

(i) that portion of the section 1250 property acquired the cost of which does not exceed the net amount realized (as defined in section 1039(b)) attributable to the section 1250 property disposed of, reduced by the amount of gain recognized (if any) attributable to such property, and

(ii) that portion of the section 1250 property acquired the cost of which exceeds the net amount realized (as defined in section 1039(b)) attributable to the section 1250 property disposed of.

(F) Allocation rules.

For purposes of this paragraph—

(i) the amount of gain recognized attributable to the section 1250 property disposed of shall be the net amount realized wtih respect to such property, reduced by the greater of the adjusted basis of the section 1250 property disposed of or the cost of the section 1250 property acquired, but shall not exceed the gain recognized in the transaction, and

(ii) if any section 1250 property is treated as consisting of more than one element by reason of the application of subparagraph (E) to a prior transaction, then the amount of gain recognized, the net amount realized, and the additional depreciation, with respect to each such element shall be allocated in accordance with regulations prescribed by the Secretary or his delegate.

(e) Holding period.

For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

(1) Beginning of holding period.

The holding period of section 1250 property shall be deemed to begin—

(A) in the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(B) in the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(2) Property with transferred basis.

If the basis of property acquired in a transaction described in paragraph (1), (2), (3), or (5) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(3) Principal residence.

If the basis of property acquired in a transaction described in paragraph (7) of subsection (d) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.

(4) Qualified low-income housing.

The holding period of any section 1250 property acquired which is described in subsection (d)(8)(E)(i) shall include the holding period of the corresponding element of section 1250 property disposed of.

(f) Special rules for property which is substantially improved.

(1) Amount treated as ordinary income.

If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 shall be the sum of the amounts determined under paragraph (2).

(2) Ordinary income attributable to an element.

For purposes of paragraph (1), the amount taken into account for any element shall be the sum of—

(A) the amount (if any) determined by multiplying—

(i) the amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)(1) for the section 1250 property as the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by

(ii) the applicable percentage for such element, and

(B) the amount (if any) determined by multiplying—

(i) the amount which bears the same ratio to the lower of the amounts specified in subsection (a)(2)(A) (i) or (ii) for the section 1250 property as the additional depreciation for such element attributable to periods before January 1, 1970, bears to the sum of the additional depreciation for all elements attributable to periods before January 1, 1970, by

(ii) the applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(3) Property consisting of more than one element.

In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—

(A) each separate improvement,

(B) if, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and

(C) the remaining property which is not taken into account under subparagraphs (A) and (B).

(4) Property which is substantially improved.

For purposes of this subsection—

(A) In general.

The term "separate improvement" means each improvement added during the 36-month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—

(i) 25 percent of the adjusted basis of the property,

(ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or

(iii) $5,000.

For purposes of clauses (i) and (ii), the adjusted basis of the property shall be determined as of the beginning of the first day of such 36-month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

(B) Exception.

Improvements in any taxable year shall be taken into account for purposes of subparagraph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—

(i) $2,000, or

(ii) one percent of the adjusted basis referred to in subparagraph (A) (ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(C) Improvement.

The term "improvement" means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(g) Special rules for qualified low-income housing.

(1) Amount treated as ordinary income.

If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of the application of subsection (d)(8)(E), and gain is recognized in whole or in part, then the amount taken into account under subsection (a) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 shall be the sum of the amounts determined under paragraph (2).

(2) Ordinary income attributable to an element.

For purposes of paragraph (1), the amount taken into account for any element shall be the amount determined by multiplying—

(A) the amount which bears the same ratio to the lower of the additional depreciation or the gain recognized for the section 1250 property disposed of as the additional depreciation for such element bears to the sum of the additional depreciation for all elements disposed of, by

(B) the applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(h) Adjustments to basis.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(i) Application of section.

This section shall apply notwithstanding any other provision of this subtitle. (Added Pub. L. 88–272, title II, § 231(a), Feb. 26, 1964, 78 Stat. 100, and amended Pub. L. 91–172, title V, § 521 (b), (c), (e), title VII, § 704(b)(5), title IX, § 910(b), Dec. 30, 1969, 83 Stat. 652, 653, 670, 720.)

REFERENCES IN TEXT

Section 221(d)(3) of the National Housing Act, referred to in subsec. (a)(1)(C)(ii), is section 221(d)(3) of act June 27, 1934, ch. 847, title II, as amended June 30, 1961, Pub. L. 87–70, 75 Stat. 150, which is classified to section 1715*l*(d)(3) of Title 12, Banks and Banking.

Section 236 of the National Housing Act, referred to in subsec. (a)(1)(C)(ii), is section 236 of act June 27, 1934, ch. 847, title II as added Aug. 1, 1968, Pub. L. 90–448, 82 Stat. 498, which is classified to section 1715z–1 of Title 12, Banks and Banking.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 521(b), modified the recapture rules pertaining to residential housing by allowing a 1 percent per month reduction in the amount to be recaptured as ordinary income after the property has been held for 100 full months, with other real property remaining subject to full recapture, applied the existing recapture rules where the sale of property was subject to a binding contract in existence prior to July 25, 1969, provided that changes in the recapture rules are not to apply in federally assisted projects (such as programs under section 221(d)(3) or 236 of the National Housing Act) or to other publicly assisted housing programs under which the return to the investor is limited on a comparable basis, thereby rendering these projects subject to a recapture of the depreciation in full if the sale occurs in the first 12 months and for a phaseout of the recapture of the excess of accelerated over straight-line depreciation after 20 months, the recapture being reduced at the rate of 1 percent per month until 120 months after which no recapture applies, with such recapture rules to continue to apply only with respect to such property constructed, reconstructed, or acquired before Jan. 1, 1975, and applied new recapture rules to depreciation attributable to periods after Dec. 31, 1969.

Subsec. (b). Pub. L. 91–172, § 512(c), added par. (4).

Subsec. (b)(3). Pub. L. 91–172, § 704(b)(5), inserted reference to sections 169 and 185 of this title.

Subsec. (d). Pub. L. 91–172, §§ 521(e)(1), 910(b)(1), substituted "subsection (a)" for "subsection (a)(1)" wherever it appears and added par. (8).

Subsec. (e). Pub. L. 91–172, § 910(b)(2), added par. (4).

Subsec. (f)(1). Pub. L. 91–172, § 521(e)(2)(A), substituted "subsection (a)" for "subsection (a)(1)".

Subsec. (f)(2). Pub. L. 91–172, § 521(e)(2)(B), redesignated subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), respectively, and, in such cls. (i) and (ii) as so redesignated, added reference to depreciation attributable to periods after Dec. 31, 1969, and added subpar. (B).

Subsec. (g). Pub. L. 91–172, § 910(b)(3), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 91–172, § 910(b)(3), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91–172, § 910(b)(3), redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 521 (b), (c), and (e) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

Amendment of section by section 704(b)(5) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as a note under section 169 of this title.

Amendment of section by section 910(b) of Pub. L. 91–172 applicable to approved dispositions of qualified housing projects after Oct. 9, 1969, see section 910(d) of Pub. L. 91–172, set out as a note under section 1039 of this title.

EFFECTIVE DATE

Section 231(c) of Pub. L. 88–272 provided that: "The amendments made by this section [adding this section, and amending section 170, 301, 312, 341, 453(d)(4), 751, and the analysis preceding section 1231 of this title] shall apply to dispositions after December 31, 1963, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 167, 170, 301, 312, 341, 453, 751 of this title.

§ 1251. Gain from disposition of property used in farming where farm losses offset nonfarm income.

(a) Circumstances under which section applies.

This section shall apply with respect to any taxable year only if—

(1) there is a farm net loss for the taxable year, or

(2) there is a balance in the excess deductions account as of the close of the taxable year after applying subsection (b)(3)(A).

(b) Excess deductions account.

(1) Requirement.

Each taxpayer subject to this section shall, for purposes of this section, establish and maintain an excess deductions account.

(2) Additions to account.

(A) General rule.

There shall be added to the excess deductions account for each taxable year an amount equal to the farm net loss.

(B) Exceptions.

In the case of an individual (other than a trust) and, except as provided in this subparagraph, in the case of an electing small business corporation (as defined in section 1371(b)), subparagraph (A) shall apply for a taxable year—

(i) only if the taxpayer's nonfarm adjusted gross income for such year exceeds $50,000, and

(ii) only to the extent the taxpayer's farm net loss for such year exceeds $25,000.

This subparagraph shall not apply to an electing small business corporation for a taxable year if on any day of such year a shareholder of such corporation is an individual who, for his taxable year with which or within which the taxable year of the corporation ends, has a farm net loss.

(C) Married individuals.

In the case of a husband or wife who files a separate return, the amount specified in subparagraph (B)(i) shall be $25,000 in lieu of $50,000, and in subparagraph (B)(ii) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer does not have any nonfarm adjusted gross income for the taxable year.

(D) Nonfarm adjusted gross income.

For purposes of this section, the term "nonfarm adjusted gross income" means adjusted gross income (taxable income, in the case of an electing small business corporation) computed without regard to income or deductions attributable to the business of farming.

(3) Subtractions from account.

If there is any amount in the excess deductions account at the close of any taxable year (determined before any amount is subtracted under this paragraph for such year) there shall be subtracted from the account—

(A) an amount equal to the farm net income for such year, plus the amount (determined as provided in regulations prescribed by the Secretary or his delegate) necessary to adjust the account for deductions which did not result in a reduction of the taxpayer's tax under this subtitle for the taxable year or any preceding taxable year, and

(B) after applying paragraph (2) or subparagraph (A) of this paragraph (as the case may be), an amount equal to the sum of the amounts treated, solely by reason of the application of subsection (c), as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

(4) Exception for taxpayers using certain accounting methods.

(A) General rule.

Except to the extent that the taxpayer has succeeded to an excess deductions account as provided in paragraph (5), additions to the excess deductions account shall not be required by a taxpayer who elects to compute taxable income from farming (i) by using inventories, and (ii) by charging to capital account all expenditures paid or incurred which are properly chargeable to capital account (including such expenditures which the taxpayer may, under this chapter or regulations prescribed thereunder, otherwise treat or elect to treat as expenditures which are not chargeable to capital account).

(B) Time, manner, and effect of election.

An election under subparagraph (A) for any taxable year shall be filed within the time prescribed by law (including extensions thereof) for filing the return for such taxable year, and shall be made and filed in such manner as the Secretary or his delegate shall prescribe by regulations. Such election shall be binding on the taxpayer for such taxable year and for all subsequent taxable years and may not be revoked except with the consent of the Secretary or his delegate.

(C) Change of method of accounting, etc.

If, in order to comply with the election made under subparagraph (A), a taxpayer changes his method of accounting in computing taxable income from the business of farming, such change shall be treated as having been made with the consent of the Secretary or his delegate and for purposes of section 481(a)(2) shall be treated as a change not initiated by the taxpayer.

(5) Transfer of account.

(A) Certain corporate transactions.

In the case of a transfer described in subsection (d)(3) to which section 371(a), 374(a), or 381 applies, the acquiring corporation shall succeed to and take into account as of the close of the day of distribution or transfer, the excess deductions account of the transferor.

(B) Certain gifts.

If—

(i) farm recapture property is disposed of by gift, and

(ii) the potential gain (as defined in subsection (e)(5)) on farm recapture property disposed of by gift during any one-year period in which any such gift occurs is more than 25 percent of the potential gain on farm recapture property held by the donor immediately prior to the first of such gifts.

each donee of the property shall succeed (at the time the first of such gifts is made, but in an amount determined as of the close of the donor's taxable year in which the first of such gifts is made) to the same proportion of the donor's excess deductions account (determined, after the application of paragraphs (2) and (3) with respect to the donor, as of the close of such taxable year), as the potential gain on the property received by such donee bears to the aggregate potential gain on farm recapture property held by the donor immediately prior to the first of such gifts.

(6) Joint return.

In the case of an addition to an excess deductions account for a taxable year for which a joint return was filed under section 6013, for any sub-

sequent taxable year for which a separate return was filed the Secretary or his delegate shall provide rules for allocating any remaining amount of such addition in a manner consistent with the purposes of this section.

(c) Ordinary income.

(1) General rule.

Except as otherwise provided in this section, if farm recapture property (as defined in subsection (e)(1)) is disposed of during a taxable year beginning after December 31, 1969, the amount by which—

(A) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(B) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Limitation.

(A) Amount in excess deductions account.

The aggregate of the amounts treated under paragraph (1) as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 for any taxable year shall not exceed the amount in the excess deductions account at the close of the taxable year after applying subsection (b)(3)(A).

(B) Dispositions taken into account.

If the aggregate of the amounts to which paragraph (1) applies is limited by the application of subparagraph (A), paragraph (1) shall apply in respect of such dispositions (and in such amounts) as provided under regulations prescribed by the Secretary or his delegate.

(C) Special rule for dispositions of land.

In applying subparagraph (A), any gain on the sale or exchange of land shall be taken into account only to the extent of its potential gain (as defined in subsection (e)(5)).

(d) Exceptions and special rules.

(1) Gifts.

Subsection (c) shall not apply to a disposition by gift.

(2) Transfer at death.

Except as provided in section 691 (relating to income in respect of a decedent), subsection (c) shall not apply to a transfer at death.

(3) Certain corporate transactions.

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of sections 332, 351, 361, 371(a), or 374(a), then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversion, etc.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the sum of—

(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

(B) the fair market value of property acquired with respect to which no gain is recognized under subparagraph (A), but which is not farm recapture property.

(5) Partnerships.

(A) In general.

In the case of a partnership, each partner shall take into account separately his distributive share of the partnership's farm net losses, gains from dispositions of farm recapture property, and other items in applying this section to the partner.

(B) Transfers to partnerships.

If farm recapture property is contributed to a partnership and gain (determined without regard to this section) is not recognized under section 721, then the amount of gain taken into account by the transferor under subsection (c)(1) shall not exceed the excess of the fair market value of farm recapture property transferred over the fair market value of the partnership interest attributable to such property. If the partnership agreement provides for an allocation of gain to the contributing partner with respect to farm recapture property contributed to the partnership (as provided in section 704(c)(2)), the partnership interest of the contributing partner shall be deemed to be attributable to such property.

(6) Property transferred to controlled corporations.

Except for transactions described in subsection (b)(5)(A), in the case of a transfer, described in paragraph (3), of farm recapture property to a corporation, stock or securities received by a transferor in the exchange shall be farm recapture property to the extent attributable to the fair market value of farm recapture property (or, in the case of land, if less, the adjusted basis plus the potential gain (as defined in subsection (e)(5)) on farm recapture property) contributed to the corporation by such transferor.

(e) Definitions.

For purposes of this section—

(1) Farm recapture property.

The term "farm recapture property" means—

(A) any property (other than section 1250 property) described in paragraph (1) (relating to business property held for more than 6 months), (3) (relating to livestock), or (4) (relating to an unharvested crop) of section

1231(b) which is or has been used in the trade or business of farming by the taxpayer or by a transferor in a transaction described in subsection (b)(5), and

(B) any property the basis of which in the hands of the taxpayer is determined with reference to the adjusted basis of property which was farm recapture property in the hands of the taxpayer within the meaning of subparagraph (A).

(2) Farm net loss.

The term "farm net loss" means the amount by which—

(A) the deductions allowed or allowable by this chapter which are directly connected with the carrying on of the trade or business of farming, exceed

(B) the gross income derived from such trade or business.

Gains and losses on the disposition of farm recapture property referred to in section 1231(a) (determined without regard to this section or section 1245(a)) shall not be taken into account.

(3) Farm net income.

The term "farm net income" means the amount by which the amount referred to in paragraph (2)(B) exceeds the amount referred to in paragraph (2)(A).

(4) Trade or business of farming.

(A) Horse racing.

In the case of a taxpayer engaged in the raising of horses, the term "trade or business of farming" includes the racing of horses.

(B) Several businesses of farming.

If a taxpayer is engaged in more than one trade or business of farming, all such trades and businesses shall be treated as one trade or business.

(5) Potential gain.

The term "potential gain" means an amount equal to the excess of the fair market value of property over its adjusted basis, but limited in the case of land to the extent of the deductions allowable in respect to such land under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for the taxable year and the 4 preceding taxable years.

(Added Pub. L. 91–172, title II, § 211(a), Dec. 30, 1969, 83 Stat. 566.)

EFFECTIVE DATE

Section 211(c) of Pub. L. 91–172 provided that: "The amendments made by this section [adding this section and amending sections 301 (b), (d)(2), 312(c)(3), 341(e)(12), 453(d)(4)(B), and 751(c) of this title] shall apply to taxable years beginning after December 31, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 301, 312, 341, 453, 751, 1252 of this title.

§ 1252. Gain from disposition of farm land.

(a) General rule.

(1) Ordinary income.

Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning after December 31, 1969, the lower of—

(A) the applicable percentage of the aggregate of the deductions allowed under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures made by the taxpayer after December 31, 1969, with respect to the farm land or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of the farm land (in the case of any other disposition), over

(ii) the adjusted basis of such land,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent section 1251 applies to such gain.

(2) Farm land.

For purposes of this section, the term "farm land" means any land with respect to which deductions have been allowed under sections 175 (relating to soil and water conservation expenditures) or 182 (relating to expenditures by farmers for clearing land).

(3) Applicable percentage.

For purposes of this section—

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired	100 percent.
Within the sixth year after it was acquired	80 percent.
Within the seventh year after it was acquired.	60 percent.
Within the eighth year after it was acquired	40 percent.
Within the ninth year after it was acquired	20 percent.
10 years or more years after it was acquired	0 percent.

(b) Special rules.

Under regulations prescribed by the Secretary or his delegate, rules similar to the rules of section 1245 shall be applied for purposes of this section.

(Added Pub. L. 91–172, title II, § 214(a), Dec. 30, 1969, 83 Stat. 572.)

EFFECTIVE DATE

Section 214(c) of Pub. L. 91–172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 301, 312, 341, 453, 751 of this title.

§ 1253. Transfers of franchises, trademarks, and trade names.

(a) General rule.

A transfer of a franchise, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains any significant power, right, or continuing interest with respect to the subject matter of the franchise, trademark, or trade name.

(b) Definitions.

For purposes of this section—

(1) Franchise.

The term "franchise" includes an agreement which gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

(2) Significant power, right, or continuing interest.

The term "significant power, right, or continuing interest" includes, but is not limited to, the following rights with respect to the interest transferred:

(A) A right to disapprove any assignment of such interest, or any part thereof.

(B) A right to terminate at will.

(C) A right to prescribe the standards of quality of products used or sold, or of services furnished, and of the equipment and facilities used to promote such products or services.

(D) A right to require that the transferee sell or advertise only products or services of the transferor.

(E) A right to require that the transferee purchase substantially all of his supplies and equipment from the transferor.

(F) A right to payments contingent on the productivity, use, or disposition of the subject matter of the interest transferred, if such payments constitute a substantial element under the transfer agreement.

(3) Transfer.

The term "transfer" includes the renewal of a franchise, trademark, or trade name.

(c) Treatment of contingent payments by transferor.

Amounts received or accrued on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be treated as amounts received or accrued from the sale or other disposition of property which is not a capital asset.

(d) Treatment of payments by transferee.

(1) Contingent payments.

Amounts paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

(2) Other payments.

If a transfer of a franchise, trademark, or trade name is not (by reason of the application of subsection (a)) treated as a sale or exchange of a capital asset, any payment not described in paragraph (1) which is made in discharge of a principal sum agreed upon in the transfer agreement shall be allowed as a deduction—

(A) in the case of a single payment made in discharge of such principal sum, ratably over the taxable years in the period beginning with the taxable year in which the payment is made and ending with the ninth succeeding taxable year or ending with the last taxable year beginning in the period of the transfer agreement, whichever period is shorter;

(B) in the case of a payment which is one of a series of approximately equal payments made in discharge of such principal sum, which are payable over—

(i) the period of the transfer agreement, or

(ii) a period of more than 10 taxable years, whether ending before or after the end of the period of the transfer agreement,

in the taxable year in which the payment is made; and

(C) in the case of any other payment, in the taxable year or years specified in regulations prescribed by the Secretary or his delegate, consistently with the preceding provisions of this paragraph.

(e) Exception.

This section shall not apply to the transfer of a franchise to engage in professional football, basketball, baseball, or other professional sport. (Added Pub. L. 91–172, title V, § 516(c)(1), Dec. 30, 1969, 83 Stat. 647.)

EFFECTIVE DATE

Section applicable to transfers after Dec. 31, 1969, except that subsec. (d)(1) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before Jan. 1, 1970, but only with respect to payments made in taxable years ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1016 of this title.

Subchapter Q.—Readjustment of Tax Between Years and Special Limitations

Part
I. Income averaging.
II. Mitigation of effect of limitations and other provisions.
III. Involuntary liquidation and replacement of LIFO inventories.
IV. War loss recoveries.
V. Claim of right.
VI. Other limitations.
VII. Recoveries of foreign expropriation losses.

AMENDMENTS

1966—Pub. L. 89–384, § 1(g)(1), Apr. 8, 1966, 80 Stat. 104, added item VII.

1964—Pub. L. 88–272, title II, § 232(f)(3), Feb. 26, 1964, 78 Stat. 112, substituted "averaging" for "attributable to several taxable years" in the heading to Part I.

PART I.—INCOME AVERAGING

Sec.
1301. Limitation on tax.
1302. Definition of averagable income; related definitions.
1303. Eligible indiivduals.
1304. Special rules.
1305. Regulations.

§ 1301. Limitation on tax.

If an eligible individual has averagable income for the computation year, and if the amount of such income exceeds $3,000, then the tax imposed by section 1 for the computation year which is attributable to averagable income shall be 5 times the

increase in tax under such section which would result from adding 20 percent of such income to 120 percent of average base period income. (Added Pub. L. 88–272, title II, § 232(a) Feb. 26, 1964, 78 Stat. 106, and amended Pub. L. 91–172, title III § 311(a), Dec. 30, 1969, 83 Stat. 586.)

CODIFICATION

A prior section 1301, act Aug. 16, 1954, ch. 736, 68A Stat. 334, related to compensation from an employment, defined "an employment" and stated the rule with respect to partners. See Effective Date note set out under this section.

AMENDMENTS

1969—Pub. L. 91–172 substituted "20 percent of such income to 120 percent of average base period income" for "20 percent of such income to the sum of—

"(1) 133⅓ percent of average base period income, and

"(2) the amount (if any) of the average base period capital gain net income."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 311(e) of Pub. L. 91–172 provided that: "The amendments made by this section [to this section and sections 1302, 1303(c)(2), 1304(b)(5), (6), (c)-(g) and 6511(d)(2)(B) of this title] shall apply with respect to computation years (within the meaning of section 1302(c)(1) of the Internal Revenue Code of 1954) beginning after December 31, 1969, and to base period years (within the meaning of section 1302(c)(3) of such Code) applicable to such computation years."

EFFECTIVE DATE

Section 232(g) of Pub. L. 88–272 provided that:

"(1) *General rule.*—Except as provided in paragraph (2), the amendments made by this section [adding sections 1301–1305, amending sections 4, 5, 72, 144, 402, 403, 6511, and omitting former sections 1301–1307 of this title] shall apply with respect to taxable years beginning after December 31, 1963.

"(2) *Income from an employment.*—If, in a taxable year beginning after December 31, 1963, an individual or partnership receives or accrues compensation from an employment (as defined by section 1301(b) of the Internal Revenue Code of 1954 as in effect immediately before the enactment of this Act [Feb. 26, 1964] and the employment began before February 6, 1963, the tax attributable to such compensation may, at the election of the taxpayer, be computed under the provisions of sections 1301 and 1307 of such Code as in effect immediately before the enactment of this Act. If a taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate by regulations prescribes), he may not choose for such taxable year the benefits provided by part I of subchapter Q of chapter 1 of such Code (relating to income averaging) as amended by this Act and (if he elects to have subsection (e) of such section 1307 apply) section 170(b)(5) of such Code as amended by this Act shall not apply to charitable contributions paid in such taxable year.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 1301 of this title.

§ 1302. Definition of averagable income; related definitions.

(a) Averagable income.

(1) In general.

For purposes of this part, the term "averagable income" means the amount by which taxable income for the computation year (reduced as provided in paragraph (2)) exceeds 120 percent of average base period income.

(2) Reductions.

The taxable income for the computation year shall be reduced by—

(A) the amount (if any) to which section 72(m)(5) applies, and

(B) the amounts included in the income of a beneficiary of a trust under section 668(a).

(b) Average base period income.

For purposes of this part—

(1) In general.

The term "average base period income" means one-fourth of the sum of the base period incomes for the base period.

(2) Base period income.

The base period income for any taxable year is the taxable income for such year—

(A) increased by an amount equal to the excess of—

(i) the amount excluded from gross income under section 911 (relating to earned income from sources without the United States) and subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States), over

(ii) the deductions which would have been properly allocable to or chargeable against such amount but for the exclusion of such amount from gross income; and

(B) decreased by the amounts included in the income of a beneficiary of a trust under section 668(a).

(c) Other related definitions.

For purposes of this part—

(1) Computation year.

The term "computation year" means the taxable year for which the taxpayer chooses the benefits of this part.

(2) Base period.

The term "base period" means the 4 taxable years immediately preceding the computation year.

(3) Base period year.

The term "base period year" means any of the 4 taxable years immediately preceding the computation year.

(4) Joint return.

The term "joint return" means the return of a husband and wife made under section 6013.

(Added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 106, and amended Pub. L. 91–172, title III, § 311(b), Dec. 30, 1969, 83 Stat. 586.)

CODIFICATION

A prior section 1302, act Aug. 16, 1964, ch. 736, 68A Stat. 335, related to income from an invention or artistic work.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted in par. (1) "amount by which taxable income for the computation year (reduced as provided in paragraph (2)) exceeds 120 percent of average base period income" for "amount (if any) by which adjusted taxable income exceeds 133⅓ percent of average base period income" and substituted in par. (2) provisions respecting reductions for prior provisions for adjustment in certain cases for capital gains.

Subsec. (b). Pub. L. 91–172, in redesignating former subsec. (c) as (b), reenacted par. (1) and amended par. (2), eliminating "first increased and then decreased (but

not below zero) in the following order" following "such year" in the introductory text, eliminating "Taxable income shall be" preceding "increased" in subpar. (A), substituting subpar. (B) reading "decreased by the amounts included in the income of a beneficiary of a trust under section 668(a)" for "Taxable income shall be decreased by the capital gain net income", and eliminating subpar. (C) reading "If the decrease provided by paragraph (2) of subsection (b) applies to the computation year, the taxable income shall be decreased under the rules of such paragraph (2) (other than the limitation contained in subparagraph (C) thereof)." Former subsec. (b) defined "adjusted taxable income" as the taxable income decreased by capital gain net income for the computation year in former par. (1); income attributable to gifts, bequests, etc., in former par. (2), subpar. (A) prescribing the general rule, subpar. (B) amount of net income, subpar. (C) limitation provision, and subpar. (D) net income provision; wagering income in former par. (3) and certain amounts received by owner-employees in former par. (4).

Subsec. (c). Pub. L. 91–172 redesignated former subsec. (e) as (c). Former subsec. (c) was redesignated (b).

Subsec. (d). Pub. L. 91–172, in the general amendment of this section, eliminated definition in former par. (1) of "capital gain net income" and in former par. (2) of "average base period capital gain net income."

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (e) as (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable with respect to computation years (within the meaning of subsec. (c)(1) of this section) beginning after Dec. 31, 1969, and to base period years (within the meaning of subsec. (c)(3) of this section) applicable to such computation years, see section 311(e) of Pub. L. 91–172, set out as a note under section 1301 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6511 of this title.

§ 1303. Eligible individuals.

(a) General rule.

Except as otherwise provided in this section, for purposes of this part the term "eligible individual" means any individual who is a citizen or resident of the United States throughout the computation year.

(b) Nonresident alien individuals.

For purposes of this part, an individual shall not be an eligible individual for the computation year if, at any time during such year or the base period, such individual was a nonresident alien.

(c) Individuals receiving support from others.

(1) In general.

For purposes of this part, an individual shall not be an eligible individual for the computation year if, for any base period year, such individual (and his spouse) furnished less than one-half of his support.

(2) Exceptions.

Paragraph (1) shall not apply to any computation year if—

(A) such year ends after the individual attained the age of 25 and, during at least 4 of his taxable years beginning after he attained age 21 and ending with his computation year, he was not a full-time student,

(B) more than one-half of the individual's taxable income for the computation year is attributable to work performed by him in substantial part during 2 or more of the base period years, or

(C) the individual makes a joint return for the computation year and not more than 25 percent of the aggregate adjusted gross income of such individual and his spouse for the computation year is attributable to such individual.

In applying subparagraph (C), amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income shall be taken into account as if such amounts did not constitute community income.

(d) Student defined.

For purposes of this section, the term "student" means, with respect to a taxable year, an individual who during each of 5 calendar months during such taxable year—

(1) was a full-time student at an educational institution (as defined in section 151(e)(4)); or

(2) was pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution (as defined in section 151(e)(4)) or of a State or political subdivision of a State.

(Added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 107, and amended Pub. L. 91–172, title III, § 311(d)(1), Dec. 30, 1969, 83 Stat. 587.)

CODIFICATION

A prior section 1303, acts Aug. 16, 1954, ch. 736, 68A Stat. 335, Sept. 22, 1961, Pub. L. 87–293, title II, § 201(b), 75 Stat. 625, related to income from back pay.

AMENDMENTS

1969—Subsec. (c)(2)(B). Pub. L. 91–172 struck out "adjusted" preceding "taxable income".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable with respect to computation years (within the meaning of section 1302(c)(1) of this title) beginning after Dec. 31, 1969, and to base period years (within the meaning of section 1302(c)(3) of this title) applicable to such computation years, see section 311(e) of Pub. L. 91–172, set out as a note under section 1301 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(b) of Pub. L. 87–293 repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

§ 1304. Special rules.

(a) Taxpayer must choose benefits.

This part shall apply to the taxable year only if the taxpayer chooses to have the benefits of this part for such taxable year. Such choice may be made or

changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year.

(b) Certain provisions inapplicable.

If the taxpayer chooses the benefits of this part for the taxable year, the following provisions shall not apply to him for such year:

(1) section 3 (relating to optional tax),

(2) section 72(n)(2) (relating to limitation of tax in case of total distribution),

(3) section 911 (relating to earned income from sources without the United States),

(4) subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States),

(5) section 1201(b) (relating to alternative capital gains tax), and

(6) section 1348 (relating to 50-percent maximum rate on earned income).

(c) Failure or certain married individuals to make joint return, etc.

(1) Application of subsection.

Paragraphs (2) and (3) of this subsection shall apply in the case of any individual who was married for any base period year or the computation year; except that—

(A) such paragraphs shall not apply in respect of a base period year if—

(i) such individual and his spouse make a joint return, or such individual makes a return as a surviving spouse (as defined in section 2(b)), for the computation year, and

(ii) such individual was not married to any other spouse for such base period year, and

(B) paragraph (3) shall not apply in respect of the computation year if the individual and his spouse make a joint return for such year.

(2) Minimum base period income.

For purposes of this part, the base period income of an individual for any base period year shall not be less than 50 percent of the base period income which would result from combining his income and deductions for such year—

(A) with the income and deductions for such year of the individual who is his spouse for the computation year, or

(B) if greater, with the income and deductions for such year of the individual who was his spouse for such base period year.

(3) Community income attributable to services.

In the case of amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income—

(A) the amount taken into account for any base period year for purposes of determining base period income shall not be less than the amount which would be taken into account if such amounts did not constitute community income, and

(B) the amount taken into account for purposes of determining taxable income for the computation year shall not exceed the amount which would be taken into account if such amounts did not constitute community income.

(4) Marital status.

For purposes of this subsection, section 143(a) shall apply in determining whether an individual is married for any taxable year.

(d) Dollar limitations in case of joint returns.

In the case of a joint return, the $3,000 figure contained in section 1301 shall be applied to the aggregate averagable income.

(e) Treatment of certain other items.

(1) Section 72(m)(5).

Section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) shall be applied as if this part had not been enacted.

(2) Other items.

Except as otherwise provided in this part, the order and manner in which items of income or limitations on tax shall be taken into account in computing the tax imposed by this chapter on the income of any eligible individual to whom section 1301 applies for any computation year shall be determined under regulations prescribed by the Secretary or his delegate.

(f) Short taxable years.

In the case of any computation year or base period year which is a short taxable year, this part shall be applied in the manner provided in regulations prescribed by the Secretary or his delegate. (Added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 108, and amended Pub. L. 91–172, title III, § 311(c), (d)(2), title V, § 515(c)(4), title VIII, §§ 802(c)(5), 803(d)(8), Dec. 30, 1969, 83 Stat. 587, 646, 678, 684.)

CODIFICATION

A prior section 1304, act Aug. 11, 1955, ch. 804, § 1(a), 69 Stat. 688, related to compensatory damages for patent infringement.

AMENDMENTS

1969—Subsec. (b)(1). Pub, L. 91–172, § 803(d)(8), struck out "if adjusted gross income is less than $5,000" in the parenthetical material.

Subsec. (b)(2). Pub. L. 91–172, § 515(c)(4), substituted "(relating to limitation of tax in case of total distribution)" for "(relating to limitation of tax in case of certain distributions with respect to contributions by self employed individuals)."

Subsec. (b)(5), (6). Pub. L. 91–172, § 311(c), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 91–172, § 311(d)(2)(B), (C), deleted reference to par. (4) in the text preceding subpar. (A) and substituted par. "3" for "4" in subpar. (B), respectively.

Subsec. (c)(3) to (5). Pub. L. 91–172, § 311(d)(2)(A), (D), struck out par. (3) describing minimum base period capital gain net income and redesignated former pars. (4) and (5) as (3) and (4), and struck out in subpar. (B) of redesignated par. (3) "adjusted" preceding "taxable income", respectively.

Subsec. (c)(4). Pub. L. 91–172, § 802(c)(5), substituted reference to section 143(a) for reference to section 143.

Subsec. (d). Pub. L. 91–172, § 311(d)(2)(E), struck out ", and the $3,000 figure contained in section 1302(b)(2)(C) shall be applied to the aggregate net income" following "aggregate averagable income".

Subsec. (e). Pub. L. 91–172, § 311(d)(2)(F), redesignated former subsec. (f) as (e), deleting former par. (1) provisions respecting treatment of gift or wagering income and redesignating former pars. (2) and (3) as (1) and (2), respectively, and struck out former subsec. (e) which prescribed special rules where there are capital gains, providing in former par. (1) for treatment of capital gains in computation year and in former par. (2) for computation of alternative tax.

Subsec. (f). Pub. L. 91–172, § 311(d)(2)(G), redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 91–172, § 311(d)(2)(G), redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (b)(1) by section 803(d)(8) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

Amendment of subsec (b)(2) by section 515(c)(4) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

Amendment of subsecs. (b)(5), (6) and (c) to (g) of this section by section 311(c), (d)(2) of Pub. L. 91–172 applicable with respect to computation years (within the meaning of section 1302(c)(1) of this title) beginning after Dec. 31, 1969, and to base period years (within the meaning of section 1302(c)(3) of this title) applicable to such computation years, see section 311(e) of Pub. L. 91–172, set out as a note under section 1301 of this title.

Amendment of subsec. (c)(4) of this section by section 802(c)(5) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 802(d) of Pub. L. 91–172, set out as a note under section 4 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

§ 1305. Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this part. (Added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 110.)

CODIFICATION

A prior section 1305, act Aug. 26, 1957, Pub. L. 85–165, § 1, 71 Stat. 413, related to damages for breach of contract or fiduciary duty.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

PART II.—MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

Sec.
1311. Correction of error.
1312. Circumstances of adjustment.
1313. Definitions.
1314. Amount and method of adjustment.
1315. Effective date.

§ 1311. Correction of error.

(a) General rule.

If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

(b) Conditions necessary for adjustment.

(1) Maintenance of an inconsistent position.

Except in cases described in paragraphs (3)(B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) in case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary or his delegate, or

(B) in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary or his delegate in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(2) Correction not barred at time of erroneous action.

(A) Determination described in section 1312 (3)(B).

In the case of a determination described in section 1312 (3)(B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary or his delegate first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court of the United States, that the item described in section 1312 (3)(B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) Determination described in section 1312 (4).

In the case of a determination described in section 1312 (4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or his delegate or before the Tax Court of the United States, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) Existence of relationship.

In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312 (3)(B)), the adjustment shall not be made

with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court of the United States for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(Aug. 16, 1954, ch. 736, 68A Stat. 337.)

CROSS REFERENCES

Mitigation of effect of renegotiation of government contracts, see section 1481 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1312, 1314, 1481 of this title.

§ 1312. Circumstances of adjustment.

The circumstances under which the adjustment provided in section 1311 is authorized are as follows:

(1) Double inclusion of an item of gross income.

The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) Double allowance of a deduction or credit.

The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3) Double exclusion of an item of gross income.

(A) Items included in income.

The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(B) Items not included in income.

The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) Double disallowance of a deduction or credit.

The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs.

The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (secs. 641 and following, relating to estates, trusts, and beneficiaries) of part I of subchapter J of this chapter, or corresponding provisions of prior internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer.

(6) Correlative deductions and credits for certain related corporations.

The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income, or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted, or disallowed, as the case may be, in respect of a related taxpayer described in section 1313 (c) (7).

(7) Basis of property after erroneous treatment of a prior transaction.

(A) General rule.

The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in subparagraph (B) of this paragraph, any of the errors described in subparagraph (C) of this paragraph.

(B) Taxpayers with respect to whom the erroneous treatment occurred.

The taxpayer with respect to whom the erroneous treatment occurred must be—

(i) the taxpayer with respect to whom the determination is made,

(ii) a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or

(iii) a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015 (a) (relating to the basis of property acquired by gift).

(C) Prior erroneous treatment.

With respect to a taxpayer described in subparagraph (B) of this paragraph—

(i) there was an erroneous inclusion in, or omission from, gross income,

(ii) there was an erroneous recognition, or nonrecognition, of gain or loss, or

(iii) there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(Aug. 16, 1954, ch. 736, 68A Stat. 338; Sept. 2, 1958, Pub. L. 85-866, title I, § 59 (a), 72 Stat. 1647.)

AMENDMENTS

1958—Par. (6) Pub. L. 85-866 added par. (6) and redesignated former par. (6) as (7).

Par. (7). Pub. L. 85-866 redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 59 (c) of Pub. L. 85-866 provided that: "The amendments made by subsections (a) and (b) [to pars. (6) and (7) of this section and section 1314 (c) of this title] shall apply to determinations (as defined in section 1313 (a)) made after November 14, 1954."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1333 of this title.

§ 1313. Definitions.

(a) Determination.

For purposes of this part, the term "determination" means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) a final disposition by the Secretary or his delegate of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary or his delegate—

(A) as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary or his delegate in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(4) under regulations prescribed by the Secretary or his delegate, an agreement for purposes of this part, signed by the Secretary or his delegate and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax under this subtitle for any taxable period.

(b) Taxpayer.

Notwithstanding section 7701 (a) (14), the term "taxpayer" means any person subject to a tax under the applicable revenue law.

(c) Related taxpayer.

For purposes of this part, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(1) husband and wife,

(2) grantor and fiduciary,

(3) grantor and beneficiary,

(4) fiduciary and beneficiary, legatee, or heir,

(5) decedent and decedent's estate,

(6) partner, or

(7) member of an affiliated group of corporations (as defined in section 1504).

(Aug. 16, 1954, ch. 736, 68A Stat. 339.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1312, 1314, 1315 of this title.

§ 1314. Amount and method of adjustment.

(a) Ascertainment of amount of adjustment.

In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return (determined as provided in section 6211 (b) (1), (3), and (4), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in section 6211 (b) (2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(b) Method of adjustment.

The adjustment authorized in section 1311 (a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Secretary or his delegate with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a), and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313 (a) (4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid

for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(c) Adjustment unaffected by other items.

The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this part, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under this part, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment.

(d) Periods for which adjustments may be made.

No adjustment shall be made under this part in respect of any taxable year beginning prior to January 1, 1932.

(e) Taxes imposed by subtitle C.

This part shall not apply to any tax imposed by subtitle C (sec. 3101 and following relating to employment taxes). (Aug. 16, 1954, ch. 736, 68A Stat. 340; Sept. 2, 1958, Pub. L. 85–866, title I, § 59(b), 72 Stat. 1647; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d)(5)(B), 79 Stat. 168; Dec. 30, 1969, Pub. L. 91–172, title V, § 512(f)(7), (8), 83 Stat. 641, 642.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 512(f)(7), substituted "capital loss carryback or carryover" for "capital loss carryover."

Subsec. (b). Pub. L. 91–172, § 512(f)(8), added reference to net capital loss.

1965—Subsec. (a)(1)(A). Pub. L. 89–44 struck out "(b) (1) and (3)" and inserted in lieu thereof "(b) (1), (3), and (4)".

1958—Subsec. (c). Pub. L. 85–866 substituted in the second sentence "The" for "Other than in the case of an adjustment resulting from a determination under section 1313 (a) (4), the".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a)(1)(A) by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective with respect to determinations made after Nov. 14, 1954, see note set out under section 1312 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 481, 1311, 1333, 1351, 6164, 6411 of this title.

§ 1315. Effective date.

(a) In general.

This part shall apply only to determinations (as defined in section 1313 (a)) made after the 90th day after the date of enactment of this title.

(b) Transitional provision.

Notwithstanding any other provision of this title, section 3801 of the Internal Revenue Code of 1939 shall apply to determinations (as defined in subsection (a) of such section) made on or before such 90th day as if this title had not been enacted. (Aug. 16, 1954, ch. 736, 68A Stat. 341.)

PART III.—INVOLUNTARY LIQUIDATION AND REPLACEMENT OF LIFO INVENTORIES

Sec.
1321. Involuntary liquidation of LIFO inventories.

§ 1321. Involuntary liquidation of LIFO inventories.

(a) Adjustment of taxable income and resulting tax.

If, for any taxable year ending after June 30, 1950, and before January 1, 1955, the closing inventory of a taxpayer inventorying goods under the method provided in section 22 (d) of the Internal Revenue Code of 1939 reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Secretary or his delegate may prescribe, to have this section apply, and if it is established to the satisfaction of the Secretary or his delegate, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in section 22 (d) (6) (B) of the Internal Revenue Code of 1939 (as modified by subsection (b) of this section), and if the closing inventory of a subsequent taxable year, ending before January 1, 1956, reflects a replacement, in whole or in part, of the goods so previously liquidated, then the taxable income of the taxpayer otherwise determined for the year of such involuntary liquidation shall be increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost, or decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation. The taxes imposed by this chapter (and by chapters 1 and 2 of the Internal Revenue Code of 1939) for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

(b) Definitions.

For purposes of this section, the term "involuntary liquidation" shall have the meaning given to it in section 22 (d) (6) (B) of the Internal Revenue Code of 1939 and, in addition, it shall mean a failure, as referred to in that section, on the part of the taxpayer due, directly and exclusively, to disruption of normal trade relations between countries. For purposes of this section, the words "enemy" and "war", as used in such section 22 (d) (6) (B), shall be interpreted, pursuant to regulations prescribed by the Secretary or his delegate, in such a way as to apply to circumstances, occurrences and conditions, lacking a state of war, which are similar, by reason of a state of national preparedness, to those which would exist under a state of war.

(c) Special rules.

Subparagraphs (C) and (E) of section 22 (d) (6) of the Internal Revenue Code of 1939, to the extent that they refer to any taxpayer subject to subparagraph (A) of such section or to the adjustments specified in or resulting from the effect of subparagraph (A) of such section, shall apply to a taxpayer subject to this section or to adjustments specified in or resulting from the effect of this section as though they specifically referred to this section. If, for any taxable year ending after June 30, 1950, and before January 1, 1953, subparagraph (C) of such section 22 (d) (6) applies with respect to involuntary liquidations of goods of the same class subject to both subparagraph (A) of such section and to this section, the involuntary liquidations of such goods subject to this section shall be considered for the purpose of such subparagraph (C) as having occurred before the involuntary liquidations of such goods subject to subparagraph (A) of such section 22 (d) (6). For the purpose of this subsection, and with respect to the taxable years covered by this section, the reference in subparagraph (E) of such section 22 (d) (6) to section 734 (d) shall be taken as a reference to section 452 (d) of the Internal Revenue Code of 1939, and, with respect to any taxable year to which any provision of the Internal Revenue Code of 1939 may not be applicable, references in such subparagraph to such provision shall, where applicable, be deemed a reference to the corresponding provision of the Internal Revenue Code of 1954. (Aug. 16, 1954, ch. 736, 68A Stat. 342.)

CROSS REFERENCES

Last-in, first-out inventories, see section 472 of this title.

Limitations on credit or refund generally, see section 6511 et seq. of this title.

PART IV.—WAR LOSS RECOVERIES

Sec.
1331. War loss recoveries.
1332. Inclusion in gross income of war loss recoveries.
1333. Tax adjustment measured by prior benefits.
1334. Restoration of value of investments referable to destroyed or seized property.
1335. Election by taxpayer for application of section 1333.
1336. Basis of recovered property.
1337. Applicable rules.

§ 1331. War loss recoveries.

On the recovery in the taxable year of any money or property in respect of property considered under section 127 (a) of the Internal Revenue Code of 1939, as destroyed or seized, the amount of such recovery shall be included in gross income to the extent provided in section 1332, unless section 1333 applies to the taxable year pursuant to an election made by the taxpayer under section 1335. (Aug. 16, 1954, ch. 736, 68A Stat. 343.)

§ 1332. Inclusion in gross income of war loss recoveries.

(a) Amount of recovery.

The amount of the recovery of any money or property in respect of property considered under section 127 (a) of the Internal Revenue Code of 1939, as destroyed or seized, shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery.

(b) Amount of gain includible.

(1) Portion excluded from gross income.

To the extent that the amount of the recovery plus the aggregate of the amounts of previous such recoveries do not exceed that part of the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in such section 127 (a) which did not result in a reduction of any tax of the taxpayer under chapter 1 or 2 of the Internal Revenue Code of 1939, such amount shall not be includible in gross income and shall not be deemed gain on the involuntary conversion of property as a result of its destruction or seizure.

(2) Portion treated as ordinary income.

To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed that part of the aggregate of such deductions, which did not result in a reduction of any tax of the taxpayer under such chapters and do not exceed that part of the aggregate of such deductions which did result in a reduction of any tax of the taxpayer under such chapters, such amount shall be included in gross income but shall not be deemed a gain on the involuntary conversion of property as a result of its destruction or seizure.

(3) Portion treated as gain on involuntary conversion.

To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in such section 127 (a), such amount shall be considered a gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 1033 (relating to involuntary conversions).

(4) Obligations not discharged.

If for any previous taxable year the taxpayer chose under section 127 (b) of the Internal Revenue Code of 1939 to treat any obligations and liabilities as discharged or satisfied out of the property or interest described in such section 127 (a), and if such obligations and liabilities were not so discharged or satisfied, the amount of such obligations and liabilities treated as discharged or satisfied under such section 127 (b) shall be considered for purposes of this part as a deduction by reason of such section 127 (a) which did not result in a reduction of any tax of the taxpayer under such chapters 1 or 2.

(5) Allowable deduction not allowed.

For purposes of this subsection, an allowable deduction for any taxable year on account of the destruction or seizure of property described in such section 127 (a) shall, to the extent not allowed in computing the tax of the taxpayer for such taxable year, be considered an allowable deduction which did not result in a reduction of any tax of the taxpayer under such chapters 1 or 2.

(Aug. 16, 1954, ch. 736, 68A Stat. 343.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1336 of this title.

§ 1333. Tax adjustment measured by prior benefits.

If this section applies to the taxable year pursuant to an election made by the taxpayer under section 1335 or section 127 (c) (5) of the Internal Revenue Code of 1939—

(1) Amount of recovery.

The amount of the recovery in the taxable year of any money or property in respect of property considered under section 127 (a) of the Internal Revenue Code of 1939 as destroyed or seized, shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery. For purposes of this section, in the case of the recovery of the same property or interest considered under such section 127 (a) as destroyed or seized, the fair market value of such property or interest shall, at the option of the taxpayer, be considered an amount equal to the adjusted basis (for determining loss) of such property or interest in the hands of the taxpayer on the date such property or interest was considered under such section 127 (a) as destroyed or seized. The amount of the recovery determined under this paragraph shall be reduced for purposes of paragraphs (2) and (3) by the amount of the obligations or liabilities with respect to the property considered under such section 127 (a) as destroyed or seized in respect of which the recovery was received, if the taxpayer for any previous taxable year chose under section 127 (b) (2) of such code to treat such obligations or liabilities as discharged or satisfied out of such property, and such obligations or liabilities were not so discharged or satisfied before the date of the recovery.

(2) Adjustment for prior tax benefits.

That part of the amount of the recovery, in respect of any property considered under such section 127 (a) as destroyed or seized, which is not in excess of the allowable deductions in prior taxable years on account of such destruction or seizure of the property (the amount of such allowable deductions being first reduced by the aggregate amount of any prior recoveries in respect of the same property) shall be excluded from gross income for the taxable year of the recovery for purposes of computing the tax under this subtitle; but there shall be added to, and assessed and collected as a part of, the tax under this subtitle for the taxable year of the recovery the total increase in the tax under chapters 1 and 2 of the Internal Revenue Code of 1939 for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded, such deductions allowable in the prior taxable years with respect to the destruction or seizure of the property. Such increase in the tax for each such year so resulting shall be computed in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 111, relating to recovery of bad debts, etc.) with respect to any prior year, and shall provide for the case where there was no tax for the prior year, but shall otherwise treat the tax previously determined for any year in accordance with the principles set forth in section 1314 (a) (relating to corrections of errors). All credits allowable against the tax for any year and all carryovers and carrybacks affected by so decreasing the allowable deductions shall be taken into account in computing the increase in the tax, except that the computation of the excess profits credit under chapter 2E of such code for any taxable year shall not be affected.

(3) Gain on recovery.

The amount of any recovery or part thereof, in respect of property considered under such section 127 (a) as destroyed or seized, which is not excluded from gross income under paragraph (2), shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 1033.

(4) Recoveries treated as gross income for certain purposes.

For purposes of section 6012 (relating to persons required to make income tax returns) and section 1312 (relating to circumstances of adjustment), the recovery in the taxable year of any money or property in respect of property considered under such section 127 (a) as destroyed or seized in any prior taxable year shall be deemed to be an item includible in gross income for the taxable year in which the recovery is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 344.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 1331, 1334, 1335, 1336 of this title.

§ 1334. Restoration of value of investments referable to destroyed or seized property.

For purposes of this part, the restoration in whole or in part of the value of any interest described in section 127 (a) (3) of the Internal Revenue Code of 1939 by reason of any recovery of money or property in respect of property to which such interest related and which was considered under subsection (a) (1) or (2) of such section 127 as destroyed or seized shall be deemed a recovery of property in respect of property considered under such section 127 (a) as destroyed or seized. In applying section 1333, such restoration shall be treated as the recovery of the same interest considered under such section 127 (a) as destroyed or seized. (Aug. 16, 1954, ch. 736, 68A Stat. 346.)

§ 1335. Election by taxpayer for application of section 1333.

If the taxpayer elects to have section 1333 apply to any taxable year in which he recovered any money or property in respect of property considered under section 127 (a) of the Internal Revenue Code of 1939, as destroyed or seized, section 1333 shall apply to all taxable years of the taxpayer beginning after December 31, 1941, and such election, once made, shall be irrevocable. The election shall be made in

such manner and at such time as the Secretary or his delegate may by regulations prescribe, except that no election under this section may be made unless the taxpayer recovers money or property (in respect of property considered under such section 127 (a) as destroyed or seized) during the taxable year for which the election is made. If pursuant to such election section 1333 applies to any taxable year—

(1) the period of limitations provided in chapter 66 on the making of assessments and the beginning of distraint or a proceeding in court for collection shall not, with respect to—

(A) the amount to be added to the tax for such taxable year under section 1333, and

(B) any deficiency for such taxable year or for any other taxable year, to the extent attributable to the basis of the recovered property being determined under section 1336 (b),

expire before the expiration of 2 years following the date of the making of such election, and such amount and such deficiency may be assessed at any time before the expiration of such period notwithstanding any law or rule of law which would otherwise prevent such assessment and collection, and

(2) in case refund or credit of any overpayment resulting from the application of section 1333 to such taxable year is prevented on the date of the making of such election, or within one year from such date, by the operation of any law or rule of law (other than section 7122, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date.

In the case of any taxable year ending before the date of the making by the taxpayer of an election under this section, no interest shall be paid on any overpayment resulting from the application of section 1333 to such taxable year, and no interest shall be assessed or collected with respect to any amount or any deficiency specified in paragraph (1) for any period before the expiration of 6 months following the date of the making of such election by the taxpayer. (Aug. 16, 1954, ch. 736, 68A Stat. 346.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1336 of this title.

§ 1336. Basis of recovered property.

(a) In general.

The unadjusted basis of property recovered in respect of property considered as destroyed or seized under section 127 (a) of the Internal Revenue Code of 1939 shall be determined under this section. Such basis shall be an amount equal to the fair market value of such property, determined as of the date of the recovery, reduced by an amount equal to the excess of the aggregate of such fair market value and the amounts of previous recoveries of money or property in respect of property considered under such section 127 (a) as destroyed or seized over the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in such section 127 (a), and increased by that portion of the amount of the recovery which under section 1332 is treated as a recognized gain from the involuntary conversion of property. On application of the taxpayer, the aggregate of the bases (determined under the preceding sentence) of any properties recovered in respect of properties considered under such section 127 (a) as destroyed or seized may be allocated among the properties so recovered in such manner as the Secretary or his delegate may determine under regulations prescribed by the Secretary or his delegate, and the amounts so allocated to any such property so recovered shall be the unadjusted basis of such property in lieu of the unadjusted basis of such property determined under the preceding sentence.

(b) Property recovered in taxable year to which section 1333 applies.

In the case of a taxpayer who has made an election under section 1335, the basis of property recovered shall be an amount equal to the value at which such property is included in the amount of the recovery under section 1333 (1) (determined without regard to the last sentence thereof), reduced by such part of the gain under section 1333 (3) which is not recognized as provided in section 1033. (Aug. 16, 1954, ch. 736, 68A Stat. 347.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1335 of this title.

§ 1337. Applicable rules.

(a) Determination of tax benefits.

The determination as to whether and to what extent an allowable deduction on account of the destruction or seizure of property described in section 127 (a) of the Internal Revenue Code of 1939 did or did not result in a reduction of any tax of the taxpayer under chapter 1 or 2 of such code shall be made in accordance with regulations prescribed by the Secretary or his delegate.

(b) Partial worthlessness of certain investments treated as war losses under 1939 Code.

The part of the stock or other interest of the taxpayer treated under subsection (e) of such section 127 as property described in subsection (a) (3) of such section shall be treated in the same manner for purposes of this part. (Aug. 16, 1954, ch. 736, 68A Stat. 347.)

PART V.—CLAIM OF RIGHT

Sec.
1341. Computation of tax where taxpayer restores substantial amount held under claim of right.
1342. Computation of tax where taxpayer recovers substantial amount held by another under claim of right.[1]

§ 1341. Computation of tax where taxpayer restores substantial amount held under claim of right.

(a) General rule.

If—

(1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;

(2) a deduction is allowable for the taxable

[1] Item supplied by Editor.

year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item; and

(3) the amount of such deduction exceeds $3,000,

then the tax imposed by this chapter for the taxable year shall be the lesser of the following:

(4) the tax for the taxable year computed with such deduction; or

(5) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

For purposes of paragraph (5) (B), the corresponding provisions of the Internal Revenue Code of 1939 shall be chapter 1 of such code (other than subchapter E, relating to self-employment income) and subchapter E of chapter 2 of such code.

(b) Special rules.

(1) If the decrease in tax ascertained under subsection (a) (5) (B) exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) Subsection (a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility (as defined in section 7701(a)(33) without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the Government, political subdivision, agency, or instrumentality referred to in such section, or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation. This paragraph shall not apply if the deduction arises out of payments or repayments made pursuant to a price redetermination provision in a subcontract entered into before January 1, 1958, between persons other than those bearing the relationship set forth in section 267 (b), if the subcontract containing the price redetermination provision is subject to statutory renegotiation and section 1481 (relating to mitigation of effect of renegotiation of Government contracts) does not apply to such payment or repayment solely because such payment or repayment is not paid or repaid to the United States or any agency thereof.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a) (5), then the deduction referred to in subsection (a) (2) shall not be taken into account for any purpose of this subtitle other than this section.

(4) For purposes of determining whether paragraph (4) or paragraph (5) of subsection (a) applies—

(A) in any case where the deduction referred to in paragraph (4) of subsection (a) results in a net operating loss, such loss shall, for purposes of computing the tax for the taxable year under such paragraph (4), be carried back to the same extent and in the same manner as is provided under section 172; and

(B) in any case where the exclusion referred to in paragraph (5)(B) of subsection (a) results in a net operating loss or capital loss for the prior taxable year (or years), such loss shall, for purposes of computing the decrease in tax for the prior taxable year (or years) under such paragraph (5)(B), be carried back and carried over to the same extent and in the same manner as is provided under section 172 or section 1212, except that no carryover beyond the taxable year shall be taken into account.

(5) For purposes of this chapter, the net operating loss described in paragraph (4)(A) of this subsection, or the net operating loss or capital loss described in paragraph (4)(B) of this subsection, as the case may be, shall (after the application of paragraph (4) or (5)(B) of subsection (a) for the taxable year) be taken into account under section 172 or 1212 for taxable years after the taxable year to the same extent and in the same manner as—

(A) a net operating loss sustained for the taxable year, if paragraph (4) of subsection (a) applied, or

(B) a net operating loss or capital loss sustained for the prior taxable year (or years), if paragraph (5)(B) of subsection (a) applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 348; Sept. 2, 1958, Pub. L. 85-866, title I, § 60(a)—(d), 72 Stat. 1647; Oct. 23, 1962, Pub. L. 87-863, § 5(a), 76 Stat. 1142; Feb. 26, 1964, Pub. L. 88-272, title II, § 234(b)(7), 78 Stat. 116.)

AMENDMENTS

1964—Subsec. (b)(2). Pub. L. 88-272 substituted "7701 (a)(33) without regard to the limitation continued in the last two sentences thereof)" for "1503(c) without regard to paragraph (2) thereof)."

1962—Subsec. (b) (4), (5). Pub. L. 87-863 added pars. (4) and (5).

1958—Subsec. (a). Pub. L. 85-866, § 60(a), inserted in the last sentence "and subchapter E of chapter 2 of such code".

Subsec. (b)(2), Pub. L. 85-866, § 60 (b), (c), in second sentence inserted "with respect to rates" and added ", or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation" and added last sentence.

Subsec. (b)(3). Pub. L. 85-866, § 60(d), added subsec. (b)(3).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(b) of Pub. L. 87–863 provided that: "The amendment made by subsection (a) [to this section] shall be effective with respect to taxable years beginning on or after January 1, 1962."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) and the last sentence of subsec. (b) (2) of this section by Pub. L. 85–866, and subsec. (b) (3) of this section, applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 60 (e) of Pub. L. 85–866 provided that: "The amendment made by subsection (b) [to second sentence of subsec. (b) of this section] shall apply with respect to taxable years beginning after December 31, 1957. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by subsection (c)."

CROSS REFERENCES

Taxable year of inclusion of gross income, see section 451 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

§ 1342. Computation of tax where taxpayer recovers substantial amount held by another under claim of right.

(a) General rule.

If—

(1) an item was deducted from gross income for a prior taxable year (or years) because it appeared that another person held an unrestricted right to such item as a result of a court decision in a patent infringement suit (whether or not the taxpayer is a party to such suit); and

(2) gross income is increased for the taxable year because it was established after the close of such prior taxable year (or years) that such other person did not have an unrestricted right to such item or to a portion of such item because of the subsequent reversal of such court decision on the ground that such decision was induced by fraud or undue influence; and

(3) the amount of such increase in gross income exceeds $3,000, then the tax imposed by this chapter for the taxable year shall be the lesser of the following:

(4) the tax for the taxable year computed with the gross income so increased; or

(5) an amount equal to—

(A) the tax for the taxable year computed without such increase in gross income, plus

(B) the increase in tax (including interest) under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the elimination of such item (or portion thereof) as a deduction from gross income for such prior taxable year (or years).

(b) Special rule.

For purposes of subsection (a) (5) (B) interest shall be computed from the due date of the return for such prior taxable year to the due date of the return for the taxable year. (Added Aug. 12, 1955, ch. 870, § 3, 69 Stat. 717.)

EFFECTIVE DATE

Section 4 of act Aug. 12, 1955, provided that: "The amendment made by section 3 of this Act [adding this section] shall apply with respect to taxable years beginning after December 31, 1954."

PART VI.—OTHER LIMITATIONS

Sec.
1346. Recovery of unconstitutional federal taxes.
1347. Claims against United States involving acquisition of property.
1348. Fifty-percent maximum rate on earned income.

AMENDMENTS

1969—Pub. L. 91–172, title VIII, § 804(b), Dec. 30, 1969, 83 Stat. 686, added item 1348.

§ 1346. Recovery of unconstitutional federal taxes.

Income (excluding interest) attributable to the recovery during the taxable year of a tax imposed by the United States which has been held unconstitutional, and in respect of which a deduction was allowed in a prior taxable year, may be excluded from gross income for the taxable year, and the deduction allowed in respect thereof in such prior taxable year treated as not having been allowable, if—

(1) the taxpayer elects in writing (at such time and in such manner as may be prescribed by regulations prescribed by the Secretary or his delegate) to treat such deduction as not having been allowable for such prior taxable year, and

(2) the taxpayer consents in writing to the assessment, within such period as may be agreed on, of any deficiency resulting from such treatment, even though the statutory period for the assessment of any such deficiency had expired before the filing of such consent.

(Aug. 16, 1954, ch. 736, 68A Stat. 349.)

§ 1347. Claims against United States involving acquisition of property.

In the case of amounts (other than interest) received by a taxpayer from the United States with respect to a claim against the United States involving the acquisition of property and remaining unpaid for more than 15 years, the tax imposed by section 1 attributable to such receipt shall not exceed 33 percent of the amount (other than interest) so received. This section shall apply only if claim was filed with the United States before January 1, 1958. (Aug. 16, 1954, ch. 736, 68A Stat. 349; Sept. 2, 1958, Pub. L. 85–866, title I, § 61(a), 72 Stat. 1648; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(d)(5), 83 Stat. 684.)

AMENDMENTS

1969—Pub. L. 91–172 substituted "tax" for "surtax", and "33 per cent" for "30 per cent".

1958—Pub. L. 85–866 substituted "surtax" for "tax" and added sentence "this section shall apply only if claim was filed with the United States before January 1, 1958".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 61 (b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) (1) [to first sentence of this section] shall apply only with respect to taxable years beginning after December 31, 1957."

Last sentence of this section applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

§ 1348. Fifty-percent maximum rate on earned income.

(a) General rule.

If for any taxable year an individual has earned taxable income which exceeds the amount of taxable income specified in paragraph (1), the tax imposed by section 1 for such year shall, unless the taxpayer chooses the benefits of part I (relating to income averaging), be the sum of—

(1) the tax imposed by section 1 on the lowest amount of taxable income on which the rate of tax under section 1 exceeds 50 percent,

(2) 50 percent of the amount by which his earned taxable income exceeds the lowest amount of taxable income on which the rate of tax under section 1 exceeds 50 percent, and

(3) the excess of the tax computed under section 1 without regard to this section over the tax so computed with reference solely to his earned taxable income.

In applying this subsection to a taxable year beginning after December 31, 1970, and before January 1, 1972, "60 percent" shall be substituted for "50 percent" each place it appears in paragraphs (1) and (2).

(b) Definitions.

For purposes of this section—

(1) Earned income.

The term "earned income" means any income which is earned income within the meaning of section 401(c)(2)(C) or section 911(b), except that such term does not include any distribution to which section 72(m)(5), 72(n), 402(a)(2), or 403(a)(2)(A) applies or any deferred compensation within the meaning of section 404. For purposes of this paragraph, deferred compensation does not include any amount received before the end of the taxable year following the first taxable year of the recipient in which his right to receive such amount is not subject to a substantial risk of forfeiture (within the meaning of section 83(c)(1)).

(2) Earned taxable income.

The earned taxable income of an individual is the excess of—

(A) the amount which bears the same ratio (but not in excess of 100 percent) to his taxable income as his earned net income bears to his adjusted gross income, over

(B) the amount by which the greater of—

(i) one-fifth of the sum of the taxpayer's items of tax preference referred to in section 57 for the taxable year and the 4 preceding taxable years, or

(ii) the sum of the items of tax preference for the taxable year,

exceeds $30,000.

For purposes of subparagraph (A), the term "earned net income" means earned income reduced by any deductions allowable under section 62 which are properly allocable to or chargeable against such earned income.

(c) Married individuals.

This section shall apply to a married individual only if such individual and his spouse make a single return jointly for the taxable year. (Added Pub. L. 91-172, title VIII, § 804(a), Dec. 30, 1969, 83 Stat. 685.)

EFFECTIVE DATE

Section 804(c) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1970."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1304 of this title.

PART VII.—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

Sec.
1351. Treatment of recoveries of foreign expropriation losses.

§ 1351. Treatment of recoveries of foreign expropriation losses.

(a) Election.

(1) In general.

This section shall apply only to a recovery, by a domestic corporation subject to the tax imposed by section 11 or 802, of a foreign expropriation loss sustained by such corporation and only if such corporation was subject to the tax imposed by section 11 or 802, as the case may be, for the year of the loss and elects to have the provisions of this section apply with respect to such loss.

(2) Time, manner, and scope.

An election under paragraph (1) shall be made at such time and in such manner as the Secretary or his delegate may prescribe by regulations. An election made with respect to any foreign expropriation loss shall apply to all recoveries in respect of such loss.

(b) Definition of foreign expropriation loss.

For purposes of this section, the term "foreign expropriation loss" means any loss sustained by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For purposes of the preceding sentence, a debt which becomes worthless shall, to the extent of any deduction allowed under section 166(a), be treated as a loss.

(c) Amount of recovery.

(1) General rule.

The amount of any recovery of a foreign expropriation loss is the amount of money and the fair market value of other property received in respect of such loss, determined as of the date of receipt.

(2) Special rule for life insurance companies.

The amount of any recovery of a foreign expropriation loss includes, in the case of a life insur-

ance company, the amount of decrease of any item taken into account under section 810(c), to the extent such decrease is attributable to the release, by reason of such loss, of its liabilities with respect to such item.

(d) Adjustment for prior tax benefits.

(1) In general.

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which, when added to the aggregate of the amounts of previous recoveries with respect to such loss, does not exceed the allowable deductions in prior taxable years on account of such loss shall be excluded from gross income for the taxable year of the recovery for purposes of computing the tax under this subtitle; but there shall be added to, and assessed and collected as a part of, the tax under this subtitle for such taxable year an amount equal to the total increase in the tax under this subtitle for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded; the deductions allowable in the prior taxable years on account of such loss. For purposes of this paragraph, if the loss to which the recovery relates was taken into account as a loss from the sale or exchange of a capital asset, the amount of the loss shall be treated as an allowable deduction even though there were no gains against which to allow such loss.

(2) Computation.

The increase in the tax for each taxable year referred to in paragraph (1) shall be computed in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 111, relating to recovery of bad debts, etc.) with respect to any prior taxable year, but shall otherwise treat the tax previously determined for any taxable year in accordance with the principles set forth in section 1314(a) (relating to correction of errors). Subject to the provisions of paragraph (3), all credits allowable against the tax for any taxable year, and all carryovers and carrybacks affected by so decreasing the allowable deductions, shall be taken into account in computing the increase in the tax.

(3) Foreign taxes.

For purposes of this subsection—

(A) any choice made under subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year may be changed,

(B) subject to the provisions of section 904 (b), an election to have the limitation provided by section 904(a)(2) apply may be made, and

(C) notwithstanding section 904(b)(1), an election previously made to have the limitation provided by section 904(a)(2) apply may be revoked with respect to any taxable year and succeeding taxable years.

(4) Substitution of current normal tax and surtax rates.

For purposes of this subsection, the normal tax rate provided by section 11(b) and the surtax rate provided by section 11(c) which are in effect for the taxable year of the recovery shall be treated as having been in effect for all prior taxable years.

(e) Gain on recovery.

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which is not excluded from gross income under subsection (d)(1) shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 1033.

(f) Basis of recovered property.

The basis of property (other than money) received as a recovery of a foreign expropriation loss to which this section applies shall be an amount equal to its fair market value on the date of receipt, reduced by such part of the gain under subsection (e) which is not recognized as provided in section 1033.

(g) Restoration of value of investments.

For purposes of this section, if the value of any interest in, or with respect to, property (including any interest represented by a security, as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking of such property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165 or a deduction for a bad debt was allowed under section 166,

is restored in whole or in part by reason of any recovery of money or other property in respect of the property which became worthless, the value so restored shall be treated as property received as a recovery in respect of such loss or such bad debt.

(h) Special rule for evidences of indebtedness.

Bonds or other evidences of indebtedness received as a recovery of a foreign expropriation loss to which this section applies shall not be considered to have any original issue discount within the meaning of section 1232(a)(2).

(i) Adjustments for succeeding years.

For purposes of this subtitle, proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, in—

(1) the credit under section 33 (relating to foreign tax credit),

(2) the credit under section 38 (relating to investment credit),

(3) the net operating loss deduction under section 172, or the operations loss deduction under section 812,

(4) the capital loss carryover under section 1212 (a), and

(5) such other items as may be specified by such regulations,

for the taxable year of a recovery of a foreign expropriation loss to which this section applies, and for succeeding taxable years, to take into account items changed in making the computations under

subsection (d) for taxable years prior to the taxable year of such recovery. (Added Pub. L. 89–384, § 1 (a), Apr. 8, 1966, 80 Stat. 99.)

EFFECTIVE DATE

Section 2 of Pub. L. 89–384 provided that: "The amendments made by section 1 (except subsection (b)) [adding this section and section 6167 of this title and amending sections 46, 901, 6503, and 6601 of this title] shall apply with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of the Internal Revenue Code of 1954 added by section 1(a)) [subsec. (b) of this section] sustained after December 31, 1958."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 80, 901, 6167 of this title.

§ 1361. Repealed. Pub. L. 89–389, § 4(b)(1), Apr. 14, 1966, 80 Stat. 116.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 350; Oct. 10, 1962, Pub. L. 87–792, § 7(h), 76 Stat. 829; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(k)(5), 78 Stat. 94; Apr. 14, 1966, Pub. L. 89–389, § 4(a), 80 Stat. 115, related to election of unincorporated business enterprises to be treated as domestic corporations, and provided for general rule, qualifications, applicability of corporate provisions, limitation, irrevocability of elections, change of ownership, constructive ownership, imposition of taxes, personal holding company income, computation of taxable income, distributions other than in liquidation and in liquidation, and revocation and termination of elections.

EFFECTIVE DATE OF REPEAL

Section 4(b)(1) of Pub. L. 89–389 provided for repeal of provisions effective Jan. 1, 1969.

Subchapter S.—Election of Certain Small Business Corporations as to Taxable Status

Sec.
1371. Definitions.
1372. Election by small business corporation.
1373. Corporation undistributed taxable income taxed to shareholders.
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1375. Special rules applicable to distributions of electing small business corporations.
1376. Adjustment to basis of stock of, and indebtedness owing, shareholders.
1377. Special rules applicable to earnings and profits of electing small business corporations.
1378. Tax imposed on certain capital gains.
1379. Certain qualified pensions, etc., plans.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 531(c), Dec. 30, 1969, 83 Stat. 656, added item 1379.

1966—Pub. L. 89–389, § 2(b)(1), Apr. 14, 1966, 80 Stat. 114, added item 1378.

1958—Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1640, added subchapter S.

§ 1371. Definitions.

(a) Small business corporation.

For purposes of this subchapter, the term "small business corporation" means a domestic corporation which is not a member of an affiliated group (as defined in section 1504) and which does not—

(1) have more than 10 shareholders;

(2) have as a shareholder a person (other than an estate) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation.

For purposes of this subchapter, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under section 1372 (a) which, under section 1372, is in effect for such taxable year.

(c) Stock owned by husband and wife.

For purposes of subsection (a)(1) stock which—

(1) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a State, or

(2) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common,

shall be treated as owned by one shareholder.

(d) Ownership of certain stock.

For purposes of subsection (a), a corporation shall not be considered a member of an affiliated group at any time during any taxable year by reason of the ownership of stock in another corporation if such other corporation—

(1) has not begun business at any time on or after the date of its incorporation and before the close of such taxable year, and

(2) does not have taxable income for the period included within such taxable year.

(Added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1650, and amended Pub. L. 86–376, § 2(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 88–272, title II, § 233(a), Feb. 26, 1964, 78 Stat. 112.)

AMENDMENTS

1964—Subsec. (d). Pub. L. 88–272 added subsec. (d).
1959—Subsec. (c). Pub. L. 86–376 added subsec. (c).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 233(c) of Pub. L. 88–272 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to taxable years of corporations beginning after December 31, 1962. The amendment made by subsection (b) [to section 1375 of this title] shall apply with respect to taxable years of corporations beginning after December 31, 1957."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2(d) of Pub. L. 86–376 provided in part that the amendment by section 2(a) of Pub. L. 86–376 adding subsec. (c) of this section shall apply to taxable years beginning after Dec. 31, 1959.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85–866, set out as a note under section 172 of this title.

APPLICATION OF SUBSEC. (c) TO TAXABLE YEARS BEGINNING AFTER DEC. 31, 1957, AND BEFORE JAN. 1, 1960

Section 23 of Pub. L. 87–834, Oct. 16, 1962, 76 Stat. 1065, provided that:

"(*a*) *In general.*—Subject to the provisions of subsection (b), section 1371(c) of the Internal Revenue Code of 1954 [subsec. (c) of this section] (as added by section 2(a) of the Act entitled 'An Act to amend the Internal Revenue Code of 1954 to provide a personal exemption for children placed for adoption and to clarify certain provisions relating to the election of small business corporations as to taxable status', approved September 23, 1959 (Public Law 86–376)), shall (notwithstanding the provisions of the first sentence of section 2(d) of such Act) also apply to taxable years beginning after December 31, 1957, and before January 1, 1960.

"(b) *Election and consent by corporations; consents by shareholders.*—Subsection (a) shall apply with respect to any corporation and its shareholders only if, within one year after the date of the enactment of this Act [Oct. 16, 1962]—

"(1) such corporation (in such manner as the Secretary of the Treasury or his delegate prescribes by regulations) elects to have the provisions of subsection (a) apply and consents to the application of subsection (c); and

"(2) each person who is a shareholder of such corporation on the date on which such corporation makes such election, and each person who was a shareholder of such corporation during any taxable year of such corporation beginning after December 31, 1957, and ending before the date of such election, consents (in such manner and at such time as the Secretary of the Treasury or his delegate prescribes by regulations) to such election and to the application of subsection (c).

"(c) *Tolling of statutes of limitations.*—In any case in which a corporation makes an election under subsection (b)—

"(1) if the assessment of any deficiency against the corporation making such election, or any shareholder of such corporation who consents to such election, for any taxable year is prevented, at any time on or before the expiration of one year after the date of such election, by the operation of any law or rule of law, assessment of such deficiency may, nevertheless, be made, to the extent such deficiency is attributable to the application of subsection (a), at any time on or before the expiration of such one-year period; and

"(2) if credit or refund of any overpayment of tax by the corporation making such election, or any shareholder of such corporation who consents to such election, for any taxable year is prevented, at any time on or before the expiration of one year after the date of such election, by the operation of any law or rule of law, credit or refund of such overpayment may, nevertheless, be allowed or made, to the extent such overpayment is attributable to the application of subsection (a), if claim therefor is filed on or before the expiration of such one-year period."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 57, 58, 163, 183, 1016, 1251, 1372, 6037 of this title.

§ 1372. Election by small business corporation.

(a) Eligibility.

Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day,

consent to such election.

(b) Effect.

If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter (other than the tax imposed by section 1378) and, with respect to such taxable years and all succeeding taxable years, the provisions of section 1377 shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of sections 1373, 1374, and 1375 shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of section 1376 shall apply to such shareholder.

(c) Where and how made.

(1) In general.

An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the Secretary or his delegate shall prescribe by regulations.

(2) Taxable years beginning before date of enactment.

An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1957, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in section 1371 (a)) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective.

An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders.

An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such election is made after such first day,

becomes a shareholder in such corporation and does not consent to such election within such time as the Secretary or his delegate shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation.

An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year,

(B) for the taxable year following the taxable year in which made, if made after the close of such first month,

and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the Secretary or his delegate shall prescribe by regulations.

(3) Ceases to be small business corporation.

An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day,

the corporation ceases to be a small business corporation (as defined in section 1371 (a)). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(4) Foreign income.

An election under subsection (a) made by a small business corporation shall terminate if for any taxable year of the corporation for which the election is in effect, such corporation derives more than 80 percent of its gross receipts from sources outside the United States. Such termination shall be effective for the taxable year of the corporation in which it derives more than 80 percent of its gross receipts from sources outside the United States, and for all succeeding taxable years of the corporation.

(5) Passive investment income.

(A) Except as provided in subparagraph (B), an election under subsection (a) made by a small business corporation shall terminate if, for any taxable year of the corporation for which the election is in effect, such corporation has gross receipts more than 20 percent of which is passive investment income. Such termination shall be effective for the taxable year of the corporation in which it has gross receipts of such amount, and for all succeeding taxable years of the corporation.

(B) Subparagraph (A) shall not apply with respect to a taxable year in which a small business corporation has gross receipts more than 20 percent of which is passive investment income, if—

(i) such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business or the next succeeding taxable year; and

(ii) the amount of passive investment income for such taxable year is less than $3,000.

(C) For purposes of this paragraph, the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account for purposes of this paragraph only to the extent of gains therefrom). Gross receipts derived from sales or exchanges of stock or securities for purposes of this paragraph shall not include amounts received by an electing small business corporation which are treated under section 331 (relating to corporate liquidations) as payments in exchange for stock where the electing small business corporation owned more than 50 percent of each class of the stock of the liquidating corporation.

(f) Election after termination.

If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the Secretary or his delegate consents to such election.

(g) Consent to election by certain shareholders of stock held as community property.

If a husband and wife owned stock which was community property (or the income from which was community income) under the applicable community property law of a State, and if either spouse filed a timely consent to an election under subsection (a) for a taxable year beginning before January 1, 1961, the time for filing the consent of the other spouse to such election shall not expire prior to May 15, 1961. (Added Pub. L. 85-866, title I, § 64 (a), Sept. 2, 1958, 72 Stat. 1650, and amended Pub. L. 87-29, § 2, May 4, 1961, 75 Stat. 64; Pub. L. 89-389, §§ 2(b)(2), 3(a), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91-683, § 1(a), Jan. 12, 1971, 84 Stat. 2067.)

REFERENCES IN TEXT

Date of the enactment of this subchapter, referred to in subsec. (c), was Sept. 2, 1958.

AMENDMENTS

1971—Subsec. (e)(5)(C). Pub. L. 91-683 inserted sentence providing that gross receipts derived from sales or exchanges of stock or securities shall not include amounts received by an electing small business corporation which are treated under section 331 as payments in exchange for stock where the electing small business corporation owned more than 50 percent of each class of the stock of the liquidating corporation.

1966—Subsec. (b)(1). Pub. L. 89-389, § 2(b)(2), inserted "(other than the tax imposed by section 1378)" following "this chapter".

Subsec. (e)(5). Pub. L. 89-389, § 3(a), lumped royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities under the general term

"passive investment income" and provided that, during the first two taxable years in which the corporation carries on the active conduct of a trade or business, the provision requiring the termination of election when passive investment income exceeds 20 percent of the gross receipts be waived if the passive investment income is less than $3,000.

1961—Subsec. (g). Pub. L. 87-29 added subsec. (g).

EFFECTIVE DATE OF 1971 AMENDMENT; LIMITATION ON DEFICIENCY ASSESSMENTS

Section 1(b), (c) of Pub. L. 91-683 provided that:

"(b) The amendment made by subsection (a) [to subsec. (e)(5)(C) of this section] shall apply to taxable years of electing small business corporations ending after the date of the enactment of this Act [Jan. 12, 1971]. Such amendment shall also apply with respect to any taxable year ending before October 7, 1970, but only if—

"(1) on such date the making of a refund or the allowance of a credit to the electing small business corporation is not prevented by any law or rule of law, and

"(2) within one year after the date of enactment of this Act [Jan. 12, 1971] and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations—

"(A) the corporation elects to have such amendment so apply, and

"(B) all persons (or their personal representatives) who were shareholders of such corporation at any time during any taxable year beginning with the first taxable year to which this amendment applies and ending on or before the date of the enactment of this Act [Jan. 12, 1971] consent to such election and to the application of the amendment made by subsection (a).

"(c) If the assessment of any deficiency in income tax resulting from the filing of such election for a taxable year ending before the date of such filing is prevented before the expiration of one year after the date of such filing by any law or rule of law, such deficiency (to the extent attributable to such election) may be assessed at any time prior to the expiration of such one-year period notwithstanding any law or rule of law which would otherwise prevent such assessment."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (b)(1) by Pub. L. 89-389 applicable with respect to taxable years of electing small business corporations beginning after April 14, 1966, but not applicable with respect to sales or exchanges occurring before February 24, 1966, see section 2(c) of Pub. L. 89-389, set out as a note under section 1378 of this title.

Section 3(b) of Pub. L. 89-389 provided that:

"The amendment made by subsection (a) [amending subsec. (e)(5) of this section] shall apply to taxable years of electing small business corporations ending after the date of the enactment of this Act. Such amendment shall also apply with respect to taxable years beginning after December 31, 1962, and ending on or before such date of enactment, if (at such time and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations)—

"(1) the corporation elects to have such amendment so apply, and

"(2) all persons (or their personal representatives) who were shareholders of such corporation at any time during any taxable year beginning after December 31, 1962, and ending on or before the date of the enactment of this Act [Apr. 14, 1966], consent to such election and to the application of the amendment made by subsection (a)."

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85-866, set out as a note under section 172 of this title.

PREVENTION OF DENIAL OF SUBCHAPTER S STATUS

Section 1(d) of Pub. L. 91-683 provided that:

"If the election of a corporation under subsection (a) of section 1372 of the Internal Revenue Code of 1954 [subsec. (a) of this section] would have been terminated because of the application of subsection (e)(5) of such section (before the amendment made by subsection (a) of this section) but for the election by such corporation under paragraph (2) of subsection (b) [set out as a note under this section] (and the consent of shareholders under such paragraph), such election under section 1372(a) of such code shall not be treated as terminated for any year beginning before the date of the enactment of this Act [Jan. 12, 1971] as a result of—

"(1) such corporation filing its income tax return on a form 1120 (instead of a form 1120S), or

"(2) a new shareholder not consenting to such election of such corporation in accordance with the requirements of subsection (e)(1) of such section 1372."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1378 of this title.

§ 1373. Corporation undistributed taxable income taxed to shareholders.

(a) General rule.

The undistributed taxable income of an electing small business corporation for any taxable year shall be included in the gross income of the shareholders of such corporation in the manner and to the extent set forth in this section.

(b) Amount included in gross income.

Each person who is a shareholder of an electing small business corporation on the last day of a taxable year of such corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend, if on such last day there had been distributed pro rata to its shareholders by such corporation an amount equal to the corporation's undistributed taxable income for the corporation's taxable year. For purposes of this chapter, the amount so included shall be treated as an amount distributed as a dividend on the last day of the taxable year of the corporation.

(c) Undistributed taxable income defined.

For purposes of this section, the term "undistributed taxable income" means taxable income (computed as provided in subsection (d)) minus the sum of (1) the taxes imposed by sections 56 and 1378 (a) and (2) the amount of money distributed as dividends during the taxable year, to the extent that any such amount is a distribution out of earnings and profits of the taxable year as specified in section 316(a)(2).

(d) Taxable income.

For purposes of this subchapter, the taxable income of an electing small business corporation shall be determined without regard to—

(1) the deduction allowed by section 172 (relating to net operating loss deduction), and

(2) the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures).

(Added Pub. L. 85-866, title I, § 64 (a), Sept. 2, 1958, 72 Stat. 1652, and amended Pub. L. 89-389, § 2(b)(3), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91-172, title III, § 301(b)(10), Dec. 30, 1969, 83 Stat. 586.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-172 inserted reference to tax imposed by section 56.

1966—Subsec. (c). Pub. L. 89-389 inserted "the sum of (1) the tax imposed by section 1378(a) and (2)" after "minus".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (c) by Pub. L. 89–389 applicable with respect to taxable years of electing small business corporations beginning after April 14, 1966, but not applicable with respect to sales or exchanges occurring before February 24, 1966, see section 2(c) of Pub. L. 89–389, set out as a note under section 1378 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85–866, set out as a note under section 172 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1372, 1375, 1376, 1377, 1378, 6042 of this title.

§ 1374. Corporation net operating loss allowed to shareholders.

(a) General rule.

A net operating loss of an electing small business corporation for any taxable year shall be allowed as a deduction from gross income of the shareholders of such corporation in the manner and to the extent set forth in this section.

(b) Allowance of deduction.

Each person who is a shareholder of an electing small business corporation at any time during a taxable year of the corporation in which it has a net operating loss shall be allowed as a deduction from gross income, for his taxable year in which or with which the taxable year of the corporation ends (or for the final taxable year of a shareholder who dies before the end of the corporation's taxable year), an amount equal to his portion of the corporation's net operating loss (as determined under subsection (c)).

(c) Determination of shareholder's portion.

(1) In general.

For purposes of this section, a shareholder's portion of the net operating loss of an electing small business corporation is his pro rata share of the corporation's net operating loss (computed as provided in section 172 (c), except that the deductions provided in part VIII (except section 248) of subchapter B shall not be allowed) for his taxable year in which or with which the taxable year of the corporation ends. For purposes of this paragraph, a shareholder's pro rata share of the corporation's net operating loss is the sum of the portions of the corporation's daily net operating loss attributable on a pro rata basis to the shares held by him on each day of the taxable year. For purposes of the preceding sentence, the corporation's daily net operating loss is the corporation's net operating loss divided by the number of days in the taxable year.

(2) Limitation.

A shareholder's portion of the net operating loss of an electing small business corporation for any taxable year shall not exceed the sum of—

(A) the adjusted basis (determined without regard to any adjustment under section 1376 for the taxable year) of the shareholder's stock in the electing small business corporation, determined as of the close of the taxable year of the corporation (or, in respect of stock sold or otherwise disposed of during such taxable year, as of the day before the day of such sale or other disposition), and

(B) the adjusted basis (determined without regard to any adjustment under section 1376 for the taxable year) of any indebtedness of the corporation to the shareholder, determined as of the close of the taxable year of the corporation (or, if the shareholder is not a shareholder as of the close of such taxable year, as of the close of the last day in such taxable year on which the shareholder was a shareholder in the corporation).

(d) Application with other provisions.

(1) In general.

The deduction allowed by subsection (b) shall, for purposes of this chapter, be considered as a deduction attributable to a trade or business carried on by the shareholder.

(2) Adjustment of net operating loss carrybacks and carryovers of shareholders.

For purposes of determining, under section 172, the net operating loss carrybacks to taxable years beginning before January 1, 1958, from a taxable year of the shareholder for which he is allowed a deduction under subsection (b), such deduction shall be disregarded in determining the net operating loss for such taxable year. In the case of a net operating loss for a taxable year in which a shareholder is allowed a deduction under subsection (b), the determination of the portion of such loss which may be carried to subsequent years shall be made without regard to the preceding sentence and in accordance with section 172 (b) (2), but the sum of the taxable incomes for taxable years beginning before January 1, 1958, shall be deemed not to exceed the amount of the net operating loss determined with the application of the preceding sentence.

(Added Pub. L. 85–866, title I, § 64 (a), Sept. 2, 1958, 72 Stat. 1653, and amended Pub. L. 86–376, § 2(b), Sept. 23, 1959, 73 Stat. 699.)

AMENDMENTS

1959—Subsec. (b). Pub. L. 86–376 inserted "(or for the final taxable year of a shareholder who dies before the end of the corporation's taxable year)" following "the taxable year of the corporation ends".

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2(d) of Pub. L. 86–376 provided in part that the amendment of subsec. (b) of this section by section 2(b) of Pub. L. 86–376 shall take effect on Sept. 24, 1959.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85–866, set out as a note under section 172 of this title.

DEDUCTION OF DECEASED SHAREHOLDER'S PRO RATA SHARE OF NET OPERATING LOSS

Section 30 of Pub. L. 87–834, Oct. 16, 1962, 76 Stat. 1069, provided that: "The amendment made by section 2(b) of Public Law 86–376 (73 Stat. 699) [which inserted "(or for the final taxable year of a shareholder who dies before the end of the corporations taxable year)" in subsec. (b) of this section] shall take effect on September 2, 1958."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 163, 1372, 1375, 1376, 1377 of this title.

§ 1375. Special rules applicable to distributions of electing small business corporations.

(a) Capital gains.

(1) Treatment in hands of shareholders.

The amount includible in the gross income of a shareholder as dividends (including amounts treated as dividends under section 1373 (b)) from an electing small business corporation during any taxable year of the corporation, to the extent that such amount is a distribution of property out of earnings and profits of the taxable year as specified in section 316 (a) (2), shall be treated as a long-term capital gain to the extent of the shareholder's pro rata share of the excess of the corporation's net long-term capital gain over its net short-term capital loss for such taxable year. For purposes of this paragraph, such excess shall be deemed not to exceed the corporation's taxable income (computed as provided in section 1373 (d)) for the taxable year.

(2) Determination of shareholder's pro rata share.

A shareholder's pro rata share of such excess for any taxable year shall be an amount which bears the same ratio to such excess as the amount of dividends described in paragraph (1) includible in the shareholder's gross income bears to the entire amount of dividends described in paragraph (1) includible in the gross income of all shareholders.

(3) Reduction for taxes imposed.

For purposes of paragraphs (1) and (2), the excess of an electing small business corporation's net long-term capital gain over its net short-term capital loss for a taxable year shall be reduced by an amount equal to the amount of the taxes imposed by sections 56 and 1378(a) on such corporation for such year.

(b) Dividends received credit not allowed.

The amount includible in the gross income of a shareholder as dividends from an electing small business corporation during any taxable year of the corporation (including any amount treated as a dividend under section 1373 (b)) shall not be considered a dividend for purposes of section 37 or section 116 to the extent that such amount is a distribution of property out of earnings and profits of the taxable year as specified in section 316(a)(2). For purposes of this subsection, the earnings and profits of the taxable year shall be deemed not to exceed the corporation's taxable income (computed as provided in section 1373(d) for the taxable year.

(c) Treatment of family groups.

Any dividend received by a shareholder from an electing small business corporation (including any amount treated as a dividend under section 1373 (b)) may be apportioned or allocated by the Secretary or his delegate between or among shareholders of such corporation who are members of such shareholder's family (as defined in section 704 (e) (3)), if he determines that such apportionment or allocation is necessary in order to reflect the value of services rendered to the corporation by such shareholders.

(d) Distributions of undistributed taxable income previously taxed to shareholders.

(1) Distributions not considered as dividends.

An electing small business corporation may distribute, in accordance with regulations prescribed by the Secretary or his delegate, to any shareholder all or any portion of the shareholder's net share of the corporation's undistributed taxable income for taxable years prior to the taxable year in which such distribution is made. Any such distribution shall, for purposes of this chapter, be considered a distribution which is not a dividend, but the earnings and profits of the corporation shall not be reduced by reason of any such distribution.

(2) Shareholder's net share of undistributed taxable income.

For purposes of this subsection, a shareholder's net share of the undistributed taxable income of an electing small business corporation is an amount equal to—

(A) the sum of the amounts included in the gross income of the shareholder under section 1373 (b) for all prior taxable years (excluding any taxable year to which the provisions of this section do not apply and all taxable years preceding such year), reduced by

(B) the sum of—

(i) the amounts allowable under section 1374 (b) as a deduction from gross income of the shareholder for all prior taxable years (excluding any taxable year to which the provisions of this section do not apply and all taxable years preceding such year), and

(ii) all amounts previously distributed during the taxable year and all prior taxable years (excluding any taxable year to which the provisions of this section do not apply and all taxable years preceding such year) to the shareholder which under subsection (f) or paragraph (1) of this subsection were considered distributions which were not dividends.

(e) Repealed. Pub. L. 89-389, § 1(a)(2), Apr. 14, 1966, 80 Stat. 111.

(f) Distributions within 2½-month period after close of taxable year.

(1) Distributions considered as distributions of undistributed taxable income.

Any distribution of money made by a corporation after the close of a taxable year with respect to which it was an electing small business corporation and on or before the 15th day of the third month following the close of such taxable year to a person who was a shareholder of such corporation at the close of such taxable year shall be treated as a distribution of the corporation's undistributed taxable income for such year, to the extent such distribution (when added to the sum of all prior distributions of money made to such person by such corporation following the close of such year) does not exceed such person's share of the corporation's undistributed taxable income for such year. Any distribution so treated shall, for purposes of this chapter, be considered a distribu-

tion which is not a dividend, and the earnings and profits of the corporation shall not be reduced by reason of such distribution.

(2) Share of undistributed taxable income.

For purposes of paragraph (1), a person's share of a corporation's undistributed taxable income for a taxable year is the amount required to be included in his gross income under section 1373(b) as a shareholder of such corporation for his taxable year in which or with which the taxable year of the corporation ends.

(3) Election under subsection (e).

Paragraph (1) shall not apply to any distribution with respect to which an election under subsection (e) applies.

(Added Pub. L. 85-866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1654, and amended Pub. L. 88-272, title II, §§ 201(d)(13), 233(b), Feb. 26, 1964, 78 Stat. 32, 112; Pub. L. 89-389, §§ 1(a), (b), 2(b)(4), Apr. 14, 1966, 80 Stat. 111, 114; Pub. L. 91-172, title III, § 301(b)(11), Dec. 30, 1969, 83 Stat. 586.)

AMENDMENTS

1969—Subsec. (a)(3). Pub. L. 91-172 substituted "taxes imposed" for "tax imposed by section 1378" in the heading and "taxes imposed by sections 56 and 1378(a) on" for "tax imposed by section 1378(a) on the income of" in the text, respectively.

1966—Subsec. (a). Pub. L. 89-389, § 2(b)(4), added par. (3).

Subsec. (d)(2)(B)(ii). Pub. L. 89-389, § 1(b), substituted "under subsection (f) or paragraph (1) of this subsection" for "under paragraph (1)".

Subsec. (e). Pub. L. 89-389, § 1(a)(2), repealed subsec. (e) which permitted distributions of the proceeds of a sale of capital assets to be treated as having been made on the last day of the taxable year within which the sale occurred, if the distributions were made within two and one-half months after the end of that taxable year and were made pursuant to a resolution of the board of directors adopted before the end of the year in question and if each shareholder owned the same proportion of the corporation's stock on the distribution date as he did on the last days of the corporation's last taxable year.

Subsec. (f). Pub. L. 89-389, § 1(a)(1), added subsec. (f).

1964—Subsec. (b). Pub. L. 88-272, § 201(d)(13), deleted "section 34," preceding "section 37."

Subsec. (e). Pub. L. 88-272, § 233(b), added subsec. (e).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91-172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89-389 applicable with respect to taxable years of electing small business corporations beginning after April 14, 1966, but not applicable with respect to sales or exchanges occurring before February 24, 1966, see section 2(c) of Pub. L. 89-389, set out as a note under section 1378 of this title.

Section 1(a)(2) of Pub. L. 89-389 provided in part that the repeal of subsec. (e) was effective "with respect to distributions made after the close of any taxable year of the corporation beginning after the date of the enactment of this Act [Apr. 14, 1966]."

Section 1(c) of Pub. L. 89-389 provided that: "Except as provided by subsection (d) [set out as a note under this section], the amendments made by subsections (a)(1) and (b) [adding subsec. (f) and amending subsec. (d)(2)(B)(ii) of this section] shall apply only with respect to distributions made after the date of the enactment of this Act [Apr. 14, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (b) by Pub. L. 88-272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 35 of this title.

Amendment of subsec. (e) by Pub. L. 88-272 applicable to taxable years of corporations beginning after Dec. 31, 1957, see section 233(c) of Pub. L. 88-272, set out as a note under section 1371 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85-866, set out as a note under section 172 of this title.

DISTRIBUTIONS OF MONEY BY CORPORATIONS ON OR BEFORE APRIL 14, 1966; ELECTION BY CORPORATIONS AND CONSENT OF SHAREHOLDERS; EXTENSION OF FILING PERIOD; DEFICIENCY ASSESSMENT

Section 1(d) of Pub. L. 89-389 provided that:

"(1) The amendments made by subsections (a)(1) and (b) [adding subsec. (f) and amending subsec. (d)(2)(B)(ii) of this section] shall also apply with respect to distributions of money (other than distributions with respect to which an election under section 1375(e) of the Internal Revenue Code of 1954 [subsec. (e) of this section] applies) made by a corporation on or before the date of the enactment of this Act [Apr. 14, 1966] and on or after the date of the first distribution of money during the taxable year designated by the corporation if—

"(A) such corporation elects to have such amendments apply to all such distributions made by it, and

"(B) except as otherwise provided by this subsection, all persons (or their personal representatives) who were shareholders of such corporation at any time on or after the date of such first distribution and before the date on which the corporation files the election with the Secretary of the Treasury or his delegate consent to such election and to the application of this subsection.

"(2) An election by a corporation under this subsection, and the consent thereto of the persons who are or were shareholders of such corporation, shall be made in such manner and within such time as the Secretary of the Treasury or his delegate prescribes by regulations, but the period for making such election shall not expire before one year after the date on which the regulations prescribed under this subsection are published in the Federal Register.

"(3) In applying paragraphs (1) and (2), the consent of a person (or his personal representative) shall not be required if, under regulations prescribed under this subsection, it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the liability of such person for Federal income tax for any taxable year cannot be affected by the election of the corporation of which he is or was a shareholder.

"(4) In applying this subsection, the reference in section 1375(f) of the Internal Revenue Code of 1954 [subsec. (f) of this section] (as added by subsection (a)(1)) to the 15th day of the third month following the close of the taxable year shall be treated as referring to the 15th day of the fourth month following the close of the taxable year.

"(5) The statutory period for the assessment of any deficiency for any taxable year against the corporation filing the election or any person consenting thereto, to the extent such deficiency is attributable to an election under this subsection, shall not expire before the last day of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

"(6) If—

"(A) credit or refund of the amount of any overpayment for any taxable year attributable to an election under this subsection is not prevented, on the date of the enactment of this Act [Apr. 14, 1966], by the operation of any law or rule of law, and

"(B) credit or refund of the amount of such overpayment is prevented, by the operation of any law or rule of law (other than chapter 74 of the Internal Revenue Code of 1954, relating to closing agreements and compromises) [Chapter 74 of this title], at any time on or before the expiration of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register,

credit or refund of such overpayment may, nevertheless, be allowed or made, to the extent such overpayment is attributable to such election, if claim therefor is filed before the expiration of such 2-year period.

"(7) If—

"(A) (i) one or more consecutive distributions of money made by the corporation after the close of a taxable year and on or before the 15th day of the fourth month following the close of the taxable year were substantially the same in amount as the undistributed taxable income of such corporation for such year, or

"(ii) it is established to the satisfaction of the Secretary of the Teasury or his delegate that one or more distributions of money made by the corporation during the period described in clause (i) were intended to be distributions of the undistributed taxable income of such corporation for the taxable year preceding such period, and

"(B) credit or refund of the amount of any overpayment for the taxable year in which such distribution or distributions were received is prevented on the date of the enactment of this Act [Apr. 14, 1966], by the operation of any law or rule of law (other than chapter 74 of the Internal Revenue Code of 1954, relating to closing agreements and compromises),

credit or refund of such overpayment may, nevertheless, be allowed or made, to the extent such overpayment is attributable to an election under this subsection, if claim therefor is filed before the expiration of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register.

"(8) No interest on any deficiency attributable to an election under this subsection shall be assessed or collected for any period before the expiration of the 2-year period beginning on the date on which the regulations prescribed under this subsection are published in the Federal Register. No interest on any overpayment attributable to an election under this subsection shall be allowed or paid for any period before the expiration of such 2-year period."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1372 of this title.

§ 1376. Adjustment to basis of stock of, and indebtedness owing, shareholders.

(a) Increase in basis of stock for amounts treated as dividends.

The basis of a shareholder's stock in an electing small business corporation shall be increased by the amount required to be included in the gross income of such shareholder under section 1373 (b), but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in any redetermination of the shareholder's tax liability.

(b) Reduction in basis of stock and indebtedness for shareholder's portion of corporation net operating loss.

(1) Reduction in basis of stock.

The basis of a shareholder's stock in an electing small business corporation shall be reduced (but not below zero) by an amount equal to the amount of his portion of the corporation's net operating loss for any taxable year attributable to such stock (as determined under section 1374 (c)).

(2) Reduction in basis of indebtedness.

The basis of any indebtedness of an electing small business corporation to a shareholder of such corporation shall be reduced (but not below zero) by an amount equal to the amount of the shareholder's portion of the corporation's net operating loss for any taxable year (as determined under section 1374(c)), but only to the extent that such amount exceeds the adjusted basis of the stock of such corporation held by the shareholder. (Added Pub. L. 85-866, title I, § 64 (a), Sept. 2, 1958, 72 Stat. 1655.)

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85-866, set out as a note under section 172 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 1372, 1374 of this title.

§ 1377. Special rules applicable to earnings and profits of electing small business corporations.

(a) Reduction for undistributed taxable income.

The accumulated earnings and profits of an electing small business corporation as of the close of its taxable year shall be reduced to the extent that its undistributed taxable income for such year is required to be included in the gross income of the shareholders of such corporation under section 1373 (b).

(b) Current earnings and profits not reduced by any amount not allowable as deduction.

The earnings and profits of an electing small business corporation for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income (as provided in section 1373 (d)) for such taxable year.

(c) Earnings and profits not affected by net operating loss.

The earnings and profits and the accumulated earnings and profits of an electing small business corporation shall not be affected by any item of gross income or any deduction taken into account in determining the amount of any net operating loss (computed as provided in section 1374 (c)) of such corporation. (Added Pub. L. 85-866, title I, § 64 (a), Sept. 2, 1958, 72 Stat. 1656.)

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85-866, set out as a note under section 172 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1372 of this title.

§ 1378. Tax imposed on certain capital gains.

(a) General rule.

If for a taxable year of an electing small business corporation—

(1) the excess of the net long-term capital gain over the net short-term capital loss of such corporation exceeds $25,000, and exceeds 50 percent of its taxable income for such year, and

(2) the taxable income of such corporation for such year exceeds $25,000,

there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation.

(b) Amount of tax.

The tax imposed by subsection (a) shall be the lower of—

(1) an amount equal to the tax, determined as provided in section 1201(a), on the amount by which the excess of the net long-term capital gain over the net short-term capital loss of the corporation for the taxable year exceeds $25,000, or

(2) an amount equal to the tax which would be imposed by section 11 on the taxable income (computed as provided in section 1373(d)) of the corporation for the taxable year if the corporation was not an electing small business corporation.

No credit shall be allowable under part IV of subchapter A of this chapter (other than under section 39) against the tax imposed by subsection (a). In applying section 1201(a)(1) (A) and (B) for purposes of paragraph (1), the $25,000 limitation shall first be deducted from the amount (determined without regard to this subsection) subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount (determined without regard to this subsection) subject to tax in accordance with section 1201(a)(1)(A).

(c) Exceptions.

(1) In general.

Subsection (a) shall not apply to an electing small business corporation for any taxable year if the election under section 1372(a) which is in effect with respect to such corporation for such taxable year has been in effect for the 3 immediately preceding taxable years.

(2) New corporations.

Subsection (a) shall not apply to an electing small business corporation if—

(A) it has been in existence for less than 4 taxable years, and

(B) an election under section 1372(a) has been in effect with respect to such corporation for each of its taxable years.

(3) Property with substituted basis.

If—

(A) but for paragraph (1) or (2), subsection (a) would apply for the taxable year,

(B) any long-term capital gain is attributable to property acquired by the electing small business corporation during the period beginning 3 years before the first day of the taxable year and ending on the last day of the taxable year, and

(C) the basis of such property is determined in whole or in part by reference to the basis of any property in the hands of another corporation which was not an electing small business corporation throughout all of the period described in subparagraph (B) before the transfer by such other corporation and during which such other corporation was in existence,

then subsection (a) shall apply for the taxable year, but the amount of the tax determined under subsection (b) shall not exceed a tax, determined as provided in section 1201(a), on the excess of the net long-term capital gain over the net short-term capital loss attributable to property acquired as provided in subparagraph (B) and having a basis described in subparagraph (C).

(Added Pub. L. 89-389, § 2(a), Apr. 14, 1966, 80 Stat. 113, and amended Pub. L. 91-172, title V, § 511 (c)(4), Dec. 30, 1969, 83 Stat. 638.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172, § 511(c)(4)(B), added provision requiring in the application of section 1201(a)(1) (A) and (B) of this title for purposes of par. (1) of subsec. (b) of this section, the $25,000 limitation shall first be deducted from the amount (determined without regard to this subsec.) subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount (determined without regard to this subsec.) subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(1). Pub. L. 91-172, § 511(c)(4)(A), substituted "the tax, determined as provided in section 1201(a), on" for "25 percent of."

Subsec. (c)(3). Pub. L. 91-172, § 511(c)(4)(C), substituted "a tax, determined as provided in section 1201(a), on" for "25 percent of."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91-172, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section 2(c) of Pub. L. 89-389 provided that: "The amendments made by this section [adding this section and amending sections 46(a)(3), 1372(b), (1), 1373(c), and 1375(a)(3) of this title] shall apply with respect to taxable years of electing small business corporations beginning after the date of enactment of this Act [Apr. 14, 1966], but such amendments shall not apply with respect to sales or exchanges occurring before February 24, 1966."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 58, 1372, 1373, 1375 of this title.

§ 1379. Certain qualified pension, etc., plans.

(a) Additional requirement for qualification of stock bonus or profit-sharing plans.

A trust forming part of a stock bonus or profit-sharing plan which provides contributions or benefits for employees some or all of whom are shareholder-employees shall not constitute a qualified trust under section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) unless the plan of which such trust is a part provides that forfeitures attributable to contributions deductible under section 404(a)(3) for any taxable year (beginning after December 31, 1970) of the employer with respect to which it is an electing small business corporation may not inure to the benefit of any individual who is a shareholder-employee for such taxable year. A plan shall be considered as satisfying the requirement of this subsection for the period beginning with the first day of a taxable year and ending with the 15th day of the third month following the close of such taxable year, if all the provisions of the plan which are necessary to satisfy this requirement are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

(b) Taxability of shareholder-employee beneficiaries.

(1) Inclusion of excess contributions in gross income.

Notwithstanding the provisions of section 402 (relating to taxability of beneficiary of employees' trust), section 403 (relating to taxation of employee annuities), or section 405(d) (relating to

taxability of beneficiaries under qualified bond purchase plans), an individual who is a shareholder-employee of an electing small business corporation shall include in gross income, for his taxable year in which or with which the taxable year of the corporation ends, the excess of the amount of contributions paid on his behalf which is deductible under section 404(a) (1), (2), or (3) by the corporation for its taxable year over the lesser of—

(A) 10 percent of the compensation received or accrued by him from such corporation during its taxable year, or

(B) $2,500.

(2) Treatment of amounts included in gross income.

Any amount included in the gross income of a shareholder-employee under paragraph (1) shall be treated as consideration for the contract contributed by the shareholder-employee for purposes of section 72 (relating to annuities).

(3) Deduction for amounts not received as benefits.

If—

(A) amounts are included in the gross income of an individual under paragraph (1), and

(B) the rights of such individual (or his beneficiaries) under the plan terminate before payments under the plan which are excluded from gross income equal the amounts included in gross income under paragraph (1),

then there shall be allowed as a deduction, for the taxable year in which such rights terminate, an amount equal to the excess of the amounts included in gross income under paragraph (1) over such payments.

(c) Carryover of amounts deductible.

No amount deductible shall be carried forward under the second sentence of section 404(a)(3)(A) (relating to limits on deductible contributions under stock bonus and profit-sharing trusts) to a taxable year of a corporation with respect to which it is not an electing small business corporation from a taxable year (beginning after December 31, 1970) with respect to which it is an electing small business corporation.

(d) Shareholder-employee.

For purposes of this section, the term "shareholder-employee" means an employee or officer of an electing small business corporation who owns (or is considered as owning within the meaning of section 318(a)(1), on any day during the taxable year of such corporation, more than 5 percent of the outstanding stock of the corporation. (Added Pub. L. 91-172, title V, § 531(a), Dec. 30, 1969, 83 Stat 654.)

EFFECTIVE DATE

Section 531(d) of Pub. L. 91-172 provided that: "The amendments made by this section [enacting this section and amending section 62 of this title] shall apply with respect to taxable years of electing small business corporations beginning after December 31, 1970."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 62 of this title.

Subchapter T.—Cooperatives and Their Patrons

Part
I. Tax treatment of cooperatives.
II. Tax treatment by patrons of patronage dividends and per-unit retain allocations.
III. Definitions; special rules.

AMENDMENTS

1966—Pub. L. 89-809, title II, § 211(b)(5), Nov. 13, 1966, 80 Stat. 1582, inserted "and per-unit retain allocations" in heading of Part II.

1962—Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1045, added the headings of subchapter T and of parts I—III.

PART I.—TAX TREATMENT OF COOPERATIVES

Sec.
1381. Organizations to which part applies.
1382. Taxable income of cooperatives.
1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates.

AMENDMENTS

1966—Pub. L. 89-809, title II, § 211(a)(8), Nov. 13, 1966, 80 Stat. 1582, inserted "or nonqualified per-unit retain certificates" in item 1383.

1962—Pub. L. 87-834, §17(a), Oct. 16, 1962, 76 Stat. 1045, added the heading of Part I and items 1381—1383.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 521 of this title.

§ 1381. Organizations to which part applies.

(a) In general.

This part shall apply to—

(1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) any corporation operating on a cooperative basis other than an organization—

(A) which is exempt from tax under this chapter,

(B) which is subject to the provisions of—

(i) part II of subchapter H (relating to mutual savings banks, etc.), or

(ii) subchapter L (relating to insurance companies), or

(C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) Tax on certain farmers' cooperatives.

An organization described in subsection (a)(1) shall be subject to the taxes imposed by section 11 or 1201. (Added Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1045.)

EFFECTIVE DATE

Section 17(c) of Pub. L. 87-834 provided that:

"(1) *For the cooperatives.*—Except as provided in paragraph (3), the amendments made by subsections (a) and (b) [adding this subchapter, amending sections 521 and 6072 of this title, and repealing section 522 of this title] shall apply to taxable years of organizations described in section 1381(a) of the Internal Revenue Code of 1954 (as added by subsection (a)) [this section] beginning after December 31, 1962.

"(2) *For the patrons.*—Except as provided in paragraph (3), section 1385 of the Internal Revenue Code of 1954 (as added by subsection (a)) [section 1385 (3) of this title] shall apply with respect to any amount received from any organization described in section 1381(a) of such Code [subsec. (a) of this section], to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

"(3) *Application of existing law.*—In the case of any money, written notice of allocation, or other property paid by any organization described in section 1381(a) [subsec. (a) of this section]—

"(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

"(B) on or after such first day with respect to patronage occurring before such first day,

the tax treatment of such money, written notice of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notice of allocation) by any person shall be made under the Internal Revenue Code of 1954 without regard to subchapter T of chapter 1 of such Code [this subchapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 1381, 1385, 6044, 6072 of this title.

§ 1382. Taxable income of cooperatives.

(a) Gross income.

Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization or by reason of any amount paid to a patron as a per-unit retain allocation (as defined in section 1388(f)).

(b) Patronage dividends and per-unit retain allocations.

In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year—

(1) as patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation (as defined in section 1388(d))) with respect to patronage occurring during such taxable year;

(2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred;

(3) as per-unit retain allocations (as defined in section 1388(f)), to the extent paid in money, qualified per-unit retain certificates (as defined in section 1388(h)), or other property (except nonqualified per-unit retain certificates, as defined in section 1388(i)) with respect to marketing occurring during such taxable year; or

(4) in money or other property (except per-unit retain certificates) in redemption of a nonqualified per-unit retain certificate which was paid as a per-unit retain allocation during the payment period for the taxable year during which the marketing occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall, in the case of an amount described in paragraph (1) or (2), be treated in the same manner as an item of gross income and as a deduction therefrom, and in the case of an amount described in paragraph (3) or (4), be treated as a deduction in arriving at gross income.

(c) Deduction for nonpatronage distributions, etc.

In determining the taxable income of an organization described in section 1381(a)(1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)—

(1) amounts paid during the taxable year as dividends on its capital stock; and

(2) amounts paid during the payment period for the taxable year—

(A) in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

(B) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

(d) Payment period for each taxable year.

For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

(e) Products marketed under pooling arrangements.

For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products—

(1) the patronage shall (to the extent provided in regulations prescribed by the Secretary or his delegate) be treated as patronage occurring during the taxable year in which the pool closes, and

(2) the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

(f) Treatment of earnings received after patronage occurred.

If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying paragraphs (1) and (2) of subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income. (Added Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1046, and amended Pub. L. 89-809,

title II, § 211(a)(1)—(4), Nov. 13, 1966, 80 Stat. 1580, 1581; Pub. L. 91-172, title IX, § 911(a), Dec. 30, 1969, 83 Stat. 722.)

AMENDMENTS

1969—Subsec. (b)(3). Pub. L. 91-172 expanded the category of per-unit retain allocations that may not be taken into account in determining the taxable income of an organization, by including per-unit retain allocations paid for in money or other property (except nonqualified per-unit retain certificates as defined in section 1388(i) of this section).

1966—Subsec. (a). Pub. L. 89-809, § 211(a)(1), inserted reference to amounts paid to patrons as a per-unit retain allocation as defined in section 1388(f).

Subsec. (b). Pub. L. 89-809, § 211(a)(2), inserted "and per-unit retain allocations" in the subsec. catchline, added pars. (3) and (4), and, in the material following the pars., added provisions making the existing material applicable only to amounts described in pars. (1) and (2) and adding material covering the treatment of amounts described in pars. (3) and (4).

Subsec. (e). Pub. L. 89-809, § 211(a)(3), added provision that the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

Subsec. (f). Pub. L. 89-809, § 211(a)(4), substituted "paragraphs (1) and (2) of subsection (b)" for "subsection (b)".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 911(c) of Pub. L. 91-172 provided that: "The amendments made by this section [amending this section and section 1388 of this title] shall apply to per-unit retain allocations made after October 9, 1969."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 211(e) of Pub. L. 89-809 provided that:

"(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 1383, 1385, and 1388 of this title] shall apply to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after April 30, 1966, with respect to products delivered during such years.

"(2) The amendments made by subsection (d) [amending section 6044 of this title] shall apply with respect to calendar years after 1966."

EFFECTIVE DATE

Except as otherwise provided, section applicable to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 1383, 1385, 1388, 6044, 6072 of this title.

§ 1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates.

(a) General rule.

If, under section 1382 (b)(2) or (4), or (c)(2)(B), deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation or non-qualified per-unit retain certificates, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) the tax for the taxable year computed with such deduction; or

(2) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation or nonqualified per-unit retain certificates as qualified written notices of allocation or qualified per-unit retain certificates (as the case may be).

(b) Special rules.

(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation or nonqualified per-unit retain certificate which is to be treated under such subsection as a qualified written notice of allocation or qualified per-unit retain certificate (as the case may be) which is allowable as a deduction under section 1382 (b)(2) or (4), or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

(Added Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1047, and amended Pub. L. 89-809, title II, § 211(a)(5)-(7), Nov. 13, 1966, 80 Stat. 1581.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809, § 211(a)(5), (6), added "or nonqualified per-unit retain certificates" to the section catchline, substituted "section 1382(b)(2) or (4)" for "1382(b)(2)", and inserted references to per-unit retain certificates.

Subsec. (b)(2). Pub. L. 89-809, § 211(a)(7), substituted "section 1382(b)(2) or (4)" for "section 1382(b)(2)" and inserted references to per-unit retain certificates.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by section 211 of Pub. L. 89-809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89-809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

PART II.—TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS AND PER-UNIT RETAIN ALLOCATIONS

Sec.
1385. Amounts includible in patron's gross income.

AMENDMENTS

1962—Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1048, added the heading of Part II and item 1385.

§ 1385. Amounts includible in patron's gross income.

(a) General rule.

Except as otherwise provided in subsection (b), each person shall include in gross income—

(1) the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a),

(2) any amount, described in section 1382 (c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1), and

(3) the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him during the taxable year from an organization described in section 1381(a).

(b) Exclusion from gross income.

Under regulations prescribed by the Secretary or his delegate, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount—

(1) is properly taken into account as an adjustment to basis of property, or

(2) is attributable to personal, living, or family items.

(c) Treatment of certain nonqualified written notices of allocation and certain nonqualified per-unit retain certificates.

(1) Application of subsection.

This subsection shall apply to—

(A) any nonqualified written notice of allocation which—

(i) was paid as a patronage dividend, or

(ii) was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A), and

(B) any nonqualified per-unit retain certificate which was paid as a per-unit retain allocation.

(2) Basis; amount of gain.

In the case of any nonqualified written notice of allocation or nonqualified per-unit retain certificate to which this subsection applies, for purposes of this chapter—

(A) the basis of such written notice of allocation or per-unit retain certificate in the hands of the patron to whom such written notice of allocation or per-unit retain certificate was paid shall be zero,

(B) the basis of such written notice of allocation or per-unit retain certificate which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) gain on the redemption, sale, or other disposition of such written notice of allocation or per-unit retain certificate by any person shall, to the extent that the stated dollar amount of such written notice of allocation or per-unit retain certificate exceeds its basis, be considered as gain from the sale or exchange of property which is not a capital asset.

(Added Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1048, and amended Pub. L. 89-809, title II, § 211(b)(1)—(4), Nov. 13, 1966, 80 Stat. 1582.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809, § 211(b)(1), added par. (3).

Subsec. (c). Pub. L. 89-809, § 211(b)(2)-(4), inserted "and certain nonqualified per-unit retain certificates" into the subsection catchline, added provisions to par. (1) for the application of the subsection to any nonqualified per-unit retain certificates which were paid as per-unit retain allocations, and inserted references to per-unit retain certificates in par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by section 211 of Pub. L. 89-809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89-809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable to taxable years of organizations described in section 1381 (a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1388 of this title.

PART III.—DEFINITIONS; SPECIAL RULES

Sec.
1388. Definitions; special rules.

AMENDMENTS

1962—Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1049, added the heading of Part III and item 1388.

§ 1388. Definitions; special rules.

(a) Patronage dividend.

For purposes of this subchapter, the term "patronage dividend" means an amount paid to a patron by an organization to which part I of this subchapter applies—

(1) on the basis of quantity or value of business done with or for such patron,

(2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and

(3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions.

(b) Written notice of allocation.

For purposes of this subchapter, the term "written notice of allocation" means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) Qualified written notice of allocation.

(1) Defined.

For purposes of this subchapter, the term "qualified written notice of allocation" means—

(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) Manner of obtaining consent.

A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by—

(A) making such consent in writing,

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after the date of the enactment of the Revenue Act of 1962) a bylaw providing that membership in the organization constitutes such consent, and

(ii) he has received a written notification and copy of such bylaw, or

(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) Period for which consent is effective.

(A) General rule.

Except as provided in subparagraph (B)—

(i) a consent described in paragraph (2)(A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and

(ii) a consent described in paragraph (2)(B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382(e)) after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382(e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382(e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(4) Qualified check.

For purposes of this subchapter, the term "qualified check" means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

(d) Nonqualified written notice of allocation.

For purposes of this subchapter, the term "nonqualified written notice of allocation" means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

(e) Determination of amount paid or received.

For purposes of this subchapter, in determining amounts paid or received—

(1) property (other than a written notice of allocation or a per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(f) Per-unit retain allocation.

For purposes of this subchapter, the term "per-unit retain allocation" means any allocation, by an organization to which part I of this subchapter applies, to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

(g) Per-unit retain certificate.

For purposes of this subchapter, the term "per-unit retain certificate" means any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation to him by the organization.

(h) Qualified per-unit retain certificate.

(1) Defined.

For purposes of this subchapter, the term "qualified per-unit retain certificate" means any per-unit retain certificate which the distributee has agreed, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

(2) Manner of obtaining agreement.

A distributee shall agree to take a per-unit retain certificate into account as provided in paragraph (1) only by—

(A) making such agreement in writing, or

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after the date of the enactment of this subsection) a bylaw providing that membership in the organization constitutes such agreement, and

(ii) he has received a written notification and copy of such bylaw.

(3) Period for which agreement is effective.

(A) General rule.

Except as provided in subparagraph (B)—

(i) an agreement described in paragraph (2)(A) shall be an agreement with respect to all products delivered by the distributee to the organization during the taxable year of the organization during which such agreement is made and all subsequent taxable years of the organization; and

(ii) an agreement described in paragraph (2)(B) shall be an agreement with respect to all products delivered by the distributee to the organization after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any agreement described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to products delivered by the distributee on or after the first day of the first taxable year of the organization beginning after the revocation is filed with the organization; except that in the case of a pooling arrangement described in section 1382(e) a revocation made by a distributee shall not be effective as to any products which were delivered to the organization by the distributee before such revocation.

(ii) Any agreement described in paragraph (2)(B) shall not be effective with respect to any products delivered after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(i) Nonqualified per-unit retain certificate.

For purposes of this subchapter, the term "nonqualified per-unit retain certificate" means a per-unit retain certificate which is not described in subsection (h). (Added Pub. L. 87-834, § 17(a), Oct. 16, 1962, 76 Stat. 1049, and amended Pub. L. 89-809, title II, § 211(c), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 91-172, title IX, § 911(b), Dec. 30, 1969, 83 Stat. 722.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Act of 1962, referred to in subsec. (c), means the date of the enactment of Pub. L. 87-834, which was approved on Oct. 16, 1962.

AMENDMENTS

1969—Subsec. (f). Pub. L. 91-172 struck out reference to allocations made by organizations other than by payment of money or other property except per-unit retain certificates.

1966—Subsec. (e). Pub. L. 89-809, § 211(c)(1), inserted references to per-unit retain certificates.

Subsecs. (f)—(i). Pub. L. 89-809, § 211(c)(2), added subsecs. (f)—(i).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to per-unit retain allocations made after Oct. 9, 1969, see section 911(c) of Pub. L. 91-172, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by section 211 of Pub. L. 89-809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89-809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

PER-UNIT RETAIN CERTIFICATES COVERED BY WRITTEN AGREEMENTS BETWEEN OCT. 14, 1965, AND NOV. 13, 1966: TRANSITION TREATMENT OF BY-LAW PROVISIONS

Section 211(f) of Pub. L. 89-809 provided that:

"(1) Except as provided in paragraph (2), a written agreement between a patron and a cooperative association—

"(A) which clearly provides that the patron agrees to treat the stated dollar amounts of all per-unit retain certificates issued to him by the association as representing cash distributions which he has, of his own choice, reinvested in the cooperative association,

"(B) which is revocable by the patron at any time after the close of the taxable year in which it was made,

"(C) which was entered into after October 14, 1965, and before the date of the enactment of this Act [Nov. 13, 1966], and

"(D) which is in effect on the date of the enactment of this Act [Nov. 13, 1966], and with respect to which a written notice of revocation has not been furnished to the cooperative association,

shall be effective (for the period prescribed in the agreement) for purposes of section 1388(h) of the Internal Revenue Code of 1954 [subsec. (h) of this section] as if entered into, pursuant to such section, after the date of the enactment of this Act [Nov. 13, 1966].

"(2) An agreement described in paragraphs (1)(A) and (C) which was included in a by-law of the cooperative association and which is in effect on the date of the enactment of this Act [Nov. 13, 1966] shall be effective for purposes of section 1388(h) of such Code only for taxable years of the association beginning before May 1, 1967."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 6044 of this title.

Chapter 2.—TAX ON SELF-EMPLOYMENT INCOME

Sec.
1401. Rate of tax.
1402. Definitions.
1403. Miscellaneous provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6015, 6017, 6103, 6654 of this title; title 42 sections 401, 405, 408; title 48 sections 1421h, 1421i.

§ 1401. Rate of tax.

(a) Old-age, survivors, and disability insurance.

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1967, and before January 1, 1969, the tax shall be equal to 5.8 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1968, and before January 1, 1971, the tax shall be equal to 6.3 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1970, and before January 1, 1973, the tax shall be equal to 6.9 percent of the amount of the self-employment income for such taxable year; and

(4) in the case of any taxable year beginning after December 31, 1972, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year.

(b) Hospital insurance.

In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1967, and before January 1, 1973, the tax shall be equal to 0.60 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1972, and before January 1, 1976, the tax shall be equal to 0.65 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1975, and before January 1, 1980, the tax shall be equal to 0.70 percent of the amount of the self-employment income for such taxable year;

(4) in the case of any taxable year beginning after December 31, 1979, and before January 1, 1987, the tax shall be equal to 0.80 percent of the amount of the self-employment income for such taxable year; and

(5) in the case of any taxable year beginning after December 31, 1986, the tax shall be equal to 0.90 percent of the amount of the self-employment income for such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, § 208(a), 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 202(a), 70 Stat. 845; Aug. 28, 1958, Pub. L. 85–840, title IV, § 401(a), 72 Stat. 1041; June 30, 1961, Pub. L. 87–64, title II, § 201(a), 75 Stat. 140; July 30, 1965, Pub. L. 89–97, title I, § 111(c)(4), title III, § 321(a), 79 Stat. 342, 394; Jan. 2, 1968, Pub. L. 90–248, title I, § 109(a)(1), (b)(1), 81 Stat. 835, 836.)

AMENDMENTS

1968—Subsec. (a)(1)—(4). Pub. L. 90–248, § 109(a)(1), substituted "December 31, 1967" and "January 1, 1969" for "December 31, 1965" and "January 1, 1967" in par. (1), "December 31, 1968", "January 1, 1971" and "6.3" for "December 31, 1966", "January 1, 1969", and "5.9" in par. (2), and "December 31, 1970" and "6.9" for "December 31, 1968" and "6.6" in par. (3), and reenacted par. (4) without change.

Subsec. (b)(1)—(5). Pub. L. 90–248, § 109(b)(1), struck out par. (1) provision for rate of 0.35 percent of amount of self-employment income for any taxable year beginning after Dec. 31, 1965, and before Jan. 1, 1967, redesignated former pars. (2)—(6) as (1)—(5), substituted "December 31, 1967" for "December 31, 1966" in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1)—(5), respectively.

1965—Pub. L. 89–97, § 321(a), divided the total tax imposed under the entire section for each taxable year upon the self-employment income for such taxable year into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting a separate tax for hospital insurance; reduced from 6.2 percent to 6.15 percent the rate of total tax imposed under the entire section for taxable years beginning after Dec. 31, 1965, and before Jan. 1, 1967 (resulting from a tax of 5.8 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 6.2 percent to 6.4 percent the rate for taxable years beginning after Dec. 31, 1966, and before Jan. 1, 1968 (resulting from a tax of 5.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 6.9 percent to 6.4 percent the rate for taxable years beginning after Dec. 31, 1967, and before Jan. 1, 1969 (resulting from a tax of 5.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 6.9 percent to 7.1 percent the rate for taxable years beginning after Dec. 31, 1968, and before Jan. 1, 1973 (resulting from a tax of 6.6 percent under subsec. (a) and 0.50 percent under subsec. (b)), from 6.9 percent to 7.55 percent the rate for taxable years beginning after Dec. 31, 1972, and before Jan. 1, 1976 (resulting from a tax of 7.0 percent under subsec. (a) and 0.55 percent under subsec. (b)), from 6.9 percent to 7.60 percent the rate for taxable years beginning after Dec. 31, 1975, and before Jan. 1, 1980 (resulting from a tax of 7.0 percent under subsec. (a) and 0.60 percent under subsec. (b)), from 6.9 percent to 7.70 percent the rate for taxable years beginning after Dec. 31, 1979, and before Jan. 1, 1987 (resulting from a tax of 7.0 percent under subsec. (a) and 0.70 percent under subsec. (b)), and from 6.9 percent to 7.80 percent the rate for taxable years beginning after Dec. 31, 1986 (resulting from a tax of 7.0 percent under subsec. (a) and 0.80 percent under

subsec. (b)), and provided that the exclusion of employee representatives by section 1402(c)(3) should not apply for purposes of the tax imposed by subsec. (b).

Subsec. (b). Pub. L. 89-97, § 111(c)(4), struck out the last sentence reading "For purposes of the tax imposed by this subsection, the exclusion of employee representatives by section 1402(c)(3) shall not apply."

1961—Pub. L. 87-64 increased the rate of tax for taxable years beginning after Dec. 31, 1961, and before Jan. 1, 1963, from 4½ to 4.7 percent, taxable years beginning after Dec. 31, 1962, and before Jan. 1, 1966, from 5¼ to 5.4 percent, taxable years beginning after Dec. 31, 1965, and before Jan. 1, 1968, from 6 to 6.2 percent, taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1969, from 6 to 6.9 percent, and taxable years beginning after Dec. 31, 1968, from 6¾ to 6.9 percent.

1958—Pub. L. 85-840 increased the rate of tax by substituting provisions imposing a tax of 3¾ percent for taxable years beginning after Dec. 31, 1958, 4½ percent for years beginning after Dec. 31, 1959, 5¼ percent for years beginning after Dec. 31, 1962, 6 percent for years beginning after Dec. 31, 1965, and 6¾ percent for years beginning after Dec. 31, 1968, for provisions which imposed a tax of 3⅜ percent for taxable years beginning after Dec. 31, 1956, 4⅛ percent for years beginning after Dec. 31, 1959, 4⅞ percent for years beginning after Dec. 31, 1964, 5⅝ percent for years beginning after Dec. 31, 1969, and 6⅜ percent for years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased the rate of tax for all taxable years beginning after Dec. 31, 1956, by three-eighths percent.

1954—Act Sept. 1, 1954, increased the 4⅞ percent rate of tax on self-employment income for taxable years beginning after Dec. 31, 1969, to 5¼ percent for taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1975, and 6 percent for taxable years beginning after Dec. 31, 1974.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 109(c) of Pub. L. 90-248 provided that: "The amendments made by subsections (a)(1) [to subsec. (a)(1)—(4) of this section] and (b)(1) [to subsec. (b)(1)—(5) of this section] shall apply only with respect to taxable years beginning after December 31, 1967. The remaining amendments made by this section [to sections 3101(a)(1)—(4), (b)(1)—(5) and 3111(a)(1)—(4) and (b)(1)—(5) of this title] shall apply only with respect to remuneration paid after December 31, 1967."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 321(d) of Pub. L. 89-97 provided that: "The amendments made by subsection (a) to this section shall apply only with respect to taxable years beginning after December 31, 1965. The amendments made by subsections (b) to section 3101 of this title and (c) to section 3111 of this title shall apply only with respect to remuneration paid after December 31, 1965."

Amendment of subsec. (b) of this section by Pub. L. 89-97, § 111(c)(4), applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as a note under section 228s-2 of Title 45, Railroads.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 201(d) of Pub. L. 87-64 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to taxable years beginning after December 31, 1961. The amendments made by subsections (b) and (c) [to sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 401 (d) of Pub. L. 85-840 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to taxable years beginning after December 31, 1958. The amendments made by subsections (b) and (c) [to section 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1958."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 202 (d) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to taxable years beginning after December 31, 1956. The amendments made by subsections (b) and (c) [to sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1956."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1402 of this title; title 42 sections 401, 401a, 907 and 1395i.

§ 1402. Definitions.

(a) Net earnings from self-employment.

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(9) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) there shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity;

(2) there shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 35) are received in the course of a trade or business as a dealer in stocks or securities;

(3) there shall be excluded any gain or loss—

(A) which is considered as gain or loss from the sale or exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

(C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither—

(i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

(B) any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) the deduction for personal exemptions provided in section 151 shall not be allowed;

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c) (4) without regard to section 107 (relating to rental value of parsonages) and section 119 (relating to meals and lodging furnished for the convenience of the employer) and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 3121 (h)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States);

(9) the term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa; and

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A).

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121 (g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707 (c) applies) is not more than $2,400, his distributive share of income described in section 702 (a) (9) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707 (c) applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702 (a) (9) derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600 his distributive share of income described in section 702 (a) (9) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

(b) Self-employment income.

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year; except that such term shall not include—

(1) that part of the net earnings from self-employment which is in excess of—

(A) for any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) for any taxable year ending after 1954 and before 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) for any taxable year ending after 1958 and before 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) for any taxable year ending after 1965 and before 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) for any taxable year ending after 1967, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; or

(2) the net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121 (*l*) (relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations), as would be wages under section 3121 (a) if such services constituted employment under section 3121 (b), and (B) includes, but solely with respect to the tax imposed by section 1401(b), compensation which is subject to the tax imposed by section 3201 or 3211. An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual.

(c) Trade or business.

The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

(2) the performance of service by an individual as an employee, other than—

(A) service described in section 3121(b)(14)

(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16),

(C) service described in section 3121(b) (11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) service described in paragraph (4) of this subsection, and

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (h) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) Employee and wages.

The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) Ministers, members of religious orders, and Christian Science practitioners.

(1) Exemption.

Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act), shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

(2) Time for filing application.

Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof) for this second taxable year ending after 1967.

(3) Effective date of exemption.

An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

(f) Partner's taxable year ending as the result of death.

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Treatment of certain remuneration erroneously reported as net earnings from self-employment.

If—

(1) an amount is erroneously paid as tax under section 1401, for any taxable year ending after 1954 and before 1962, with respect to remuneration for service described in section 3121(b)(8) (other than service described in section 3121(b)(8)(A)), and such remuneration is reported as self-employment income on a return field on or before the due date prescribed for filing such return (including any extension thereof),

(2) the individual who paid such amount (or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act)) requests that such remuneration be deemed to constitute net earnings from self-employment,

(3) such request is filed after the date of the enactment of this paragraph and on or before April 15, 1962,

(4) such remuneration was paid to such individual for services performed in the employ of an organization which, on or before the date on which such request is filed, has filed a certificate pursuant to section 3121(k), and

(5) no credit or refund of any portion of the amount erroneously paid for such taxable year as tax under section 1401 (other than a credit or refund which would be allowable if such tax were applicable with respect to such remuneration) has been obtained before the date on which such request is filed or, if obtained, the amount credited or refunded (including any interest under section 6611) is repaid on or before such date,

then, for purposes of this chapter and chapter 21, any amount of such remuneration which is paid to such individual before the calendar quarter in which such request is filed (or before the succeeding quarter if such certificate first becomes effective with respect to services performed by such individual in such succeeding quarter), and with respect to which no tax (other than an amount erroneously paid as tax) has been paid under chapter 21, shall be deemed to constitute net earnings from self-employment and not remuneration for employment. For purposes of section 3121(b)(8)(B) (ii) and (iii), if the certificate filed by such organization pursuant to section 3121(k) is not effective with respect to services performed by such individual on or before the first day of the calendar quarter in which the request is filed, such individual shall be deemed to have become an employee of such organization (or to have become a member of a group described in section 3121(k)(1)(E)) on the first day of the succeeding quarter.

(h) Members of certain religious faiths.

(1) Exemption.

Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary or his delegate may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of Health, Education, and Welfare finds that—

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) Time for filing application.

For purposes of this subsection, an application must be filed—

(A) In the case of an individual who has self-employment income (determined without regard to this subsection and subsection (c)(6)) for any taxable year ending before December 31, 1967, on or before December 31, 1968, and

(B) In any other case, on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year ending on or after December 31, 1967, for which he has self-employment income (as so determined), except that an application filed after such date but on or before the last day of the third calendar month following the calendar month in which the taxpayer is first notified in writing by the Secretary or his delegate that a timely application for an exemption from the tax imposed by this chapter has not been filed by him shall be deemed to be filed timely.

(3) Period for which exemption effective.

An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which he is a member ceases to meet the requirments of subparagraph (C) or (D).

(4) Application by fiduciaries or survivors.

In any case where an individual who has self-employment income dies before the expiration of the time prescribed by paragraph (2) for filing an application for exemption pursuant to this subsection, such an application may be filed with respect

to such individual within such time by a fiduciary acting for such individual's estate or by such individual's survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act). (Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, § 201(a)(c), 68 Stat. 1087; Aug. 1, 1956, ch. 836, title II, § 201(e) (2), (3), (f), (g), (i), 70 Stat. 840—842; Aug. 30, 1957, Pub. L. 85-239, §§ 1 (a), (b), 2, 5(b), 71 Stat. 521, 523; Aug. 28, 1958, Pub. L. 85-840, title IV, §§ 402(a), 403(a), 72 Stat. 1042, 1043; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 101(a)—(c), 103(k), (*l*), 105(c)(1), 106(b), 74 Stat. 926, 927, 938, 944, 945; June 30, 1961, Pub. L. 87-64, title II, § 202(a), 75 Stat. 141; Feb. 26, 1964, Pub. L. 88-272, title II, § 227(b)(6), 78 Stat. 98; Oct. 13, 1964, Pub. L. 88-650, § 2(a), (b), 78 Stat. 1076, 1077; July 30, 1965, Pub. L. 89-97, title III, §§ 311(b)(1)-(3), 312(b), 319(a), (c), 320(b)(1), 331 (a), 341(a), (b), 79 Stat. 381, 390, 391, 393, 401, 411; Mar. 15, 1966, Pub. L. 89-368, title I, § 102(c), 80 Stat. 64; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 108(b)(1), 115(b), 118(a), 122(b), title V, §§ 501(a), 502(b)(1), 81 Stat. 835, 839, 841, 843, 933, 934.)

REFERENCES IN TEXT

Section 218 of the Social Security Act, referred to in subsecs. (b) and (c)(1), (2) (E), is classified to section 418 of Title 42, The Public Health and Welfare.

The Social Security Act, referred to in subsec. (e)(1) (B) and in the material preceding subsec. (h)(1)(A), is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Section 205(c)(1)(C) of the Social Security Act, referred to in subsecs. (e)(5) and (h)(4), is classified to section 405(c)(1)(C) of Title 42.

Titles II and XVIII of the Social Security Act, referred to in subsec. (h)(1)(B), are classified to sections 401 et seq. and 1395 et seq. respectively of Title 42.

Sections 203 and 222(b) of the Social Security Act, referred to in the material following subsec. (h)(1)(E), are classified to sections 403 and 422(b) respectively of Title 42.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-248, § 118(a), added par. (10).

Subsec. (b). Pub. L. 90-248, § 502(b)(1), designated existing provisions of second sentence respecting "wages" as item "A" and added item "B".

Subsec. (b)(1)(D). Pub. L. 90-248, § 108(b)(1)(A), inserted "and before 1968" after "1965".

Subsec. (b)(1)(E). Pub. L. 90-248, § 108(b)(1)(B), added subpar. (E).

Subsec. (c). Pub. L. 90-248, § 115(b)(1), substituted in last sentence, "such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him" for "such order performed by an individual during the period for which a certificate filed by him under subsection (e) is in effect".

Subsec. (c)(1). Pub. L. 90-248, § 122(b)(1), excepted from exclusion from definition of "trade or business" the functions of a public office of a State or a political division thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered by such State and the Secretary pursuant to section 218 of the Social Security Act, section 418 of Title 42, The Public Health and Welfare.

Subsec. (c)(2). Pub. L. 90-248, § 122(b)(2), added subpar. (E).

Subsec. (e). Pub. L. 90-248, § 115(b)(2), substituted provisions allowing clergymen, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners to secure an exemption from social security self-employment tax upon meeting requirements of pars. (1)—(3) respecting such exemption, time for filing application, and effective date of exemption for provisions of former pars. (1)—(5) permitting such persons to secure social security coverage by filing a waiver certificate, prescribing time for filing certificate, effective date of certificate treatment of certain remuneration paid in 1955 and 1956 as wages, and optional provision for certain certificates filed on or before April 15, 1967.

Subsec. (h)(2). Pub. L. 90-248, § 501(a), substituted "December 31, 1967" and "December 31, 1968" for "December 31, 1965" and "April 15, 1966", respectively, in subpar. (A) and "December 31, 1967" for "December 31, 1965" in subpar. (B) and added in such subpar. (B) exception provision as to when an application shall be deemed timely filed.

1966—Subsec. (e)(3). Pub. L. 89-368 added subpar. (E).

1965—Subsec. (a). Pub. L. 89-97, § 312(b), substituted "2,400" for "$1,800" in clauses (i)—(iv) and "$1,600" for "$1,200" in clauses (ii) and (iv) of second sentence following par. (9), wherever appearing.

Subsec. (b)(1)(D). Pub. L. 89-97, § 320(b)(1)(B), inserted "and before 1966" after "1958" and substituted "and" for "or" after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89-97, § 320(b)(1)(B). added subpar. (D).

Subsec. (c). Pub. L. 89-97, §§ 311(b) (1), (2), 319(a) deleted from par. (5) "doctor of medicine, or" preceding and "; or the performance of such service by a partnership" following "Christian Science practitioner," added par. (6), and consolidated into one sentence former last two sentences.

Subsec. (e)(1). Pub. L. 89-97, § 311(b)(3)(A), substituted "extended to service described in subsection (c)(4) or (c)(5) performed by him" for "extended to service described in subsection (c)(4), or service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be, performed by him."

Subsec. (e)(2)(A). Pub. L. 89-97, § 311(b)(3)(B), substituted "(computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5)" for "(computed, in the case of an individual referred to in paragraph (1)(A), without regard to subsection (c)(4), and, in the case of an individual referred to in paragraph (1)(B), without regard to subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4), or from the performance of service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be".

Subsec. (e)(2)(B). Pub. L. 89-97, § 341(a), substituted "his second taxable year ending after 1963" for "his second taxable year ending after 1962" in clause (B).

Subsec. (e)(3). Pub. L. 89-97, § 341(b), added subpar. (D).

Subsec. (e)(5). Pub. L. 89-97, § 331(a), extended the applicability of the section to earnings in taxable years beyond those ending before 1960, extended until April 15, 1966, the last date for filing a certificate by an individual and until Apr. 15, 1967, the last date for filing a supplemental certificate by an individual, provided for filing of the certificate on or before Apr. 15, 1967, if the individual died on or before April 15, 1966, and extended to Apr. 15, 1967, the date on or before which the tax under section 1401 had been paid, or the overpayment, including interest under section 6611, had been repaid.

Subsec. (e)(6). Pub. L. 89-97, § 331(a), struck out par. (6) which dealt with the filing of certificates by fiduciaries or survivors on or before April 15, 1962.

Subsec. (h). Pub. L. 89-97, § 319(c), added subsec. (h).

1964—Subsec. (a)(3)(B). Pub. L. 88-272 inserted the reference to iron ore.

Subsec. (e)(2)(B). Pub. L. 88-650, § 2(a) substituted "his second taxable year ending after 1962" for "his second taxable year ending after 1959."

Subsec. (e)(3). Pub. L. 88-650, § 2(b), added subpar. (C).

1961—Subsec. (e)(6). Pub. L. 87-64 added subsec. (e)(6).

1960—Subsec. (a). Pub. L. 86–778, § 103(k), added par. (9), and included references to paragraph (9) in cls. (v) and (vi) of the last sentence.

Subsec. (b). Pub. L. 86–778, § 103(*l*), substituted "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa" for "the Virgin Islands or a resident of Puerto Rico" in the last sentence.

Subsec. (c)(2). Pub. L. 86–778, § 106(b), excluded service described in section 3121(b) (11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States.

Subsec. (e)(2). Pub. L. 86–778, § 101(a), substituted "1959" for "1956" in cl. (B).

Subsec. (e)(3). Pub. L. 86–778, § 101(b), designated existing provisions as cl. (A), eliminated therein provisions which related to certificates for prior taxable years which have now become inapplicable, and added cl. (B).

Subsec. (e)(5). Pub. L. 86–778, § 101(c), added subsec. (e)(5).

Subsec. (g). Pub. L. 86–778, § 105(c)(1), added subsec. (g).

1958—Subsec. (b)(1). Pub. L. 85–840, § 402(a), increased the limitation on self-employment income subject to tax, for taxable years ending after 1958, from $4,200 to $4,800.

Subsec. (f). Pub. L. 85–840, § 403(a), added subsec. (f).

1957—Subsec. (a)(8). Pub. L. 85–239, § 5(b), permitted computation of net earnings without regard to sections 107 and 119 of this title.

Subsec. (e)(2). Pub. L. 85–239, § 1(a), permitted a person to file a certificate on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1956.

Subsec. (e)(3). Pub. L. 85–239, § 1(b), provided for the effective date of certificates filed after August 30, 1957, but on or before the due date of the return (including any extension thereof) for the second taxable year ending after 1956, for certificates filed on or before August 30, 1957 which are effective only for the third or fourth taxable year ending after 1954 and all succeeding taxable years, and for certificates filed after the due date of the return (including any extension thereof) for the second taxable year ending after 1956.

Subsec. (e)(4). Pub. L. 85–239, § 2, added subsec. (e)(4).

1956—Subsec. (a). Act Aug. 1, 1956, § 201(i), amended generally the last two sentences to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 66⅔ percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, § 201(e)(2), eliminated from the exclusion income derived by an owner or tenant of land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(8)(B). Act Aug. 1, 1956, § 201(g), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, § 201(e)(3), included within the term "trade or business" service described in section 3121(b)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, § 201(f), eliminated the exclusion of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a). Act Sept. 1, 1954, § 201(a), (c) (4), in par. (1), clarified the term rentals to indicate that it includes rentals paid in the form of crop shares; struck out par. (2), redesignated pars. (3)—(8) as (2)—(7), respectively; added a new par. (8), and added provisions at the end establishing an optional method of reporting income for self-employed farmers.

Subsec. (b). Act Sept. 1, 1954, § 201(b), increased the limitation on self-employment income subject to tax, for taxable years ending after 1954, from $3,600 to $4,200 and included as "wages", for purposes of computing "self employment income," remuneration of United States citizens employed by a foreign subsidiary of a domestic corporation which has agreed to have the Social Security insurance system extended to service performed by such citizens.

Subsec. (c). Act Sept. 1, 1954, § 201(c)(2), added two new sentences at the end thereof making the provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under subsec. (e) is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, § 201(c)(1), added after "18" the words "and other than service described in paragraph (4) of this subsection."

Subsec. (c)(5). Act Sept. 1, 1954, § 201(c)(5), eliminated exclusions from self-employment tax in the case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors and professional engineers.

Subsec. (e). Act Sept. 1, 1954, § 201(c)(3), added subsec. (e).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment of subsec. (b)(1)(D), (E) of this section by section 108(b)(1) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Section 115(c) of Pub. L. 90–248 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (c) and (e) of this section and section 411(c) of Title 42] shall apply only with respect to taxable years ending after 1967."

Section 118(c) of Pub. L. 90–248 provided that: "The amendments made by this section [to subsec. (a)(10) of this section and section 411(a)(9) of Title 42] shall apply only with respect to taxable years ending on or after December 31, 1967."

Section 122(c) of Pub. L. 90–248 provided that: "(1) The amendments made by subsections (a) and (b) of this section [to subsecs. (c)(1), (2)(E) of this section and section 411(c)(1), (2)(E) of Title 42] shall apply with respect to fees received after 1967.

"(2) Notwithstanding the provisions of subsections (a) and (b) of this section [amending subsecs. (c)(1), (2)(E) of this section and section 411(c)(1), (2)(E) of Title 42], any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 and every year thereafter, if on or before the due date of his income tax return for 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe, a certificate of election of exemption from such amendments."

Section 501(b) of Pub. L. 90–248 provided that: "The amendment made by subsection (a) [to subsec. (h)(2) of this section] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1954 [chapter 2 of this table] shall be treated as applying to all taxable years beginning after such date."

Section 502(b)(2) of Pub. L. 90–248 provided that: "The amendments made by paragraph (1) [amending subsec. (b) of this section] shall be effective only with respect to taxable years ending on or after December 31, 1968."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (e)(3) by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–97 applicable only with respect to taxable years beginning after Dec. 31, 1965, see section 312(c) of Pub. L. 89–97, set out as a note under section 411 of Title 42, The Public Health and Welfare.

Amendment of subsec. (b) by section 320 of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

Amendment of subsecs. (c), (e)(1), and (e)(2)(A) by Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Section 319(e) of Pub. L. 89–97 provided that: "The amendments made by this section [to subsec. (c) (4)—(6) of this section and sections 402 and 411 of Title 42] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1954 [this chapter] shall be treated as applying to all taxable years beginning after such date."

Section 331(d) of Pub. L. 89–97 provided that: "The amendments made by this section [amending subsec. (e)(5) and striking out subsec. (e)(6) of this section] shall be applicable (except as otherwise specifically provided therein) only to certificates with respect to which supplemental certificates are filed pursuant to section 1402(e)(5)(A) of such Code [subsec. (e)(5)(A) of this section] after the date of the enactment of this Act [July 30, 1965], and to certificates filed pursuant to section 1402(e)(5)(B) [subsec. (e)(5)(B) of this section] after such date; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments, and no lump-sum death payment under such title [section 401 et seq. of Title 42] shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [July 30, 1965]. The provisions of section 1402(e) (5) and (6) of the Internal Revenue Code of 1954 [subsecs. (e) (5) and (6) of this section] which were in effect before the date of enactment of this Act shall be applicable with respect to any certificate filed pursuant thereto before such date if a supplemental certificate is not filed with respect to such certificate as provided in this section."

Section 341(c) of Pub. L. 89–97 provided that: "The amendments made by subsections (a) and (b) [to subsec. (e) of this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1954 [subsec. (e) of this section] after the date of the enactment of this Act [July 30, 1965]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments."

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 2(c) of Pub. L. 88–650 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (e)(2)(B) and (e)(3) of this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1954 [subsec. (e) of this section] after the date of the enactment of this Act [Oct. 13, 1964]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act [Oct. 1964] is enacted or any prior month shall be payable or increased by reason of such amendments."

Amendment of section by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 202(b) of Pub. L. 87–64 provided that: "The amendment made by subsection (a) [adding par. (6) to subsec. (e) of this section] shall take effect on the date of enactment of this Act [June 30, 1961]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendment, and no lump-sum death payment under such title shall be payable or increased by reason of such amendment in the case of any individual who died prior to the date of enactment of this Act [June 30, 1961]."

EFFECTIVE DATE OF 1960 AMENDMENT

Enactment of subsec. (a)(9) of this section applicable only in the case of taxable years beginning after 1960, except that, insofar as such enactment involves the non-application of section 932 of this title to the Virgin Islands for purposes of chapter 2 of this title and section 411 of Title 42, such enactment shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and section 411 of Title 42 are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Amendment of subsec. (b) of this section by Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Amendment of subsec. (c)(2) of this section by Pub. L. 86–778 applicable only with respect to taxable years ending on or after Dec. 31, 1960, see section 106(c) of Pub. L. 86–778, set out as a note under section 411 of Title 42, The Public Health and Welfare.

Section 101(f) of Pub. L. 86–778 provided that: "The amendments made by this section [amending subsecs. (e)(2)(B), (3) of this section] shall be applicable (except as otherwise specifically indicated therein) only with respect to certificates (and supplemental certificates) filed pursuant to section 1402(e) of the Internal Revenue Code of 1954 [subsec. (e) of this section] after the date of the enactment of this Act [Sept. 13, 1960]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendments, and no lump-sum death payment under such title shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 403 (b) of Pub. L. 85–840 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [adding subsec. (f) of this section] shall apply only with respect to individuals who die after the date of the enactment of this Act [August 28, 1958].

"(2) In the case of an individual who died after 1955 and on or before the date of the enactment of this Act [August 28, 1958], the amendment made by subsection (a) [adding subsec. (f) of this section] shall apply only if—

"(A) before January 1, 1960, there is filed a return (or amended return) of the tax imposed by chapter 2 of the Internal Revenue Code of 1954 [chapter 2 of this title] for the taxable year ending as a result of his death, and

"(B) in any case where the return is filed solely for the purpose of reporting net earnings from self-employment resulting from the amendment made by subsection (a), the return is accompanied by the amount of tax attributable to such net earnings.

In any case described in the preceding sentence, no interest or penalty shall be assessed or collected on the amount of any tax due under chapter 2 of such Code [chapter 2 of this title] solely by reason of the operation of section 1402 (f) of such Code [subsec. (f) of this section]."

EFFECTIVE DATE OF 1957 AMENDMENTS

Section 4 of Pub. L. 85–239 provided that:

"(a) Section 3 [set out as a note under this section], and the amendments made by the first section of this Act [to subsecs. (e) (2) and (e) (3) of this section], shall apply with respect to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for months beginning after, and lump sum death payments under such title in the case of deaths occurring after, the date of the enactment of this Act [Aug. 30, 1957].

"(b) Notwithstanding subsection (a), in the case of any individual who—

"(1) (A) has remuneration which is deemed, by reason of section 3, to constitute remuneration for employment for purposes of title II of the Social Security Act [section 401 et seq. of Title 42], or

"(B) has income which constitutes net earnings from self-employment under such title by reason of the filing of a certificate pursuant to section 1402 (e) (3) (A) or (B) of the Internal Revenue Code of 1954 [subsec. (e) (3) (A) or (B) of this section], and

"(2) was entitled to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [August 1957],

section 3 [set out as a note under this section] and the amendments made by the first section of this Act [to subsecs. (e) (2) and (e) (3) of this section] shall apply with respect to monthly insurance benefits under such title based on his wages and self-employment income only if he, or any other person entitled to monthly insurance benefits under such title on the basis of such wages and self-employment income, files, on or after the date of enactment of this Act [August 30, 1957], an application for recomputation by reason of this Act. Such recomputation shall be made in the manner provided in title II of the Social Security Acts [section 401 et seq. of Title 42] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount and as though the application therefor was filed in the month in which the application for such last previous computation or recomputation was filed. No recomputation under this subsection shall be regarded as a recomputation under section 215 (f) of the Social Security Act [section 415 (f) of Title 42]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application therefor is filed, but in no case for any month which begins on or prior to the date of the enactment of this Act [August 30, 1957]. Any such recomputation shall be effective only if it results in a higher primary insurance amount.

"(c) The preceding provisions of this section shall not render erroneous any monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act [August 1957] is enacted or any prior month."

Section 5 (c) of Pub. L. 85-239 provided that: "The amendments made by this section [to subsec. (a) (8) of this section and to section 411 (a) (7) of Title 42] shall, except for purposes of section 203 of the Social Security Act [section 403 of Title 42], apply only with respect to taxable years ending on or after December 31, 1957. For purposes of section 203 of the Social Security Act [section 403 of Title 42] (other than subsection (a)), such amendments shall apply only with respect to taxable years beginning after the month in which this Act is enacted [August 1957]. For purposes of subsection (a) of such section 203 [subsec. (a) of section 403 of Title 42], such amendments shall apply only with respect to taxable years of the insured individual ending on or after December 31, 1957."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 201 (m) of act Aug. 1, 1956, provided in part that the amendment of subsecs. (a) (1) and (c) (5) of this section by such act Aug. 1, 1956, shall be applicable with respect to taxable years ending after 1955, the amendment of the last two sentences of subsec. (a) of this section shall be applicable with respect to taxable years ending on or after December 31, 1956, the amendment of subsec. (c)(2) of this section shall be applicable with respect to taxable years ending after 1954, and, except as provided in section 201 (m) (2) (B) of act Aug. 1, 1956, the amendment of subsec. (a) (8) (B) of this section shall be applicable only with respect to taxable years ending after 1956. See section 201 (m) of act Aug. 1, 1956, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 201 (d) of act Sept. 1, 1954, provided that the amendments to subsecs. (a), (b) and (c) and the addition of subsec. (e) shall be applicable only with respect to taxable years ending after 1954.

COMPUTATION OF INTEREST OR ASSESSMENT OF PENALTIES ON SELF-EMPLOYMENT TAXES PAYABLE BY MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS

Section 101(d) of Pub. L. 86-778 provided that:

"In the case of a certificate or supplemental certificate filed pursuant to section 1402(e) (3)(B) or (5) of the Internal Revenue Code of 1954 [subsec. (e) (3)(B) or (5) of this section]—

"(1) for purposes of computing interest, the due date for the payment of the tax under section 1401 which is due for any taxable year ending before 1959 solely by reason of the filing of a certificate which is effective under such section 1402(e) (3)(B) or (5) [subsec. (e) (3)(B) or (5) of this section shall be April 15, 1962;

"(2) the statutory period for the assessment of any tax for any such year which is attributable to the filing of such certificate shall not expire before the expiration of 3 years from such due date; and

"(3) for purposes of section 6651 of such Code (relating to addition to tax for failure to file tax return), the amount of tax required to be shown on the return shall not include such tax under section 1401."

Section 1 (c) of Pub. L. 85-239 provided that:

"If a certificate filed pursuant to section 1402 (e) (3) (A) or (B) of the Internal Revenue Code of 1954 [subsec. (e) (3) (A) or (B) of this section] after the due date of the return (including any extension thereof) for any taxable year is effective for such taxable year or for any preceding taxable year, then—

"(1) for purposes of computing interest, the due date for the payment of the increase in tax for such taxable year or years resulting from the filing of such certificate shall be the last day of the sixth month following the month in which such certificate is filed;

"(2) the statutory period for the assessment of any deficiency attributable to such increase in tax shall not expire before the expiration of 3 years from such due date; and

"(3) for purposes of section 6651 of such Code (relating to addition to tax for failure to file tax return), the amount of tax required to be shown on the return shall not include such increase in tax."

TIME FOR CLAIM FOR REFUND OR CREDIT OF OVERPAYMENT; DISALLOWANCE OF INTEREST

Section 501(c) of Pub. L. 90-248 provided that: "If refund or credit of any overpayment resulting from the enactment of this section [amending subsec. (h)(2) of this section] is prevented on the date of the enactment of this Act [Jan. 2, 1968] or at any time on or before December 31, 1968, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before December 31, 1968. No interest shall be allowed or paid on any overpayment resulting from the enactment of this section."

REFUND OR CREDIT ON CLAIMS FOR OVERPAYMENT FILED BEFORE APRIL 15, 1966, BY MEMBERS OF RELIGIOUS GROUPS OPPOSED TO INSURANCE

Section 319(f) of Pub. L. 89-97 provided that: "If refund or credit of any overpayment resulting from the enactment of this section [adding subsec. (h) to this section and otherwise amending this section and sections 402 and 411 of this title] is prevented on the date of the enactment of this Act [July 30, 1965] or at any time on or before April 15, 1966, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1966. No interest shall be allowed or paid on any overpayment resulting from the enactment of this section."

COMPUTATION OF INTEREST OR ASSESSMENT OF PENALTIES ON SELF-EMPLOYMENT TAXES PAYABLE BY MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS

Section 331(b) of Pub. L. 89-97 provided that:

"In the case of a certificate or supplemental certificate filed pursuant to section 1402(e)(5) of the Internal Revenue Code of 1954 [subsec. (e)(5) of section], as amended by subsection (a)—

"(1) for purposes of computing interest, the due date for the payment of the tax under section 1401 of such Code [section 1401 of this title] which is due for any taxable year ending before January 1, 1966, solely by reason of the filing of a certificate which is effective under such section 1402(e)(5) [subsec. (e)(5) of this section] shall be April 15, 1967;

"(2) for purposes of section 6501 of such Code [section 6501 of this title], the statutory period for the assessment of any tax for any taxable year for which tax is due solely by reason of the filing of such certificate shall not expire before April 16, 1970; and

"(3) for purposes of section 6651 of such Code [section 6651 of this title] (relating to addition to tax for failure to file tax return), the amount of tax required to be shown on the return shall not include tax under section 1401 of such Code [section 1401 of this title] which is due for any taxable year ending before January 1, 1966, solely by reason of the filing of a certificate which is effective under section 1402(e)(5) [subsec. (e)(5) of this section]."

REMUNERATION DEEMED NET EARNINGS FROM SELF-EMPLOYMENT AND NOT REMUNERATION FOR EMPLOYMENT

Section 105(c)(2) of Pub. L. 86-778 provided that: "Remuneration which is deemed under section 1402(g) of the Internal Revenue Code of 1954 [subsec. (g) of this section] to constitute net earnings from self-employment and not remuneration for employment shall also be deemed, for purposes of title II of the Social Security Act [section 401 et seq. of Title 42], to constitute net earnings from self-employment and not remuneration for employment. If, pursuant to the last sentence of section 1402(g) of the Internal Revenue Code of 1954 [subsec. (g) of this section], an individual is deemed to have become an employee of an organization (or to have become a member of a group) on the first day of a calendar quarter, such individual shall likewise be deemed, for purposes of clause (ii) or (iii) of section 210(a)(8)(B) of the Social Security Act [section 410(a)(18)(B) (ii), (iii) of Title 42], to have become an employee of such organization (or to have become a member of such group) on such day."

REMUNERATION PAID TO MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS IN 1955 AND 1956 DEEMED REMUNERATION FOR EMPLOYMENT FOR PURPOSES OF SOCIAL SECURITY BENEFITS

Section 3 of Pub. L. 85-239 provided that: "Remuneration which is deemed under section 1402 (e) (4) of the Internal Revenue Code of 1954 [subsec. (e) (4) of this section] to constitute remuneration for employment shall also be deemed, notwithstanding sections 210 (a) (8) (A) and 211 (c) of the Social Security Act [sections 410 (a) (8) (A) and 411 (c) of Title 42], to constitute remuneration for employment (and not net earnings from self-employment) for purposes of title II of such Act [section 401 et seq. of Title 42]." See effective date note under this section.

MONTHLY BENEFITS AND LUMP-SUM DEATH PAYMENTS UNDER SOCIAL SECURITY ACT

Section 105(d)(2) of Pub. L. 86-778, set out as a note under section 3121 of this title, provided that no monthly benefits under title II of the Social Security Act, section 401 et seq. of Title 42, for September 1960 or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of section 105 or the amendments made by such subsections [adding subsec. (g) to this section and enacting notes under this section and section 3121 of this title], and no lump-sum death payment under title II of the Social Security Act shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to Sept. 13, 1960.

CROSS REFERENCES

Abatements, credits, and refunds, income tax withheld, see section 6414 of this title.

Applicability of revenue laws, see section 7851 of this title.

Foreign tax-exempt organizations, see section 1443 of this title.

Mitigation of effect of limitations in case of related taxes under different chapters, see section 6521 of this title.

Publicity of returns and lists of taxpayers, see section 6103 of this title.

Tax on nonresident alien individuals, see section 871 of this title.

Tax withheld at source on nonresident aliens, foreign corporations, and tax-free covenant bonds, see section 32 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 981, 6521, 6654 of this title; title 42 sections 401, 402 and 411.

§ 1403. Miscellaneous provisions.

(a) Title of chapter.

This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) Cross references.

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(3) For provisions relating to declarations of estimated tax on self-employment income, see section 6015.

(Aug. 16, 1954, ch. 736, 68A Stat. 355; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(m), 74 Stat. 938; Mar. 15, 1966, Pub. L. 89-368, title I, § 102(b)(6), 80 Stat. 64.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-368 added par. (3).

1960—Subsec. (b). Pub. L. 86-778 included Guam and American Samoa in par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (b) by Pub. L. 89-368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 of this title.

Chapter 3.—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

Subchapter
A. Nonresident aliens and foreign corporations.
B. Tax-free covenant bonds.
C. Application of withholding provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 864, 896, 6501, 6103, 6513 of this title.

Subchapter A.—Nonresident Aliens and Foreign Corporations

Sec.
1441. Withholding of tax on nonresident aliens.
1442. Withholding of tax on foreign corporations.
1443. Foreign tax-exempt organizations.

§ 1441. Withholding of tax on nonresident aliens.

(a) General rule.

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from

sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except in the cases provided for in section 1451 and except as otherwise provided in regulations prescribed by the Secretary or his delegate under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items.

The items of income referred to in subsection (a) are interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 402(a)(2), 403(a)(2), or 631 (b) or (c), amounts subjcet to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includable in gross income.

In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions.

(1) Income connected with United States business.

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown.

The Secretary or his delegate may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates.

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens.

Under regulations prescribed by the Secretary or his delegate, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items.

In the case of gains described in section 402(a)(2), 403(a)(2), or 631 (b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens.

No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans.

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(d) Exemption of certain foreign partnerships.

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary or his delegate, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary or his delegate determines that the requirements of subsection (a) impose an undue administration burden and that the collection of the tax imposed by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico.

For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(f) Continental shelf areas.

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, § 544(f), as added July 18, 1956, ch.

627, § 11(a), 70 Stat. 563; Aug. 14, 1957, Pub. L. 85-141, § 11(b)(1), 71 Stat. 365; Sept. 2, 1958, Pub. L. 85-866, title I, § 40(b), 72 Stat. 1638; Sept. 21, 1961, Pub. L. 87-256, § 110(d), 75 Stat. 536; Feb. 26, 1964, Pub. L. 88-272, title III, § 302(c), 78 Stat. 146; Nov. 13, 1966, Pub. L. 89-809, title I, § 103(h), 80 Stat. 1553; Dec. 30, 1969, Pub. L. 91-172, title V, § 505(b), 83 Stat. 634.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsecs. (b) and (c)(4), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

AMENDMENTS

1969—Subsec. (f). Pub. L. 91-172 added subsec. (f).

1966—Subsec. (a). Pub. L. 89-809, § 103(h)(1), substituted "or of any foreign partnership" for ", or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens,".

Subsec. (b). Pub. L. 89-809, § 103(h)(2)—(4), struck out "(except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States)" following "The items of income referred to in subsection (a) are interest" and substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966" for "and amounts described in section 402(a)(2), section 403(a)(2), section 631 (b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets" in the material preceding par. (1), and added provision for the treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89-809, § 103(h)(5), substituted "in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year" for "in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1" following "shall be required".

Subsec. (c)(4). Pub. L. 89-809, § 103(h)(6), struck out provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89-809, § 103(h)(7), substituted "gains described in section 402(a)(2), 403(a)(2), or 631 (b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966," for "amounts described in section 402(a)(2), section 403(a)(2), section 631 (b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets," and "amounts payable," for "proceeds from such sale or exchange,".

Subsec. (c)(7). Pub. L. 89-809, § 103(h)(8), added par. (7).

Subsec. (d). Pub. L. 89-809, § 103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 89-809, § 103(h)(9), redesignated former subsec. (d) as (e).

1964—Subsecs. (a) and (b). Pub. L. 88-272 reduced the withholding rate from 18% to 14%.

1961—Subsec. (a). Pub. L. 87-256, § 110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in the second sentence of subsection (b).

Subsec. (b). Pub. L. 87-256, § 110(d)(2), inserted provisions listing the items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87-256, § 110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended.

1958—Subsec. (b). Pub. L. 85-866 inserted "section 403(a)(2)," after "section 402(a)(2),".

Subsec. (c)(5). Pub. L. 85-866, inserted "section 403 (a)(2)," after "section 402(a)(2),".

1956—Subsec. (c). Act July 18, 1956, added section 544 (f) to act Aug. 26, 1954, which section amended this subsection by adding par. (6).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to payments made after the seventh day following Feb. 24, 1964, see section 302(d) of Pub. L. 88-272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(2) of Pub. L. 87-256 provided that: "The amendments made by subsection (d) of this section [to this section] shall apply with respect to payments made after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section effective on Sept. 3, 1958. see section 40 (c) of Pub. L. 85-866, set out as a note under section 871 of this title.

REPEALS

Pub. L. 85-141 repealed section 544 (f) of act August 26, 1954, except insofar as such section 544 (f) affected this section.

CROSS REFERENCES

Consent dividends, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 565, 871, 1442, 6015 of this title.

§ 1442. Withholding of tax on foreign corporations.

(a) General rule.

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 or section 1451 a tax equal to 30 percent thereof; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1) (C) and (D) shall be treated as referring to sections 881(a) (3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, and the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4).

(b) Exemption.

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary or his delegate, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption. (Aug. 16, 1954, ch. 736, 68A Stat. 358; Nov. 13, 1966, Pub. L. 89–809, title I, § 104 (c), 80 Stat. 1557.)

AMENDMENTS

1966—Pub. L. 89–809 limited the withholding of tax at the 30 percent rate to items of fixed or determinable United States source income not effectively connected with the conduct of a trade or business in the United States and authorized the granting of an exemption from the withholding requirement in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the withholding imposes an undue administrative burden and that the collection of the tax will not be jeopardized by the exemption.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

CROSS REFERENCES

Consent dividends, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 565, 871 of this title.

§ 1443. Foreign tax-exempt organizations.

(a) Income subject to section 511.

In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary or his delegate.

(b) Income subject to section 4948.

In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 358; Dec. 30, 1969, Pub. L. 91–172, title I, §§ 101(j)(22), 121(d)(2)(C), 83 Stat. 528, 547.)

AMENDMENTS

1969—Pub. L. 91–172, § 101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a). Pub. L. 91–172, § 121(d)(2)(C), substituted "income" for "rents" following "this chapter shall apply to".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(j)(22) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment of section by section 121(d)(2)(C) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

CROSS REFERENCES

Credits against tax, see section 32 (1) of this title.
Itemized deductions, see section 164 of this title.

Subchapter B.—Tax-Free Covenant Bonds

Sec.
1451. Tax-free covenant bonds.

§ 1451. Tax-free covenant bonds.

(a) Requirement of withholding.

In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this subtitle on the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 percent (regardless of whether the liability assumed by the obligor is less than, equal to, or greater than 2 percent) of the interest on such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to—

(1) an individual,

(2) a partnership, or

(3) a foreign corporation not engaged in trade or business within the United States.

(b) Payments to foreigners.

Notwithstanding subsection (a), if the liability assumed by the obligor does not exceed 2 percent of the interest, then the deduction and withholding shall be at the rate of 30 percent in the case of—

(1) a nonresident alien individual,

(2) any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, and

(3) a foreign corporation not engaged in trade or business within the United States.

(c) Owner unknown.

If the owners of such obligations are not known to the withholding agent, the Secretary or his delegate may authorize such deduction and withholding to be at the rate of 2 percent, or, if the liability assumed by the obligor does not exceed 2 percent of the interest, then at the rate of 30 percent.

(d) Benefit of personal exemptions.

Deduction and withholding under this section shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the deduction for personal exemptions provided in section 151; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Secretary or his delegate under section 874.

(e) Alien residents of Puerto Rico.

For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(f) Income of obligor and obligee.

The obligor shall not be allowed a deduction for the payment of the tax imposed by this subtitle, or

any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee. (Aug. 16, 1954, ch. 736, 68A Stat. 359.)

CROSS REFERENCES

Credits against tax, see section 32 (2) of this title.
Definition of deficiency, see section 6211 of this title.
Itemized deductions, see section 164 of this title.
Withholding of tax on foreign individuals and corporations, see sections 1441, 1442 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 1441, 1442, 6049, 6211 of this title.

Subchapter C.—Application of Withholding Provisions

Sec.
1461. Return and payment of withheld tax.[1]
1462. Withheld tax as credit to recipient of income.
1463. Tax paid by recipient of income.
1464. Refunds and credits with respect to withheld tax.
1465. Definition of withholding agent.

§ 1461. Liability for withheld tax.

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 360; Nov. 13, 1966, Pub. L. 89-809, title I, § 103 (i), 80 Stat. 1554.)

AMENDMENTS

1966—Pub. L. 89-809 struck out requirement that persons required to deduct and withhold any tax under this chapter make return thereof on or before March 15 of each year and pay the tax to the officer designated in section 6151, and substituted "Liability for withheld tax" for "Return and payment of withheld tax" as the section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to payments occurring after Dec. 31, 1966, see section 103(n)(3) of Pub. L. 89-809, set out as a note under section 871 of this title.

§ 1462. Withheld tax as credit to recipient of income.

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return. (Aug. 16, 1954, ch. 736, 68A Stat. 360.)

CROSS REFERENCES

Applicability of revenue laws, see section 7851 (a) (1) (B) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6513 of this title.

§ 1463. Tax paid by recipient of income.

If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment. (Aug. 16, 1954, ch. 736, 68A Stat. 360.)

[1] Section catchline amended without amending analysis.

§ 1464. Refunds and credits with respect to withheld tax.

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent. (Aug. 16, 1954, ch. 736, 68A Stat. 360.)

§ 1465. Definition of withholding agent.

The term "withholding agent" means any person required to deduct and withhold any tax under this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 360.)

Chapter 4.—RULES APPLICABLE TO RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

Subchapter
A. Recovery of Excessive Profits on Government Contracts.
B. Mitigation of Effect of Renegotiation of Government Contracts.

Subchapter A.—Recovery of Excessive Profits on Government Contracts

Sec.
1471. Recovery of excessive profits on Government contracts.

§ 1471. Recovery of excessive profits on government contracts.

(a) Method of collection.

If the amount of profit required to be paid into the Treasury under section 3 of the Act of March 27, 1934, as amended (34 U. S. C. 496), with respect to contracts completed within taxable years subject to this code is not voluntarily paid, the Secretary or his delegate shall collect the same under the methods employed to collect taxes under this subtitle.

(b) Laws applicable.

All provisions of law (including penalties) applicable with respect to the taxes imposed by this subtitle and not inconsistent with section 3 of the Act of March 27, 1934, as amended, shall apply with respect to the assessment, collection, or payment of excess profits to the Treasury as provided by subsection (a), and to refunds by the Treasury of overpayments of excess profits into the Treasury. (Aug. 16, 1954, ch. 736, 68A Stat. 361.)

REFERENCES IN TEXT

Section 3 of the act of March 27, 1934, as amended (34 U. S. C. 496), referred to in subsecs. (a) and (b), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. See sections 2382 and 7300 of Title 10, Armed Forces.

Subchapter B.—Mitigation of Effect of Renegotiation of Government Contracts

Sec.
1481. Mitigation of effect of renegotiation of government contracts.
1482. Readjustment for repayments made pursuant to price redeterminations.

AMENDMENTS

1958—Pub. L. 85-866, title I, § 62(b), Sept. 2, 1958, 72 Stat. 1648, added item 1482.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable only with respect to subcontracts entered into after Dec. 31, 1957, see note set out under section 1482 of this title.

§ 1481. Mitigation of effect of renegotiation of government contracts.

(a) Reduction for prior taxable year.

(1) Excessive profits eliminated for prior taxable year.

In the case of a contract with the United States or any agency thereof, or any subcontract thereunder, which is made by the taxpayer, if a renegotiation is made in respect of such contract or subcontract and an amount of excessive profits received or accrued under such contract or subcontract for a taxable year (referred to in this section as "prior taxable year") is eliminated and, the taxpayer is required to pay or repay to the United States or any agency thereof the amount of excessive profits eliminated or the amount of excessive profits eliminated is applied as an offset against other amounts due the taxpayer, the part of the contract or subcontract price which was received or was accrued for the prior taxable year shall be reduced by the amount of excessive profits eliminated. For purposes of this section—

(A) The term "renegotiation" includes any transaction which is a renegotiation within the meaning of the Federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

(B) The term "excessive profits" includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

(C) The term "subcontract" includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

(D) The term "Federal renegotiation act" includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public Law 528, 77th Cong., 2d Sess.), as amended or supplemented, the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented.

(2) Reduction of reimbursement for prior taxable year.

In the case of a cost-plus-a-fixed-fee contract between the United States or any agency thereof and the taxpayer, if an item for which the taxpayer has been reimbursed is disallowed as an item of cost chargeable to such contract and the taxpayer is required to repay the United States or any agency thereof the amount disallowed or the amount disallowed is applied as an offset against other amounts due the taxpayer, the amount of the reimbursement of the taxpayer under the contract for the taxable year in which the reimbursement for such item was received or was accrued shall be reduced by the amount disallowed.

(3) Deduction disallowed.

The amount of the payment, repayment, or offset described in paragraph (1) or paragraph (2) shall not constitute a deduction for the year in which paid or incurred.

(4) Exception.

The foregoing provisions of this subsection shall not apply in respect of any contract if the taxpayer shows to the satisfaction of the Secretary or his delegate that a different method of accounting for the amount of the payment, repayment, or disallowance clearly reflects income, and in such case the payment, repayment, or disallowance shall be accounted for with respect to the taxable year provided for under such method, which for the purposes of subsections (b) and (c) shall be considered a prior taxable year.

(b) Credit against repayment on account of renegotiation or allowance.

(1) General rule.

There shall be credited against the amount of excessive profits eliminated the amount by which the tax for the prior taxable year under this subtitle is decreased by reason of the application of paragraph (1) of subsection (a); and there shall be credited against the amount disallowed the amount by which the tax for the prior taxable year under this subtitle is decreased by reason of the application of paragraph (2) of subsection (a).

(2) Credit for barred year.

If at the time of the payment, repayment, or offset described in paragraph (1) or paragraph (2) of subsection (a), refund or credit of tax under this subtitle for the prior taxable year is prevented (except for the provisions of section 1311) by any provision of the internal revenue laws other than section 7122, or by rule of law, the amount by which the tax for such year under this subtitle is decreased by the application of paragraph (1) or paragraph (2) of subsection (a) shall be computed under this paragraph. There shall first be ascertained the tax previously determined for the prior taxable year. The amount of the tax previously determined shall be the excess of—

(A) the sum of—

(i) the amount shown as the tax by the taxpayer on his return (determined as provided in section 6211(b)(1), (3), and (4)), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(ii) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(B) the amount of rebates, as defined in section 6211 (b) (2), made.

There shall then be ascertained the decrease in tax previously determined which results solely from the application of paragraph (1) or paragraph (2) of subsection (a) to the prior taxable

year. The amount so ascertained, together with any amounts collected as additions to the tax or interest, as a result of paragraph (1) or paragraph (2) of subsection (a) not having been applied to the prior taxable year, shall be the amount by which such tax is decreased.

(3) Interest.

In determining the amount of the credit under this subsection no interest shall be allowed with respect to the amount ascertained under paragraph (1); except that if interest is charged by the United States or the agency thereof on account of the disallowance for any period before the date of the payment, repayment, or offset, the credit shall be increased by an amount equal to interest on the amount ascertained under such paragraph at the same rate and for the period (prior to the date of the payment, repayment, or offset) as interest is so charged.

(c) Credit in lieu of other credit or refund.

If a credit is allowed under subsection (b) with respect to a prior taxable year no other credit or refund under the internal-revenue laws founded on the application of subsection (a) shall be made on account of the amount allowed with respect to such taxable year. If the amount allowable as a credit under subsection (b) exceeds the amount allowed under such subsection, the excess shall, for purposes of the internal revenue laws relating to credit or refund of tax, be treated as an overpayment for the prior taxable year which was made at the time the payment, repayment, or offset was made.

(d) Renegotiation of government contracts affecting taxable years prior to 1954.

If a recovery of excessive profits through renegotiation as described in this section relates to profits of a taxable year subject to the Internal Revenue Code of 1939, the adjustments in respect of such renegotiation shall be made under section 3806 of such code. (Aug. 16, 1954, ch. 736, 68A Stat. 362; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d)(5)(B), 79 Stat. 168.)

REFERENCES IN TEXT

Section 403 of the Sixth Supplemental National Defense Appropriation Act (Public Law 528, 77th Cong., 2d Sess.), as amended or supplemented, referred to in subsec. (a)(1)(D), is classified to section 1191 of Appendix to Title 50, War and National Defense.

Renegotiation Act of 1948, referred to in subsec. (a)(1)(D), is classified to section 1193 of Appendix to Title 50, War and National Defense.

Renegotiation Act of 1951, as amended or supplemented, referred to in subsec. (a)(1)(D), is classified to section 1211 et seq. of Appendix to Title 50, War and National Defense.

AMENDMENTS

1965—Subsec. (b)(2)(A)(i). Pub. L. 89–44 struck out "(b)(1) and (3)" and inserted in lieu thereof "(b)(1), (3), and (4)".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b)(2)(A)(i) by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

CROSS REFERENCES

Applicability of revenue laws, see section 7851(a)(1)(A) of this title.

Publicity of returns and lists of taxpayers, see section 6103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1341, 1482, 6511 of this title.

§ 1482. Readjustment for repayments made pursuant to price redeterminations.

(a) General rule.

If, pursuant to a price redetermination provision in a subcontract to which this section applies, a repayment with respect to an amount paid under the subcontract is made by one party to the subcontract (hereinafter referred to as the "payor") to another party to the subcontract (hereinafter referred to as the "payee"), then—

(1) the tax of the payor for prior taxable years shall be recomputed as if the amount received or accrued by him with respect to which the repayment is made did not include an amount equal to the amount of the repayment, and

(2) the tax of the payee for prior taxable years shall be recomputed as if the amount paid or incurred by him with respect to which the repayment is made did not include an amount equal to the amount of the repayment.

(b) Subcontracts to which section applies.

Subsection (a) shall apply only to a subcontract which is subject to renegotiation under the applicable Federal renegotiation act.

(c) Limitation.

Subsection (a) shall not apply to any repayment to the extent that section 1481 applies to the amount repaid.

(d) Treatment in year of repayment.

The amount of any repayment to which subsection (a) applies shall not be taken into account by the payor or payee for the taxable year in which the repayment is made; but any overpayment or underpayment of tax resulting from the application of subsection (a) shall be treated as if it were an overpayment or underpayment for the taxable year in which the repayment is made. (Added Pub. L. 85–866, title I, § 62(a), Sept. 2, 1958, 72 Stat. 1648.)

EFFECTIVE DATE

Section 62(c) of Pub. L. 85–866 provided that: "The amendments made by subsections (a) and (b) [adding this section and conforming analysis to the addition] shall apply only with respect to subcontracts entered into after December 31, 1957."

Chapter 5.—TAX ON TRANSFERS TO AVOID INCOME TAX

Sec.
1491. Imposition of tax.
1492. Nontaxable transfers.
1494. Payment and collection.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6103 of this title.

§ 1491. Imposition of tax.

There is hereby imposed on the transfer of stock or securities by a citizen or resident of the United States, or by a domestic corporation or partnership,

or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership, an excise tax equal to 27½ percent of the excess of—

(1) the value of the stock or securities so transferred, over

(2) its adjusted basis (for determining gain) in the hands of the transferor.

(Aug. 16, 1954, ch. 736, 68A Stat. 365.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1492, 1494 of this title.

§ 1492. Nontaxable transfers.

The tax imposed by section 1491 shall not apply—

(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401 (a)); or

(2) If before the transfer it has been established to the satisfaction of the Secretary or his delegate that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes; or

(3) To a transfer to which section 367(d) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91-681, § 1(b), 84 Stat. 2066.)

AMENDMENTS

1971—Par. (3). Pub. L. 91-681 added par. (3).

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-681 applicable with respect to transfers made after Dec. 31, 1970, see section 1(c) of Pub. L. 91-681, set out as a note under section 367 of this title.

§ 1493. Repealed. Pub. L. 89-809, title I, § 103(*l*)(2), Nov. 13, 1966, 80 Stat. 1554.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as a note under section 871 of this title.

§ 1494. Payment and collection.

(a) Time for payment.

The tax imposed by section 1491 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Secretary or his delegate.

(b) Abatement or refund.

Under regulations prescribed by the Secretary or his delegate, the tax may be abated, remitted, or refunded if after the transfer it has been established to the satisfaction of the Secretary or his delegate that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. (Aug. 16, 1954, ch. 736, 68A Stat. 365.)

CROSS REFERENCES

Publicity of returns and lists of taxpayers, see section 6103 of this title.

Chapter 6.—CONSOLIDATED RETURNS

Subchapter
A. Returns and Payment of Tax.
B. Related Rules.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1051, 1562, 6103 of this title.

Subchapter A.—Returns and Payment of Tax

Sec.
1501. Privilege to file consolidated returns.
1502. Regulations.
1503. Computation and payment of tax.
1504. Definitions.
1505. Cross references.

§ 1501. Privilege to file consolidated returns.

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group. (Aug. 16, 1954, ch. 736, 68A Stat. 367.)

CROSS REFERENCES

Definition of personal holding company, see section 542 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 963 of this title.

§ 1502. Regulations.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. (Aug. 16, 1954, ch. 736, 68A Stat. 367.)

CROSS REFERENCES

Disposition of property acquired during affiliation, see section 1051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1501, 1503 of this title.

§ 1503. Computation and payment of tax.

(a) General rule.

In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted

in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return.

(b) Special rule for application of foreign tax credit when overall limitation applies.

(1) In general.

If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 921), and if for the taxable year an election under section 904(b)(1) (relating to election of overall limitation on foreign tax credit) is in effect, then the amount of taxes paid or accrued to foreign countries and possessions of the United States by such Western Hemisphere trade corporations which may be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which—

(A) the amount of such taxes (or, if smaller, the amount of the tax which would be computed under subsection (a), if such corporations were not Western Hemisphere trade corporations, with respect to the portion of the consolidated taxable income attributable to such corporations), exceeds

(B) the amount of the tax computed under subsection (a) with respect to the portion of the consolidated taxable income attributable to such corporations.

(2) Adjustment in case of certain public utilities.

So much of any reduction under paragraph (1) as is attributable to taxes paid or accrued to foreign countries and possessions of the United States by one or more corporations which are both Western Hemisphere trade corporations and regulated public utilities shall be decreased by the excess of—

(A) the amount of tax computed under subsection (a) with respect to the portion of the consolidated taxable income attributable to income derived, by the corporations in the affiliated group which are not Western Hemisphere trade corporations, from sources within the foreign countries referred to in paragraph (3)(B), over

(B) the amount of taxes paid or accrued to such foreign countries by the corporations referred to in subparagraph (A).

This paragraph shall apply only if the corporations described in subparagraph (A) derive 80 percent or more, of the gross income (computed without regard to capital gains and losses) which they derive from sources within the foreign countries described in paragraph (3)(B), from regulated public utilities and from operations as regulated public utilities.

(3) Special rules.

(A) For purposes of paragraph (2), a corporation is a regulated public utility only if it is a regulated public utility within the meaning of subparagraph (A) (other than clauses (ii) and (iii) thereof) or (D) of section 7701(a)(33). For purposes of the preceding sentence, the limitation contained in the last two sentences of section 7701(a)(33) shall be applied as if subparagraphs (A) through (F), inclusive, of section 7701(a)(33) were limited to subparagraphs (A)(i) and (D) thereof.

(B) For purposes of paragraph (2), the foreign countries referred to in this subparagraph include only any country from which any public utility referred to in the first sentence of paragraph (2) derives the principal part of its income.

(C) For purposes of this subsection, the term "consolidated taxable income" means the consolidated taxable income computed without regard to the deduction provided by section 242 for partially tax-exempt interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Sept. 14, 1960, Pub. L. 86–780, § 2, 74 Stat. 1011; Feb. 26, 1964, Pub. L. 88–272, title II, § 234(a), (b)(1), (2), 78 Stat. 113.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–272, § 234(a), eliminated provisions which increased the tax imposed under section 11(c), or section 831, by 2% of the consolidated taxable income of the affiliated group of includible corporations, and defined "consolidated taxable income."

Subsec. (b). Pub. L. 88–272, § 234(b)(1), (2), redesignated former subsec. (d) as (b), and substituted references to section 7701 for references to former subsection (c) of this section, in subpar. (A), and the definition of "consolidated taxable income" for provisions relating to the computation of tax, for purposes of par. (1)(A), on the portion of consolidated taxable income attributable to any corporation, without regard to the increase of 2% as in subsec. (a), in subpar. (C). Former subsec. (b), which limited the 2% increase in subsec. (a) in cases where the affiliated group included one or more Western Hemisphere trade corporations or one or more regulated public utilities, to the amount by which the consolidated taxable income of the affiliated group exceed the income attributable to such corporations and utilities, was deleted.

Subsec. (c). Pub. L. 88–272, § 234(b)(1), deleted subsec. (c) which defined regulated public utility, and which is now covered by section 7701(a)(33) of this title.

Subsec. (d). Pub. L. 88–272, § 234(b)(1), redesignated former subsec. (d) as (b).

1960—Subsec. (d). Pub. L. 86–780 added subsec. (d).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 234(c) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) and (b) [to this section, and sections 12, 172, 904, 1341, 1552, and 7701 of this title] shall apply with respect to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

ABOLITION OF FEDERAL MARITIME BOARD

Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the board. Functions of the board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

CROSS REFERENCES

Earnings and profits, see section 1552 of this title.

Readjustment, computation of tax where taxpayer restores substantial amount held under claim of right, see section 1341 of this title.

§ 1504. Definitions.

(a) Definition of "affiliated group."

As used in this chapter, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(b) Definition of "includible corporation."

As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 802 or 821.

(3) Foreign corporations.

(4) Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States.

(5) Corporations organized under the China Trade Act, 1922.

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(c) Includible insurance companies.

Despite the provisions of paragraph (2) of subsection (b), two or more domestic insurance companies each of which is subject to taxation under the same section of this subtitle shall be considered as includible corporations for the purpose of the application of subsection (a) to such insurance companies alone.

(d) Subsidiary formed to comply with foreign law.

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

(e) Includible tax-exempt organizations.

Despite the provisions of paragraph (1) of subsection (b), two or more organizations exempt from taxation under section 501, one or more of which is described in section 501(c)(2) and the others of which derive income from such 501 (c)(2) organizations, shall be considered as includible corporations for the purpose of the application of subsection (a) to such organizations alone. (Aug. 16, 1954, ch. 736, 68A Stat. 369; Mar. 13, 1956, ch. 83, § 5(8), 70 Stat. 49; Sept. 2, 1958, Pub. L. 85-866, title I, § 64(d)(3), 72 Stat. 1657; June 25, 1959, Pub. L. 86-69, § 3(f)(1), 73 Stat. 140; Sept. 23, 1959, Pub. L. 86-376, § 2(c), 73 Stat. 699; Sept. 14, 1960, Pub. L. 86-779, § 10(j), 74 Stat. 1009); Apr. 14, 1966, Pub. L. 89-389, § 4(b)(3), 80 Stat. 116; Dec. 30, 1969, Pub. L. 91-172, title I, § 121(a)(4), 83 Stat. 537.)

REFERENCES IN TEXT

China Trade Act, 1922, referred to in subsec. (b) (5), is classified to chapter 4 of Title 15, Commerce and Trade.

AMENDMENTS

1969—Subsec. (e). Pub. L. 91-172 added subsec. (e).

1966—Subsec. (b)(7). Pub. L. 89-389 struck out par. (7) exception to definition of "includible corporation" of unincorporated business enterprises subject to tax as corporations under section 1361 of this title.

1960—Subsec. (b)(6). Pub. L. 86-779 inserted "and real estate investment trusts" following "Regulated investment companies".

1959—Subsec. (b)(2). Pub. L. 86-69 eliminated reference to section 811.

Subsec. (b)(8). Pub. L. 86-376 deleted subsec. (b)(8), which excepted an electing small business corporation from the term "includible corporation".

1958—Subsec. (b)(8). Pub. L. 85-866 added subsec. (b)(8).

1956—Subsec. (b)(2). Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 4(b) of Pub. L. 89-389 provided that amendment of subsec. (b)(7) of this section by Pub. L. 89-389 shall be effective on Jan. 1, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Section 2(d) of Pub. L. 86-376 provided in part that the amendment by section 2(c) of Pub. L. 86-376 striking out subsec. (b)(8) of this section shall take effect on Sept. 24, 1959.

Amendment of section by Pub. L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section by Pub. L. 85-866, which added subsec. (b)(8) of this section, applicable only with respect to taxable years beginning after Dec. 31, 1958, see section 64 (e) of Pub. L. 85-866, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

CROSS REFERENCES

Business leases, see section 514 of this title.

Deduction of employer contributions to profit-sharing plan of affiliated group, see section 404 (a) (3) (B) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 49, 172, 243, 279, 281, 311, 312, 404, 514, 542, 593, 904, 1313, 1371, 4216, 4914, 4920 of this title.

§ 1505. Cross references.

(1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503 (a) (1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

(Aug. 16, 1954, ch. 736, 68A Stat. 370.)

Subchapter B.—Related Rules

Part
I. In general.
II. Certain controlled corporations.

PART I—IN GENERAL

Sec.
1551. Disallowance of surtax exemption and accumulated earnings credit.
1552. Earnings and profits.

AMENDMENTS

1964—Pub. L. 88-272, title II, § 235(c)(4), Feb. 26, 1964, 78 Stat. 127, inserted the table of parts, and the heading to Part I.

§ 1551. Disallowance of surtax exemption and accumulated earnings credit.

(a) In general.

If—

(1) any corporation transfers, on or after January 1, 1951, and on or before June 12, 1963, all or part of its property (other than money) to a transferee corporation,

(2) any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

(3) five or fewer individuals who are in control of a corporation transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation,

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary or his delegate may (except as may be otherwise determined under subsection (d)) disallow the surtax exemption (as defined in section 11(d)), or the $100,000 accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of such transfer.

(b) Control.

For purposes of subsection (a), the term "control" means—

(1) With respect to a transferee corporation described in subsection (a) (1) or (2), the ownership by the transferor corporation, its shareholders, or both, of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock; or

(2) With respect to each corporation described in subsection (a)(3), the ownership by the five or fewer individuals described in such subsection of stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

For purposes of this subsection, section 1563(e) shall apply in determining the ownership of stock.

(c) Authority of the secretary under this section.

The provisions of section 269(b), and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this section, be applicable to this section. (Aug. 16, 1954, ch. 736, 68A Stat. 371; Sept. 2, 1958, Pub. L. 85-866, title II, § 205(a), 72 Stat. 1680; Feb. 26, 1964, Pub. L. 88-272, title II, § 235(b), 78 Stat. 125.)

AMENDMENTS

1964—Pub. L. 88-272 amended section generally, and among other changes, designated provisions as subsecs. (a)—(c), included among corporations who are disallowed surtax exemption and accumulated earnings credit, corporations, and five or fewer individuals in charge of a corporation who, directly or indirectly, transfer property in contravention of subsec. (a) after June 12, 1963, substituted provisions permitting the Secretary or his delegate to disallow the exemption or the earnings credit, for provisions which disallowed the exemption and the credit except as otherwise determined by the Secretary of his delegate, provisions that for purposes of determining ownership of stock, section 1563(e) shall apply, for provisions which determined ownership in accordance with section 544, and defined control, with respect to corporations described in subsec. (a)(3), to include the additional test as stated in subsec. (b)(2)(B).

1958—Pub. L. 85-866 substituted "$100,000" for "$60,000".

EFFECTIVE DATE OF 1964 AMENDMENT

Section 235(d) of Pub. L. 88-272 provided that: "The amendments made by subsections (a) and (c) [adding part II, and amending sections 269, 441, and 802 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [to this section] shall apply with respect to transfers made after June 12, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment to section by Pub. L. 85-866 applicable with respect to taxable years beginning after Dec. 31, 1957, see section 205 (b) of Pub. L. 85-866, set out as a note under section 535 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12 of this title.

§ 1552. Earnings and profits.

(a) General rule.

Pursuant to regulations prescribed by the Secretary or his delegate the earnings and profits of each member of an affiliated group required to be included in a consolidated return for such group filed for a taxable year beginning after December 31, 1953, and ending after the date of enactment of this title, shall be determined by allocating the tax liability of the group for such year among the mem-

bers of the group in accord with whichever of the following methods the group shall elect in its first consolidated return filed for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Secretary or his delegate.

(b) Failure to elect.

If no election is made in such first return, the tax liability shall be allocated among the several members of the group pursuant to the method prescribed in subsection (a) (1). (Aug. 16, 1954, ch. 736, 68A Stat. 371; Feb. 26, 1964, Pub. L. 88–272, title II, § 234(b)(8), 78 Stat. 116.)

AMENDMENTS

1964—Subsec. (a)(3). Pub. L. 88–272 deleted "(determined without regard to the 2 percent increase provided by section 1503(a))", preceding "based on their contributions."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

PART II—CERTAIN CONTROLLED CORPORATIONS

Sec.
1561. Surtax exemptions in case of certain controlled corporations.
1562. Privilege of groups to elect multiple surtax exemptions.
1563. Definitions and special rules.
1564. Transitional rules in the case of certain controlled corporations.

AMENDMENTS

1969—Pub. L. 91–172, title IV, § 401(a)(3), (b)(2)(E), Dec. 30, 1969, 83 Stat. 600, 602, substituted "Sec. 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations." for "Sec. 1561. Surtax exemptions in case of certain controlled corporations.", and struck out item 1562, effective with respect to taxable years beginning after Dec. 31, 1974, and added item 1564.

1964—Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 116, added the designation of Part II, and items 1561—1563.

§ 1561. Surtax exemptions in case of certain controlled corporations.

(a) General rule.

If a corporation is a component member of a controlled group of corporations on a December 31, then for purposes of this subtitle the surtax exemption of such corporation for the taxable year which includes such December 31 shall be an amount equal to—

(1) $25,000 divided by the number of corporations which are component members of such group on such December 31, or

(2) if all such component members consent (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe) to an apportionment plan, such portion of $25,000 as is apportioned to such member in accordance with such plan.

The sum of the amounts apportioned under paragraph (2) among the component members of any controlled group shall not exceed $25,000.

(b) Certain short taxable years.

If a corporation—

(1) has a short taxable year which does not include a December 31, and

(2) is a component member of a controlled group of corporations with respect to such taxable year,

then for purposes of this subtitle the surtax exemption of such corporation for such taxable year shall be an amount equal to $25,000 divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31. (Added Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 116.)

TAXABLE YEARS BEGINNING AFTER DEC. 31, 1974

Pub. L. 91–172, title IV, § 401(a)(1), (h)(1), Dec. 30, 1969, 83 Stat. 599, 604, provided that with respect to taxable years beginning after Dec. 31, 1974, section will read as follows:

"§ 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations.

"(a) General rule.—*The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to—*

"(1) one $25,000 surtax exemption under section 11(d),

"(2) one $100,000 amount for purposes of computing the accumulated earnings credit under section 535(c) (2) and (3), and

"(3) one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10).

The amount specified in paragraph (1) shall be divided equally among the component members of such group on such December 31 unless all of such component members consent (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe) to

an apportionment plan providing for an unequal allocation of such amount. The amounts specified in paragraphs (2) and (3) shall be divided equally among the component members of such group on such December 31 unless the Secretary or his delegate prescribes regulations permitting an unequal allocation of such amounts.

"(b) Certain short taxable years.—*If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle—*

"(1) the surtax exemption under section 11(d),

"(2) the amount to be used in computing the accumulated earnings credit under section 535(c) (2) and (3), and

"(3) the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10),

of such corporation for such taxable year shall be the amount specified in subsection (a) (1), (2), or (3), as the case may be, divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 401(h) of Pub. L. 91–172 provided that:

"(1) The amendments made by subsection (a) [amending this section and repealing section 1562 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

"(2) The amendments made by subsection (b) [adding section 1564 and amending sections 11(d), 535(c)(5), 804 (d) and 1562(b)(1)] shall apply with respect to taxable years beginning after December 31, 1969.

"(3) The amendments made by subsections (c), (d), (e), and (f) [amending sections 46(a)(5), 48(c)(2)(C), 48(c)(3)(C), 48(d)(2), 179(d)(2)(B), 179(d)(6)(7), 1563(a)(2), 1563(c)(2)(A) and 1563(c)(2)(B)] shall apply with respect to taxable years ending on or after December 31, 1970."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 1562, 1564 of this title.

§ 1562 Privilege of groups to elect multiple surtax exemptions.

(a) Election of multiple surtax exemptions.

(1) In general.

A controlled group of corporations shall (subject to the provisions of this section) have the privilege of electing to have each of its component members make its returns without regard to section 1561. Such election shall be made with respect to a specified December 31 and shall be valid only if—

(A) each corporation which is a component member of such group on such December 31, and

(B) each other corporation which is a component member of such group on any succeeding December 31 before the day on which the election is filed,

consents to such election.

(2) Years for which effective.

An election by a controlled group of corporations under paragraph (1) shall be effective with respect to the taxable year of each component member of such group which includes the specified December 31, and each taxable year of each corporation which is a component member of such group (or a successor group) on a succeeding December 31 included within such taxable year, unless the election is terminated under subsection (c).

(3) Effect of election.

If an election by a controlled group of corporations under paragraph (1) is effective with respect to any taxable year of a corporation—

(A) section 1561 shall not apply to such corporation for such taxable year, but

(B) the additional tax imposed by subsection (b) shall apply to such corporation for such taxable year.

(b) Additional tax imposed.

(1) General rule.

If an election under subsection (a)(1) by a controlled group of corporations is effective with respect to the taxable year of a corporation, there is hereby imposed for such taxable year on the taxable income of such corporation a tax equal to 6 percent of so much of such corporation's taxable income for such taxable year as does not exceed the amount of such corporation's surtax exemption for such taxable year. This paragraph shall not apply to the taxable year of a corporation if—

(A) such corporation is the only component member of such controlled group on the December 31 included in such corporation's taxable year which has taxable income for a taxable year including such December 31, or

(B) such corporation's surtax exemption is disallowed for such taxable year under any provision of this subtitle.

(2) Tax treated as imposed by section 11, etc.

If for the taxable year of a corporation a tax is imposed by section 11 on the taxable income of such corporation, the additional tax imposed by this subsection shall be treated for purposes of this title as a tax imposed by section 11. If for the taxable year of a corporation a tax is imposed on the taxable income of such corporation which is computed under any other section by reference to section 11, the additional tax imposed by this subsection shall be treated for purposes of this title as imposed by such other section.

(3) Taxable income defined.

For purposes of this subsection, the term "taxable income" means—

(A) in the case of a corporation subject to tax under section 511, its unrelated business taxable income (within the meaning of section 512);

(B) in the case of a life insurance company, its life insurance company taxable income (within the meaning of section 802(b));

(C) in the case of a regulated investment company, its investment company taxable income (within the meaning of section 852(b)(2)); and

(D) in the case of a real estate investment trust, it real estate investment trust taxable income (within the meaning of section 857(b)(2)).

(4) Special rules.

If for the taxable year an additional tax is imposed on the taxable income of a corporation by this subsection, then sections 244 (relating to dividends received on certain preferred stock), 247 (relating to dividends paid on certain preferred stock of public utilities), 804(a)(3) (relating to deduction for partially tax-exempt interest in the case of a life insurance company), and 922 (relating to special deduction for Western Hemisphere trade corporations) shall be applied without regard to the additional tax imposed by this subsection.

(c) Termination of election.

An election by a controlled group of corporations under subsection (a) shall terminate with respect to such group—

(1) Consent of the members.

If such group files a termination of such election with respect to a specified December 31, and—

(A) each corporation which is a component member of such group on such December 31, and

(B) each other corporation which is a component member of such group on any succeeding December 31 before the day on which the termination is filed,

consents to such termination.

(2) Refusal by new member to consent.

If on December 31 of any year such group includes a component member which—

was not a member of such group, and

(A) on the immediately preceding January 1

(B) within the time and in the manner provided by regulations prescribed by the Secretary or his delegate, files a statement that it does not consent to the election.

(3) Consolidated returns.

If—

(A) a corporation is a component member (determined without regard to section 1563(b)(3)) of such group on a December 31 included within a taxable year ending on or after January 1, 1964, and

(B) such corporation is a member of an affiliated group of corporations which makes a consolidated return under this chapter (sec. 1501 and following) for such taxable year.

(4) Controlled group no longer in existence.

If such group is considered as no longer in existence with respect to any December 31.

Such termination shall be effective with respect to the December 31 referred to in paragraph (1)(A), (2), (3), or (4), as the case may be.

(d) Election after termination.

If an election by a controlled group of corporations is terminated under subsection (c), such group (and any successor group) shall not be eligible to make an election under subsection (a) with respect to any December 31 before the sixth December 31 after the December 31 with respect to which such termination was effective.

(e) Manner and time of giving consent and making election, etc.

An election under subsection (a)(1) or a termination under subsection (c)(1) (and the consent of each member of a controlled group of corporations which is required with respect to such election or termination) shall be made in such manner as the Secretary or his delegate shall by regulations prescribe, and shall be made at any time before the expiration of 3 years after—

(1) in the case of such an election, the date when the income tax return for the taxable year of the component member of the controlled group which has the taxable year ending first on or after the specified December 31 is required to be filed (without regard to any extensions of time), and

(2) in the case of such a termination, the specified December 31 with respect to which such termination was made.

Any consent to such an election or termination, and a failure by a component member to file a statement that it does not consent to an election under this section, shall be deemed to be a consent to the application of subsection (g)(1) (relating to tolling of statute of limitations on assessment of deficiencies).

(f) Special rules.

For purposes of this section—

(1) Continuing and successor controlled groups.

The determination of whether a controlled group of corporations—

(A) is considered as no longer in existence with respect to any December 31, or

(B) is a successor to another controlled group of corporations (and the effect of such determination with respect to any election or termination),

shall be made under regulations prescribed by the Secretary or his delegate. For purposes of subparagraph (B), such regulations shall be based on the continuation (or termination) of predominant equitable ownership.

(2) Certain short taxable years.

If one or more corporations have short taxable years which do not include a December 31 and are component members of a controlled group of corporations with respect to such taxable years (determined by applying section 1563(b) as if the last day of each such taxable year were substituted for December 31), then an election by such group under this section shall apply with respect to such corporations with respect to such taxable years if—

(A) such election is in effect with respect to both the December 31 immediately preceding such taxable years and the December 31 immediately succeeding such taxable years, or

(B) such election is in effect with respect to the December 31 immediately preceding or succeeding such taxable years and each such corporation files a consent to the application of such election to its short taxable year at such time and in such manner as the Secretary or his delegate shall prescribe by regulations.

(g) Tolling of statute of limitations.

In any case in which a controlled group of corporations makes an election or termination under this section, the statutory period—

(1) for assessment of any deficiency against a corporation which is a component member of such group for any taxable year, to the extent such deficiency is attributable to the application of this part, shall not expire before the expiration of one year after the date such election or termination is made; and

(2) for allowing or making credit or refund of any overpayment of tax by a corporation which is a component member of such group for any taxable year, to the extent such credit or refund is attributable to the application of this part, shall not expire before the expiration of one year after the date such election or termination is made.

(Added Pub. L. 88–272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 117, and amended Pub. L. 91–172, title IV, § 401(b)(2)(A), Dec. 30, 1969, 83 Stat. 602.)

REPEALS

Section repealed with respect to taxable years beginning after Dec. 31, 1974, by Pub. L. 91–172, title IV, § 401(a)(2), (h)(1), Dec. 30, 1969, 83 Stat. 600, 604.

AMENDMENTS

1969—Subsec. (b)(1). Pub. L. 91–172 substituted "the amount of such corporation's surtax exemption for such taxable year" for "$25,000".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (b)(1) of this section by section 401(b)(2)(A) of Pub. L. 91–172 applicable with respect to taxable years beginning Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

RETROACTIVE TERMINATION OF ELECTIONS

Section 401(g) of Pub. L. 91–172 provided that: "If an affiliated group of corporations makes a consolidated return for the taxable year which includes December 31, 1970 (hereinafter in this subsection referred to as "1970 consolidated return year"), then on or before the due date prescribed by law (including any extensions thereof) for filing such consolidated return such affiliated group of corporations may terminate the election under section 1562 of the Internal Revenue Code of 1954 [this section] with respect to any prior December 31 which is included in a taxable year of any of such corporations from which there is a net operating loss carryover to the 1970 consolidated return year. A termination of an election under this subsection shall be valid only if it meets the requirements of sections 1562(c)(1) and 1562(e) of such Code [subsecs. (c)(1) and (e) of this section] (other than making the termination before the expiration of the 3-year period specified in section 1562(e) [subsec. (e) of this section])."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 245, 1564 of this title.

§ 1563. Definitions and special rules.

(a) Controlled group of corporations.

For purposes of this part, the term "controlled group of corporations" means any group of—

(1) Parent-subsidiary controlled group.

One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group.

Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group.

Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) is a common parent corporation included in a group of corporations described in paragraph (1), and also

(B) is included in a group of corporations described in paragraph (2).

(4) Certain insurance companies.

Two or more insurance companies subject to taxation under section 802 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) Component member.

(1) General rule.

For purposes of this part, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year (and with respect to the taxable year which includes such December 31) if such corporation—

(A) is a member of such controlled group of corporations on the December 31 included in such year and is not treated as an excluded member under paragraph (2), or

(B) is not a member of such controlled group of corporations on the December 31 included in such year but is treated as an additional member under paragraph (3).

(2) Excluded members.

A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

(A) is a member of such group for less than one-half the number of days in such taxable year which precede such December 31,

(B) is exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) for such taxable year,

(C) is a foreign corporation subject to tax under section 881 for such taxable year,

(D) is an insurance company subject to taxation under section 802 or section 821 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

(E) is a franchised corporation, as defined in subsection (f)(4).

(3) Additional members.

A corporation which—

(A) was a member of a controlled group of corporations at any time during a calendar year,

(B) is not a member of such group on December 31 of such calendar year, and

(C) is not described, with respect to such group, in subparagraph (B), (C), (D), or (E) of paragraph (2),

shall be treated as an additional member of such group on December 31 for its taxable year including such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

(4) Overlapping groups.

If a corporation is a component member of more than one controlled group of corporations with respect to any taxable year, such corporation shall be treated as a component member of only one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary or his delegate which are consistent with the purposes of this part.

(c) Certain stock excluded.

(1) General rule.

For purposes of this part, the term "stock" does not include—

(A) nonvoting stock which is limited and preferred as to dividends,

(B) treasury stock, and

(C) stock which is treated as "excluded stock" under paragraph (2).

(2) Stock treated as "excluded stock".

(A) Parent-subsidiary controlled group.

For purposes of subsection (a)(1), if a corporation (referred to in this paragraph as "parent corporation") owns (within the meaning of subsections (d)(1) and (e)(4)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (referred to in this paragraph as "subsidiary corporation"), the following stock of the subsidiary corporation shall be treated as excluded stock—

(i) stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation,

(ii) stock in the subsidiary corporation owned by an individual (within the meaning of subsection (d)(2)) who is a principal stockholder or officer of the parent corporation. For purposes of this clause, the term "principal stockholder" of a corporation means an individual who owns (within the meaning of subsection (d)(2)) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock in such corporation,

(iii) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an employee of the subsidiary corporation if such stock is subject to conditions which run in favor of such parent (or subsidiary) corporation and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock, or

(iv) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an organization (other than the parent corporation) to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by the parent corporation or subsidiary corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of clause (ii)) of the parent corporation, by an officer of the parent corporation, or by any combination thereof.

(B) Brother-sister controlled group.

For purposes of subsection (a)(2), if 5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as "common owners") own (within the meaning of subsection (d)(2)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in a corportation, the following stock of such corporation shall be treated as excluded stock—

(i) stock in such corporation held by an employees' trust described in section 401(a) which is exempt from tax under section 501 (a), if such trust is for the benefit of the employees of such corporation,

(ii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an employee of the corporation if such stock is subject to conditions which run in favor of any of such common owners (or such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock. If a condition which limits or restricts the employee's right (or the direct owner's right) to dispose of such stock also applies to the stock held by any of the common owners pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which restricts or limits the employee's right to dispose of such stock, or

(iii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of subparagraph (A)(ii)) of such corporation, by an officer of such corporation, or by any combination thereof.

(d) Rules for determining stock ownership.

(1) Parent-subsidiary controlled group.

For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection (a)(1)), stock owned by a corporation means—

(A) stock owned directly by such corporation, and

(B) stock owned with the application of subsection (e)(1).

(2) Brother-sister controlled group.

For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection (a)(2)), stock owned by a person who is an individual, estate, or trust means—

(A) stock owned directly by such person, and

(B) stock owned with the application of subsection (e).

(e) Constructive ownership.

(1) Options.

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(2) Attribution from partnerships.

Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

(3) Attribution from estates or trusts.

(A) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary.

(B) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) This paragraph shall not apply to stock owned by any employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(4) Attribution from corporations.

Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of subsection (d)) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(5) Spouse.

An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year—

(A) The individual does not, at any time during such taxable year, own directly any stock in such corporation;

(B) The individual is not a director or employee and does not participate in the manage-

ment of such corporation at any time during such taxable year;

(C) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years.

(6) Children, grandchildren, parents, and grandparents.

(A) Minor children.

An individual shall be considered as owning stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(B) Adult children and grandchildren.

An individual who owns (within the meaning of subsection (d)(2), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

(C) Adopted child.

For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(f) Other definitions and rules.

(1) Employee defined.

For purposes of this section the term "employee" has the same meaning such term is given by paragraphs (1) and (2) of section 3121(d).

(2) Operating rules.

(A) In general.

Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), (4), (5), or (6) of subsection (e) shall, for purposes of applying such paragraphs, be treated as actually owned by such person.

(B) Members of family.

Stock constructively owned by an individual by reason of the application of paragraph (5) or (6) of subsection (e) shall not be treated as owned by him for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

(3) Special rules.

For purposes of this section—

(A) If stock may be considered as owned by a person under subsection (e)(1) and under any other paragraph of subsection (e), it shall be considered as owned by him under subsection (e)(1).

(B) If stock is owned (within the meaning of subsection (d)) by two or more persons, such stock shall be considered as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group. If by reason of the preceding sentence, a corporation would (but for this sentence) become a component member of two controlled groups, it shall be treated as a component member of one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary or his delegate which are consistent with the purposes of this part.

(C) If stock is owned by a person within the meaning of subsection (d) and such ownership results in the corporation being a component member of a controlled group, such stock shall not be treated as excluded stock under subsection (c)(2), if by reason of treating such stock as excluded stock the result is that such corporation is not a component member of a controlled group of corporations.

(4) Franchised corporation.

If—

(A) a parent corporation (as defined in subsection (c)(2)(A)), or a common owner (as defined in subsection (c)(2)(B)), of a corporation which is a member of a controlled group of corporations is under a duty (arising out of a written agreement) to sell stock of such corporation (referred to in this paragraph as "franchised corporation") which is franchised to sell the products of another member, or the common owner, of such controlled group;

(B) such stock is to be sold to an employee (or employees) of such franchised corporation pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation or of the common owner in the franchised corporation;

(C) such plan—

(i) provides a reasonable selling price for such stock, and

(ii) requires that a portion of the employee's share of the profits of such corporation (whether received as compensation or as a dividend) be applied to the purchase of such stock (or the purchase of notes, bonds, debentures or other similar evidence of indebtedness of such franchised corporation held by such parent corporation or common owner);

(D) such employee (or employees) owns directly more than 20 percent of the total value of shares of all classes of stock in such franchised corporation;

(E) more than 50 percent of the inventory of such franchised corporation is acquired from members of the controlled group, the common owner, or both; and

(F) all of the conditions contained in subparagraphs (A), (B), (C), (D), and (E) have been met for one-half (or more) of the number of days preceding the December 31 included within the taxable year (or if the taxable year does not include December 31, the last day of such year) of the franchised corporation,

then such franchised corporation shall be treated as an excluded member of such group, under subsection (b)(2), for such taxable year.

(Added Pub. L. 88-272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 120, and amended Pub. L. 91-172, title IV, § 401(c), (d), Dec. 30, 1969, 83 Stat. 602; Pub. L. 91-373, title I, § 102(b), Aug. 10, 1970, 84 Stat. 696.)

AMENDMENTS

1970—Subsec. (f)(1). Pub. L. 91-373 substituted "by paragraphs (1) and (2) of section 2131(d)" for "in section 3306(i)".

1969—Subsec. (a)(2). Pub. L. 91-172, § 401(c), redesignated existing provisions with minor changes as par. (A) and added par. (B).

Subsec. (c)(2)(A). Pub. L. 91-172, § 401(d)(1), added cl. (iv).

Subsec. (c)(2)(B). Pub. L. 91-172, § 401(d)(2), substituted "5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as 'common owners') own" for "a person who is an individual, estate, or trust (referred to in this paragraph as 'common owner') owns" and in cl. (ii), substituted "any of such common owners", "any of the common owners" for "such common owner" and "the common owner", respectively and added clause (iii).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsecs. (a)(2) and (c)(2) of this section by section 401(c), (d) of Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88-272, set out as a note under section 1551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

The section is referred to in sections 46, 48, 58, 103, 179, 250, 843, 1551, 1561, 1562, 1564 of this title.

§ 1564. Transitional rules in the case of certain controlled corporations.

(a) Limitation on additional benefits.

(1) In general.

With respect to any December 31 after 1969 and before 1975, the amount of—

(A) each additional $25,000 surtax exemption under section 1562 in excess of the first such exemption,

(B) each additional $100,000 amount under section 535(c)(2) and (3) in excess of the first such amount, and

(C) each additional $25,000 limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10) in excess of the first such limitation,

otherwise allowed to the component members of a controlled group of corporations for their taxable years which include such December 31 shall be reduced to the amount set forth in the following schedule:

Taxable years including—	Surtax exemption	Amount under sec. 535(c)(2) and (3)	Small business deduction limitation
Dec. 31, 1970	$20,833	$83,333	$20,833
Dec. 31, 1971	16,667	66,667	16,667
Dec. 31, 1972	12,500	50,000	12,500
Dec. 31, 1973	8,333	33,333	8,333
Dec. 31, 1974	4,167	16,667	4,167

(2) Election.

With respect to any December 31 after 1969 and before 1975, the component members of a controlled group of corporations shall elect (at such time and in such manner as the Secretary or his delegate shall by regulations prescribe) which component member of such group shall be allowed for its taxable year which includes such December 31 the surtax exemption, the amount under section 535(c)(2) and (3), or the small business deduction limitation which is not reduced under paragraph (1).

(b) Dividends received by corporations.

(1) General rule.

If—

(A) an election of a controlled group of corporations (as defined in paragraph (1), or in so much of paragraph (4) as relates to paragraph (1), of section 1563(a)) under section 1562(a) (relating to privilege of a controlled group of corporations to elect to have each of its component members make its returns without regard to section 1561) was made on or before April 22, 1969, and

(B) such election is effective with respect to the taxable year of each component member of such group which includes December 31, 1969,

then, with respect to a dividend distributed on or before December 31, 1977, out of earnings and profits of a taxable year which includes a December 31 after 1969 and before 1975, subsections (a)(3) and (b) of section 243 (relating to dividends received by corporations) shall be applied to such component members comprising an affiliated group (as defined in section 243(b)(5)) in the manner set forth in paragraph (2).

(2) Special rules.

(A) An election under section 243(b)(2) may be made for a taxable year which includes a December 31 after 1969 and before 1975, notwithstanding that an election under section 1562(a) is in effect for the taxable year.

(B) Section 243(b)(1)(B)(ii) shall not apply with respect to a dividend distributed on or before December 31, 1977, out of earnings and profits of a taxable year which includes a December 31 after 1969 and before 1975 for which an election under section 1562(a) is in effect, and in lieu of the percentage specified in section 243(a)(3) with respect to such dividend, the percentage shall be the percentage set forth in the following schedule:

If the dividend is distributed out of the earnings and profits of the distributing corporation's taxable year which includes—	The percentage shall be—
December 31, 1970	87½ percent.
December 31, 1971	90 percent.
December 31, 1972	92½ percent.
December 31, 1973	95 percent.
December 31, 1974	97½ percent.

(C) For taxable years which include a December 31 after 1969 for which an election under section 1562(a) is in effect, section 243(b)(3)(C)(v) shall not be applied to limit the number of surtax exemptions.

(c) Certain short taxable years.

If—

(1) a corporation has a short taxable year beginning after December 31, 1969, and ending before December 31, 1974, which does not include a December 31, and

(2) such corporation is a component member of a controlled group of corporations with respect to such taxable year (determined by applying section 1563(b) as if the last day of such taxable year were substituted for December 31),

then subsections (a) and (b) shall be applied as if the last day of such taxable year were the nearest December 31 to such day. (Added Pub. L. 91–172, title IV, § 401(b)(1), Dec. 30, 1969, 83 Stat. 600.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11 of this title.

Subtitle B.—Estate and Gift Taxes

Chapter
11. Estate tax.
12. Gift tax.

Chapter 11.—ESTATE TAX

Subchapter
A. Estates of citizens or residents.
B. Estates of nonresidents not citizens.
C. Miscellaneous.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1014, 1022, 1051, 6103, 6324 of this title.

Subchapter A.—Estates of Citizens or Residents

Part
I. Tax imposed.
II. Credits against tax.
III. Gross estate.
IV. Taxable estate.

PART I.—TAX IMPOSED

Sec.
2001. Rate of tax.
2002. Liability for payment.

§ 2001. Rate of tax.

A tax computed in accordance with the following table is hereby imposed on the transfer of the taxable estate, determined as provided in section 2051, of every decedent, citizen or resident of the United States dying after the date of enactment of this title:

If the taxable estate is:	The tax shall be:
Not over $5,000	3% of the taxable estate.
Over $5,000 but not over $10,000.	$150, plus 7% of excess over $5,000.
Over $10,000 but not over $20,000.	$500, plus 11% of excess over $10,000.
Over $20,000 but not over $30,000.	$1,600, plus 14% of excess over $20,000.
Over $30,000 but not over $40,000.	$3,000, plus 18% of excess over $30,000.
Over $40,000 but not over $50,000.	$4,800, plus 22% of excess over $40,000.
Over $50,000 but not over $60,000.	$7,000, plus 25% of excess over $50,000.
Over $60,000 but not over $100,000.	$9,500, plus 28% of excess over $60,000.
Over $100,000 but not over $250,000.	$20,700, plus 30% of excess over $100,000.
Over $250,000 but not over $500,000.	$65,700, plus 32% of excess over $250,000.
Over $500,000 but not over $750,000.	$145,700, plus 35% of excess over $500,000.
Over $750,000 but not over $1,000,000.	$233,200, plus 37% of excess over $750,000.
Over $1,000,000 but not over $1,250,000.	$325,700, plus 39% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000.	$423,200, plus 42% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000.	$528,200, plus 45% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000.	$753,200, plus 49% of excess over $2,000,000.
Over $2,500,000 but not over $3,000,000.	$998,200, plus 53% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000.	$1,263,200, plus 56% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000.	$1,543,200, plus 59% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000.	$1,838,200, plus 63% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000.	$2,468,200, plus 67% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000.	$3,138,200, plus 70% of excess over $6,000,000.
Over $7,000,000 but not over $8,000,000.	$3,838,200, plus 73% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,000.	$4,568,200, plus 76% of excess over $8,000,000.
Over $10,000,000	$6,088,200, plus 77% of excess over $10,000,000.

(Aug. 16, 1954, ch. 736, 68A Stat. 373.)

CROSS REFERENCES

Credits against tax, see section 2011 et seq. of this title.

Estates of nonresidents not citizens, see section 2101 of this title.

Recipients of income in respect to decedents, see section 691 of this title.

Taxable estate, see section 2051 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 1022, 2011, 2012, 2013, 2014, 2015, 2051, 2052, 2053, 2054, 2055, 2056, 2107, 6166 of this title.

§ 2002. Liability for payment.

The tax imposed by this chapter shall be paid by the executor. (Aug. 16, 1954, ch. 736, 68A Stat. 374.)

CROSS REFERENCES

Definition of executor, see section 2203 of this title.

Discharge of executor from personal liability, see section 2204 of this title.

Liability—

Life insurance beneficiaries, see section 2206 of this title.

Recipient of property over which decedent had power of appointment, see section 2207 of this title.

Reimbursement of distributees out of estate, see section 2205 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 691 of this title.

PART II.—CREDITS AGAINST TAX

Sec.
2011. Credit for State death taxes.
2012. Credit for gift tax.
2013. Credit for tax on prior transfers.
2014. Credit for foreign death taxes.
2015. Credit for death taxes on remainders.
2016. Recovery of taxes claimed as credit.

§ 2011. Credit for State death taxes.

(a) In general.

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) Amount of credit.

The credit allowed by this section shall not exceed the appropriate amount stated in the following table:

If the taxable estate is:	The maximum tax credit shall be:
Not over $90,000	8/10ths of 1% of the amount by which the taxable estate exceeds $40,000.
Over $90,000 but not over $140,000.	$400 plus 1.6% of the excess over $90,000.
Over $140,000 but not over $240,000.	$1,200 plus 2.4% of the excess over $140,000.
Over $240,000 but not over $440,000.	$3,600 plus 3.2% of the excess over $240,000.
Over $440,000 but not over $640,000.	$10,000 plus 4% of the excess over $440,000.
Over $640,000 but not over $840,000.	$18,000 plus 4.8% of the excess over $640,000.
Over $840,000 but not over $1,040,000.	$27,600 plus 5.6% of the excess over $840,000.
Over $1,040,000 but not over $1,540,000.	$38,800 plus 6.4% of the excess over $1,040,000.
Over $1,540,000 but not over $2,040,000.	$70,800 plus 7.2% of the excess over $1,540,000.
Over $2,040,000 but not over $2,540,000.	$106,800 plus 8% of the excess over $2,040,000.
Over $2,540,000 but not over $3,040,000.	$146,800 plus 8.8% of the excess over $2,540,000.
Over $3,040,000 but not over $3,540,000.	$190,800 plus 9.6% of the excess over $3,040,000.
Over $3,540,000 but not over $4,040,000.	$238,800 plus 10.4% of the excess over $3,540,000.
Over $4,040,000 but not over $5,040,000.	$290,800 plus 11.2% of the excess over $4,040,000.
Over $5,040,000 but not over $6,040,000.	$402,800 plus 12% of the excess over $5,040,000.
Over $6,040,000 but not over $7,040,000.	$522,800 plus 12.8% of the excess over $6,040,000.
Over $7,040,000 but not over $8,040,000.	$650,800 plus 13.6% of the excess over $7,040,000.
Over $8,040,000 but not over $9,040,000.	$786,800 plus 14.4% of the excess over $8,040,000.
Over $9,040,000 but not over $10,040,000.	$930,800 plus 15.2% of the excess over $9,040,000.
Over $10,040,000	$1,082,800 plus 16% of the excess over $10,040,000.

(c) Period of limitations on credit.

The credit allowed by this section shall include only such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213 (a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

(3) If a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, then within such 4-year period or before the expiration of 60 days from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of any part of such claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, whichever is later.

Refund based on the credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(d) Basic estate tax.

The basic estate tax and the estate tax imposed by the Revenue Act of 1926 shall be 125 percent of the amount determined to be the maximum credit provided by subsection (b). The additional estate tax shall be the difference between the tax imposed by section 2001 or 2101 and the basic estate tax.

(e) Limitation in cases involving deduction under section 2053 (d).

In any case where a deduction is allowed under section 2053 (d) for an estate, succession, legacy, or inheritance tax imposed by a State or Territory or the District of Columbia upon a transfer for public, charitable, or religious uses described in section 2055 or 2106(a)(2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which such deduction is allowed under section 2053(d).

(2) The credit shall not exceed the lesser of—

(A) the amount stated in subsection (b) on a taxable estate determined by allowing such deduction authorized by section 2053 (d), or

(B) that proportion of the amount stated in subsection (b) on a taxable estate determined without regard to such deduction authorized by section 2053(d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Feb. 20, 1956, ch. 63, § 3, 70 Stat. 24; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 65(a), 102(c)(1), 72 Stat. 1657, 1674; Aug. 21, 1959, Pub. L. 86–175, § 3, 73 Stat. 397.)

AMENDMENTS

1959—Subsec. (e). Pub. L. 86–175 substituted "imposed by a State or Territory or the District of Columbia upon a transfer" for "imposed upon a transfer" in the introduction, "such deduction" for "a deduction" in par. (1) and "such deduction" for "the deduction" in two instances in par. (2).

1958—Subsec. (a). Pub. L. 85–866, § 102(c)(1), eliminated "or any possession of the United States," following "District of Columbia,".

Subsec. (c)(3). Pub. L. 85–866, § 65(a), added subsec. (c)(3).

1956—Subsec. (e). Act Feb. 20, 1956, added subsec. (e).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–175 applicable with respect to estates of decedents dying on or after July 1, 1955, see section 4 of Pub. L. 86–175, set out as a note under section 2053 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 102 (d) of Pub. L. 85–866 provided that: "The amendments made by this section (other than by subsection (b)) [which added section 2208 of this title and amended subsec. (a) of this section, and sections 2104 (f) and 2053 (d) (1) of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Sept. 2, 1958]. The amendment made by subsection (b) [to section 2501 (b) (c) of this title] shall apply to gifts made after the date of the enactment of this Act [Sept. 2, 1958]."

Section 65 (c) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [adding subsecs. (c) (3) of this section] shall apply with respect to estates of decedents dying after August 16, 1954. The amendment made by subsection (b) [adding subsecs. (c) (3) of this section] shall apply with respect to estates of decedents dying after February 10, 1939, and on or before August 16, 1954."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act Feb. 20, 1956, applicable to the estates of all decedents dying after Dec. 31, 1953, see section 4 of act Feb. 20, 1956, set out as a note under section 2053 of this title.

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2102 of this title.

Limitations, see section 6511 of this title.

Members of Armed Forces dying during induction period, see section 2201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2012, 2013, 2014, 2015, 2016, 2102, 2201 of this title.

§ 2012. Credit for gift tax.

(a) In general.

If a tax on a gift has been paid under chapter 12 (sec. 2501 and following), or under corresponding provisions of prior laws, and thereafter on the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for purposes of this chapter, then there shall be credited against the tax imposed by section 2001 the amount of the tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credit for State death taxes provided by section 2011) as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate bears to the value of the entire gross estate reduced by the aggregate amount of the charitable and marital deductions allowed under sections 2055, 2056, and 2106 (a) (2).

(b) [Valuation reductions.][1]

In applying, with respect to any gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(1) by such amount as will properly reflect the amount of such gift which was excluded in determining (for purposes of section 2503 (a)), or of corresponding provisions of prior laws, the total amount of gifts made during the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made;

(2) if a deduction with respect to such gift is allowed under section 2056 (a) (relating to marital deduction)—then by an amount which bears the same ratio to such value (reduced as provided in paragraph (1) of this subsection) as the aggregate amount of the marital deductions allowed under section 2056 (a) bears to the aggregate amount of such marital deductions computed without regard to subsection (c) thereof; and

(3) if a deduction with respect to such gift is allowed under sections 2055 or 2106 (a) (2) (relating to charitable deduction)—then by the amount of such value, reduced as provided in paragraph (1) of this subsection.

(c) [Gift by spouse to third party.][1]

Where the decedent was the donor of the gift but, under the provisions of section 2513, or corresponding provisions of prior laws, the gift was considered as made one-half by his spouse—

(1) the term "the amount of the tax paid on a gift under chapter 12", as used in subsection (a), includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subsection (d); and

(2) in applying, with respect to such gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in paragraph (1) of subsection (b).

(d) [Amount of gift tax.][1]

(1) For purposes of subsection (a), the amount of tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made as the amount of such gift bears to the total

[1] Subsection catchline supplied by Editor.

amount of taxable gifts (computed without deduction of the specific exemption) for such quarter or year.

(2) For purposes of paragraph (1), the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purposes of section 2503 (a), or of corresponding provisions of prior laws) the total amount of gifts made during such quarter or year, reduced by the amount of any deduction allowed with respect to such gift under section 2522, or under corresponding provisions of prior laws (relating to charitable deductions), or under section 2523 (relating to marital deduction).

(Aug. 16, 1954, ch. 736, 68A Stat. 375; Dec. 18, 1970, Pub. L. 91-614, title I, § 102(d)(2), 84 Stat. 1841.)

AMENDMENTS

1970—Subsec. (b)(1). Pub. L. 91-614, § 102(d)(2)(A), substituted "the calendar quarter (or calendar year if the gift was made before January 1, 1971)" for "the year".

Subsec. (d). Pub. L. 91-614, § 102(d)(2)(B), substituted "such quarter or year" for "such year" in two places.

Subsec. (d)(1). Pub. L. 91-614, § 102(d)(2)(A), substituted "the calendar quarter (or calendar year if the gift was made before January 1, 1971)" for "the year".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2013, 2014, 2102 of this title.

§ 2013. Credit for tax on prior transfers.

(a) General rule.

The tax imposed by section 2001 shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a "transferor") who died within 10 years before, or within 2 years after, the decedent's death. If the transferor died within 2 years of the death of the decedent, the credit shall be the amount determined under subsections (b) and (c). If the transferor predeceased the decedent by more than 2 years, the credit shall be the following percentage of the amount so determined—

(1) 80 percent, if within the third or fourth years preceding the decedent's death;

(2) 60 percent, if within the fifth or sixth years preceding the decedent's death;

(3) 40 percent, if within the seventh or eighth years preceding the decedent's death; and

(4) 20 percent, if within the ninth or tenth years preceding the decedent's death.

(b) Computation of credit.

Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the taxable estate of the transferor (determined for purposes of the estate tax) decreased by any death taxes paid with respect to such estate and increased by the exemption provided for by section 2052 or section 2106 (a) (3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate tax. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under section 2012, or corresponding provisions of prior laws, on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within 10 years before the death of the decedent.

(c) Limitation on credit.

(1) In general.

The credit provided in this section shall not exceed the amount by which—

(A) the estate tax imposed by section 2001 or section 2101 (after deducting the credits for State death taxes, gift tax, and foreign death taxes provided for in sections 2011, 2012, and 2014) computed without regard to this section, exceeds

(B) such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 2055 or section 2106 (a) (2) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under sections 2053 and 2054, or section 2106 (a) (1) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

(2) Two or more transferors.

If the credit provided in this section relates to property received from 2 or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

(d) Valuation of property transferred.

The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

(1) there shall be taken into account the effect of the tax imposed by section 2001 or 2101, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

(2) where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

(3) if the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 2056 (relating to marital deductions), or the corresponding provision of prior law, as a deduction from the gross estate of the transferor.

(e) Property defined.

For purposes of this section, the term "property" includes any beneficial interest in property, including a general power of appointment (as defined in section 2041). (Aug. 16, 1954, ch. 736, 68A Stat. 377.)

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1022, 2102 of this title.

§ 2014. Credit for foreign death taxes.

(a) In general.

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The determination of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States.

(b) Limitations on credit.

The credit provided in this section with respect to such taxes paid to any foreign country—

(1) shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

(A) situated within such foreign country,

(B) subjected to such tax, and

(C) included in the gross estate.

bears to the value of all property subjected to such tax; and

(2) shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credits provided by sections 2011 and 2012) as the value of property which is—

(A) situated within such foreign country,

(B) subjected to the taxes of such foreign country, and

(C) included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under sections 2055 and 2056.

(c) Valuation of property.

(1) The values referred to in the ratio stated in subsection (b) (1) are the values determined for purposes of the tax imposed by such foreign country.

(2) The values referred to in the ratio stated in subsection (b) (2) are the values determined under this chapter; but, in applying such ratio, the value of any property described in subparagraphs (A), (B), and (C) thereof shall be reduced by such amount as will properly reflect, in accordance with regulations prescribed by the Secretary or his delegate, the deductions allowed in respect of such property under sections 2055 and 2056 (relating to charitable and marital deductions).

(d) Proof of credit.

The credit provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary or his delegate—

(1) the amount of taxes actually paid to the foreign country,

(2) the amount and date of each payment thereof,

(3) the description and value of the property in respect of which such taxes are imposed, and

(4) all other information necessary for the verification and computation of the credit.

(e) Period of limitation.

The credit provided in this section shall be allowed only for such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213 (a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

Refund based on such credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(f) Additional limitation in cases involving a deduction under section 2053(d).

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country upon a transfer by the decedent for public, charitable, or religious uses described in section 2055, the property described in subparagraphs (A), (B), and (C) of paragraphs (1) and (2) of subsection (b) of this section shall not include any property in respect of which such deduction is allowed under section 2053(d).

(g) Possession of United States deemed a foreign country.

For purposes of the credits authorized by this section, each possession of the United States shall be deemed to be a foreign country.

(h) Similar credit required for certain alien residents.

Whenever the President finds that—

(1) a foreign country, in imposing estate, inheritance, legacy, or succession taxes, does not allow to citizens of the United States resident in such foreign country at the time of death a credit similar to the credit allowed under subsection (a),

(2) such foreign country, when requested by the United States to do so has not acted to provide such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death, and

(3) it is in the public interest to allow the credit under subsection (a) in the case of citizens or subjects of such foreign country only if it allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death,

the President shall proclaim that, in the case of citizens or subjects of such foreign country dying while the proclamation remains in effect, the credit under subsection (a) shall be allowed only if such foreign country allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death. (Aug. 16, 1954, ch. 736, 68A Stat. 378; Sept. 2, 1958, Pub. L. 85–866, title I, § 102(c)(2), 72 Stat. 1674; Aug. 21, 1959, Pub. L. 86–175, § 2, 73 Stat. 397; Nov. 13, 1966, Pub. L. 89–809, title I, § 106(b)(3), 80 Stat. 1570.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–809 struck out provision that, if the decedent at the time of his death was not a citizen of the United States, credit would not be allowed under this section unless the foreign country of which the decedent was a citizen or subject, in imposing estate, inheritance, legacy, or succession taxes, allows a similar credit in the case of a citizen of the United States resident in such country.

Subsec. (h). Pub. L. 89–809 added subsec. (h).

1959—Subsec. (f). Pub. L. 86–175 added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g). Pub. L. 86–175 redesignated former subsec. (f) as (g).

1958—Subsec. (f). Pub. L. 85–866 added subsec. (f).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by section 106(b)(3) of Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 106(b)(4) of Pub. L. 89–809, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–175 applicable with respect to estates of decedents dying on or after July 1, 1955, see section 4 of Pub. L. 86–175, set out as a note under section 2053 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Subsec. (f) applicable to estates of decedents dying after Sept. 2, 1958, see section 102 (d) of Pub. L. 85–866, set out as a note under section 2011 of this title.

CROSS REFERENCES

Limitation on credit or refund, see section 6511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2013, 2015, 2016 of this title.

§ 2015. Credit for death taxes on remainders.

Where an election is made under section 6163 (a) to postpone payment of the tax imposed by section 2001, or 2101, such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 2011 or 2014, as is attributable to a reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of the credit contained in such sections, if such part is paid, and credit therefor claimed, at any time before the expiration of the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163. (Aug. 16, 1954, ch. 736, 68A Stat. 379; Sept. 2, 1958, Pub. L. 85–866, title I, § 66(a)(1), 72 Stat. 1657.)

AMENDMENTS

1958—Pub. L. 85–866 substituted "the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163" for "60 days after the termination of the precedent interest or interests in the property".

EFFECTIVE DATE OF 1958 AMENDMENT

Section 66 (a) (3) of Pub. L. 85–866 provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 927 of I. R. C. 1939] shall apply in the case of any reversionary or remainder interest in property only if the precedent interest or interests in the property did not terminate before the beginning of the 60-day period which ends on the date of the enactment of this Act [Sept. 2, 1958]."

CROSS REFERENCES

Limitation on credit or refund, see section 6511 of this title.

§ 2016. Recovery of taxes claimed as credit.

If any tax claimed as a credit under section 2011 or 2014 is recovered from any foreign country, any State, any Territory or possession of the United States, or the District of Columbia, the executor, or any other person or persons recovering such amount, shall give notice of such recovery to the Secretary or his delegate at such time and in such manner as may be required by regulations prescribed by him, and the Secretary or his delegate shall (despite the provisions of section 6501) redetermine the amount of the tax under this chapter and the amount, if any, of the tax due on such redetermination, shall be paid by the executor or such person or persons, as the case may be, on notice and demand. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary or his delegate, resulting from a refund to the executor of tax claimed as a credit under section 2014, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country on such refund. (Aug. 16, 1954, ch. 736, 68A Stat. 380.)

CROSS REFERENCES

Limitations on assessment and collection, see section 6501 of this title.

PART III.—GROSS ESTATE

Sec.
2031. Definition of gross estate.
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2037. Transfers taking effect at death.
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§ 2031. Definition of gross estate.

(a) General.

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities.

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange. (Aug. 16, 1954, ch. 736, 68A Stat. 380; Oct. 16, 1962, Pub. L. 87–834, § 18(a)(1), 76 Stat. 1052.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–834 eliminated provisions which excepted real property situated outside the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 18(b) of Pub. L. 87–834 provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section and sections 2033, 2034, 2035, 2036, 2037, 2038, 2040 and 2041 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 16, 1962].

"(2) In the case of a decedent dying after the date of the enactment of this Act [Oct. 16, 1962] and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent—

"(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;

"(B) under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

"(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest."

CROSS REFERENCES

Gross estate of nonresidents not citizens, see section 2103 of this title.

Taxable estate of nonresidents not citizens, see section 2106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2103, 2106 of this title.

§ 2032. Alternate valuation.

(a) General.

The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) Special rules.

No deduction under this chapter of any item shall be allowed if allowance for such items is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) for purposes of the charitable deduction under section 2055 or 2106 (a) (2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date 6 months after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof).

(c) Time of election.

The election provided for in this section shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return. (Aug. 16, 1954, ch. 736, 68A Stat. 381; Dec. 31, 1970, Pub. L. 91–614, title I, § 101(a), 84 Stat. 1836.)

AMENDMENTS

1970—Pub. L. 91-614 substituted "6 months" for "1 year" in four places and substituted "6-month" for "1-year".

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(j) of Pub. L. 91-614 provided that: "The amendments made by this section [enacting section 6905 of this title, amending this section and sections 1223, 2055, 2204, 6040, 6075, 6091, 6161, 6314, 6324 and 6504 of this title, and enacting provisions set out as notes under this section and sections 2204 and 6905 of this title] (other than subsection (f)) [amending sections 2204 and 6905 of this title] shall apply with respect to decedents dying after December 31, 1970."

SHORT TITLE

Section 1 of Pub. L. 91-614 provided that: "This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of Title 31, Money and Finance, amending this section and sections 56, 1015, 1223, 2012, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212 6214 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under this section and sections 56, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the 'Excise, Estate, and Gift Tax Adjustment Act of 1970'."

CROSS REFERENCES

Basis of property acquired from a decedent, see section 1014 of this title.

Taxable estate of nonresident not citizen, see section 2106 of this title.

Transfers for public, charitable, and religious uses, see section 2055 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 1022 of this title.

§ 2033. Property in which the decedent had an interest.

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death. (Aug. 16, 1954, ch. 736, 68A Stat. 381; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(A), 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

§ 2034. Dower or curtesy interests.

The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy. (Aug. 16, 1954, ch. 736, 68A Stat. 381; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(B), 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2044, 6324 of this title.

§ 2035. Transactions in contemplation of death.

(a) General rule.

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of his death.

(b) Application of general rule.

If the decedent within a period of 3 years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a general power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section and sections 2038 and 2041 (relating to revocable transfers and powers of appointment); but no such transfer, relinquishment, exercise, or release made before such 3-year period shall be treated as having been made in contemplation of death. (Aug. 16, 1954, ch. 736, 68A Stat. 381; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(C), 76 Stat. 1052.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2041, 2043, 2044, 2104, 2107, 6324 of this title.

§ 2036. Transfers with retained life estate.

(a) General rule.

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Limitation on application of general rule.

This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after

March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516). (Aug. 16, 1954, ch. 736, 68A Stat. 382; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(D), 76 Stat. 1052.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2041, 2043, 2044, 2104, 2107, 6324 of this title.

§ 2037. Transfers taking effect at death.

(a) General rule.

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

(b) Special rules.

For purposes of this section, the term "reversionary interest" includes a possibility that property transferred by the decedent—

(1) may return to him or his estate, or

(2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary or his delegate. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death. (Aug. 16, 1954, ch. 736, 68A Stat. 382; Oct. 16, 1962, Pub. L. 87-834, § 834, § 18(a)(2)(E), 76 Stat. 1052.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2041, 2043, 2044, 2104, 2107, 6324 of this title.

§ 2038. Revocable transfers.

(a) In general.

The value of the gross estate shall include the value of all property.

(1) Transfers after June 22, 1936.

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

(2) Transfers on or before June 22, 1936.

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

(b) Date of existence of power.

For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination takes effect

only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(c) Effect of disability in certain cases.

For purposes of this section, in the case of a decedent who was (for a continuous period beginning not less than 3 months before December 31, 1947, and ending with his death) under a mental disability to relinquish a power, the term "power" shall not include a power the relinquishment of which on or after January 1, 1940, and on or before December 31, 1947, would, by reason of section 1000(e) of the Internal Revenue Code of 1939, be deemed not to be a transfer of property for purposes of chapter 4 of the Internal Revenue Code of 1939. (Aug. 16, 1954, ch. 736, 68A Stat. 383; Aug. 7, 1959, Pub. L. 86-141, § 1, 73 Stat. 288; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(F), 76 Stat. 1052.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

1959—Subsec. (c). Pub. L. 86-141 added subsec. (c).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86-141 provided that: "The amendment made by the first section of this Act [adding subsec. (c) of this section] shall apply only with respect to estates of decedents dying after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by the first section of this Act with respect to any payment made before the date of the enactment of this Act [Aug. 7, 1959]."

CROSS REFERENCES

Estates of nonresidents not citizens, see section 2104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2035, 2038, 2043, 2044, 2104, 2107, 6324 of this title.

§ 2039. Annuities.

(a) General.

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) Amount includible.

Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(c) Exemption of annuities under certain trusts and plans.

Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by any beneficiary (other than the executor) under—

(1) an employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401 (a);

(2) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(3) a retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust), and which is exempt from tax under section 501; or

(4) chapter 73 of title 10 of the United States Code.

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2), under a contract described in paragraph (3), or under chapter 73 of title 10 of the United States Code are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b), not be considered to be contributed by the decedent. This subsection shall apply to all decedents dying after December 31, 1953. For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of

section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent. For purposes of this subsection, amounts payable under chapter 73 of title 10 of the United States Code are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of such title 10. (Aug. 16, 1954, ch. 736, 68A Stat. 384; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 23 (e), 67(a), 72 Stat. 1622, 1658; Oct. 10, 1962, Pub. L. 87–792, § 7(i), 76 Stat. 830; Mar. 8, 1966, Pub. L. 89–365, § 2(a), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(23), 83 Stat. 528.)

AMENDMENTS

1969—Subsec. (c)(3). Pub. L. 91–172 substituted "section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust)," for "section 503(b)(1), (2), or (3),".

1966—Subsec. (c). Pub. L. 89–365 added par. (4), inserted reference to chapter 73 of Title 10 of the United States Code in the enumeration of the plans and contracts set out in the prohibition against allowance of exclusion for that part of the value of the amount payable under the plan or contract in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions made, and provided that, for purposes of this section, amounts payable under chapter 73 of Title 10 are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of Title 10.

1962—Subsec. (c). Pub. L. 87–792 substituted "was a plan described in section 403(a)" for "met the requirements of section 401(a) (3), (4), (5), and (6)" in par. (2), and inserted sentence providing, for purposes of this subsection, that contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent.

1958—Subsec. (c)(2). Pub. L. 85–866, § 67(a), inserted "(4), (5), and (6)" following "section 401(a)(3)".

Subsec. (c). Pub. L. 85–866, § 23(e), added par. (3), inserted "or under contract described in paragraph (3)" in second sentence, and substituted "paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b)," for "this subsection shall" in third sentence.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2(c) of Pub. L. 89–365 provided that: "The amendments made by subsection (a) [amending subsec. (c) of this section] shall apply with respect to decedents dying after December 31, 1965. The amendments made by subsection (b) [amending section 2517 of this title] shall apply with respect to calendar years after 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 67 (b) of Pub. L. 85–866 provided that: "The amendment made by subsection (a) [to subsec. (c) (2) of this section] shall apply with respect to estates of decedents dying after December 31, 1953."

Amendment of subsec. (c) of this section by Pub. L. 85–866, § 23(e), applicable with respect to estates of decedents dying after Dec. 31, 1957, see section 23(g) of Pub. L. 85–866, set out as a note under section 403 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 406, 407, 2044, 6324 of this title.

§ 2040. Joint interests.

The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants. (Aug. 16, 1954, ch. 736, 68A Stat. 385; Oct. 16, 1962, Pub. L. 87–834, § 18(a)(2)(G), 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87–834 eliminated provisions which excepted real property outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2044, 6324 of this title.

§ 2041. Powers of appointment.

(a) In general.

The value of the gross estate shall include the value of all property.

(1) Powers of appointment created on or before October 21, 1942.

To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by

the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

(2) Powers created after October 21, 1942.

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Creation of another power in certain cases.

To the extent of any property with respect to which the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) Definitions.

For purposes of subsection (a)—

(1) General power of appointment.

The term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person—

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(2) Lapse of power.

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) $5,000, or

(B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

(3) Date of creation of power.

For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(H), 76 Stat. 1052.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834 eliminated provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable, except as otherwise provided, to the estates of decedents dying after Oct. 16, 1962, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

CROSS REFERENCES

Credit for tax on prior transfers, see section 2013 of this title.

Liability of recipient of property over which decedent had power of appointment, see section 2207 of this title.

Special liens for estate and gift taxes, see section 6324 of this title.

Taxable estate of nonresidents not citizens, see section 2106 of this title.

Transfers for public, charitable, and religious uses, see section 2055 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2013, 2035, 2037, 2043, 2044, 2055, 2106, 2207, 6324 of this title.

§ 2042. Proceeds of life insurance.

The value of the gross estate shall include the value of all property—

(1) Receivable by the executor.

To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

(2) Receivable by other beneficiaries.

To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary or his delegate. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

(Aug. 16, 1954, ch. 736, 68A Stat. 387.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2044, 6324 of this title.

§ 2043. Transfers for insufficient consideration.

(a) In general.

If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(b) Marital rights not treated as consideration.

For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth." (Aug. 16, 1954, ch. 736, 68A Stat. 388.)

§ 2044. Prior interests.

Except as otherwise specifically provided therein, sections 2034 to 2042, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished. (Aug. 16, 1954, ch. 736, 68A Stat. 388.)

PART IV.—TAXABLE ESTATE

Sec.
2051. Definition of taxable estate.
2052. Exemption.
2053. Expenses, indebtedness, and taxes.
2054. Losses.
2055. Transfers for public, charitable, and religious uses.
2056. Bequests, etc., to surviving spouse.

§ 2051. Definition of taxable estate.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the exemption and deductions provided for in this part. (Aug. 16, 1954, ch. 736, 68A Stat. 388.)

CROSS REFERENCES

Liability of life insurance beneficiaries, see section 2206 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2206 of this title.

§ 2052. Exemption.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an exemption of $60,000. (Aug. 16, 1954, ch. 736, 68A Stat. 389.)

CROSS REFERENCES

Credit for tax on prior transfers, see section 2013 of this title.

Liability of recipient of property over which decedent had power of appointment, see section 2207 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2013, 2106, 2207 of this title.

§ 2053. Expenses, indebtedness, and taxes.

(a) General rule.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts—

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate, and

(4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

(b) Other administration expenses.

Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

(c) Limitations.

(1) Limitations applicable to subsections (a) and (b).

(A) Consideration for claims.

The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

(B) Certain taxes.

Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

(2) Limitations applicable only to subsection (a).

In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

(d) Certain State and foreign death taxes.

(1) General rule.

Notwithstanding the provisions of subsection (c)(1)(B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary or his delegate) of—

(A) Any estate, succession, legacy, or inheritance tax imposed by a State or Territory or the District of Columbia upon a transfer by the decedent for public, charitable, or religious uses described in section 2055 or 2106(a)(2), and

(B) any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055.

The determination under subparagraph (B) of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary or his delegate.

(2) Condition for allowance of deduction.

No deduction shall be allowed under paragraph (1) for a State death tax or a foreign death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal

estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

(3) Effect on credits for State and foreign death taxes of deduction under this subsection.

(A) Election.

An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

(B) Cross references.

See section 2011(e) for the effect of a deduction taken under this subsection on the credit for State death taxes, and see section 2014(f) for the effect of a deduction taken under this subsection on the credit for foreign death taxes.

(e) Marital rights.

For provisions that relinquishment of marital rights shall not be deemed a consideration "in money or money's worth," see section 2043 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 389; Feb. 20, 1956, ch. 63, § 2, 70 Stat. 23; Sept. 2, 1958, Pub. L. 85–866, title I, § 102(c)(3), 72 Stat. 1674; Aug. 21, 1959, Pub. L. 86–175, § 1, 73 Stat. 396.)

AMENDMENTS

1959—Subsec. (d). Pub. L. 86–175 inserted a reference to foreign death taxes in the catchline of the subsection and par. (3) and in the text of par. (2), redesignated provisions of par. (1) as par. (1)(A) and sentence pertaining to exercise of privilege of election, added par. (2) and sentence for determining location of property, redesignated provisions of par. (3) as par. (3)(B) in part, and added par. (3)(A) and the part of (B) relating to foreign death taxes.

1958—Subsec. (d)(1). Pub. L. 85–866 eliminated "or any possession of the United States," following "District of Columbia,".

1956—Subsec. (d). Act Feb. 20, 1956, added subsec. (d) and redesignated former subsec. (d) as subsec. (e).

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4 of Pub. L. 86–175 provided that: "The amendments made by the preceding sections of this Act [to this section and sections 2011 and 2014 of this title] shall apply with respect to the estates of decedents dying on or after July 1, 1955."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d) (1) of this section by Pub. L. 85–866 applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85–866, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 4 of act Feb. 20, 1956, provided that: "The amendments to the Internal Revenue Code of 1954 made by sections 2 and 3 of this Act [to this section and section 2011 (e) of this title], and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953."

CROSS REFERENCES

Computation of adjusted gross estate, see section 2056 (c) (2) (A) of this title.

Credit for tax on prior transfers, see section 2013 of this title.

Income tax, special rules for credits and deductions, see section 642 of this title.

Medical care deductions of decedents for income tax purposes, effect of allowance under this section, see section 213 (d) (2) of this title.

Taxable estate of nonresidents not citizens, see section 2106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213, 303, 642, 2011, 2013, 2014, 2056, 2106 of this title.

§ 2054. Losses.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise. (Aug. 16, 1954, ch. 736, 68A Stat. 390.)

CROSS REFERENCES

Computation of adjusted gross estate, see section 2056 (c) (2) (A) of this title.

Credit for tax on prior transfers, see section 2013 of this title.

Income tax, special rules for credits and deductions, see section 642 of this title.

Taxable estate of nonresidents not citizens, see section 2106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 642, 2013, 2053, 2056, 2106 of this title.

§ 2055. Transfers for public, charitable, and religious uses.

(a) In general.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or other-

wise attempting, to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; or

(4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be an irrevocable disclaimer with the same full force and effect as though he had filed such irrevocable disclaimer.

(b) Powers of appointment.

(1) General rule.

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(2) Special rule for certain bequests subject to power of appointment.

For purposes of this section, in the case of a bequest in trust, if the surviving spouse of the decedent is entitled for life to all of the net income from the trust and such surviving spouse has a power of appointment over the corpus of such trust exercisable by will in favor of, among others, organizations described in subsection (a) (2), such bequest in trust, reduced by the value of the life estate, shall, to the extent such power is exercised in favor of such organizations, be deemed a transfer to such organizations by the decedent if—

(A) no part of the corpus of such trust is distributed to a beneficiary during the life of the surviving spouse;

(B) such surviving spouse was over 80 years of age at the date of the decedent's death;

(C) such surviving spouse by affidavit executed within 6 months after the death of the decedent specifies the organizations described in subsection (a) (2) in favor of which he intends to exercise the power of appointment and indicates the amount or proportion each such organization is to receive; and

(D) the power of appointment is exercised in favor of such organizations and in the amounts or proportions specified in the affidavit required under subparagraph (C).

The affidavit referred to in subparagraph (C) shall be attached to the estate tax return of the decedent and shall constitute a sufficient basis for the allowance of the deduction under this paragraph in the first instance subject to a later disallowance of the deduction if the conditions herein specified are not complied with.

(c) Death taxes payable out of bequests.

If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(d) Limitation on deduction.

The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(e) Disallowance of deductions in certain cases.

(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than a remainder interest in a personal residence or farm or an undivided portion of the decedent's entire interest in property) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(f) Other cross references.

(1) For option as to time for valuation for purpose of deduction under this section, see section 2032.

(2) For exemption of bequests to or for benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (56 Stat. 765; 2 U. S. C. 161).

(3) For construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(4) For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U. S. C. 419b).

(5) For exemption of bequests to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U. S. C. 19c).

(6) For construction of devises or bequests accepted by the Secretary of State under the Foreign Service Act of 1946 as devises or bequests to or for the use of the United States, see section 1021 (e) of that Act (60 Stat. 1032; 22 U. S. C. 809).

(7) For construction of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 2 of the Act of May 15, 1952, 66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479 (31 U. S. C. 725s–4).

(8) For payment of tax on bequests of United States obligations to the United States, see section 24 of the Second Liberty Bond Act, as amended (59 Stat. 48, § 4; 31 U. S. C. 757e).

(9) For construction of bequests for benefit of or use in connection with the Naval Academy as bequests to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(10) For exemption of bequests for benefit of Naval Academy Museum, see section 4 of the Act of March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119).

(11) For exemption of bequests received by National Archives Trust Fund Board, see section 7 of the National Archives Trust Fund Board Act (55 Stat. 582; 44 U. S. C. 300gg).

(Aug. 16, 1954, ch. 736, 68A Stat. 390; Aug. 6, 1956, ch. 1020, § 1, 70 Stat. 1075; Sept. 2, 1958, Pub. L. 85-866, title I, § 30(d), 72 Stat. 1631; Dec. 30, 1969, Pub. L. 91-172, title II, § 201(d)(1), (4)(A), 83 Stat. 560, 561; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(c), 84 Stat. 1836.)

REFERENCES IN TEXT

Section 2 of act August 8, 1946 (60 Stat. 924; 5 U.S.C. 393), referred to in par. (3) of subsec. (f), was repealed by Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 708. See section 2101 of Title 39, The Postal Service.

Section 2 of act March 4, 1937 (50 Stat. 25; 5 U.S.C. 419b), referred to in par. (4) of subsec. (f), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. See section 7222 of Title 10, Armed Forces.

Section 3 of act March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b), referred to in par. (9) of subsec. (f), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741. See section 6973 of Title 10, Armed Forces.

Section 4 of act March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119), referred to in par. (10) of subsec. (f), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741. See section 6974 of Title 10, Armed Forces.

AMENDMENTS

1970—Subsec. (b)(2)(C). Pub. L. 91-614 substituted "6 months" for "one year".

1969—Subsec. (a)(2). Pub. L. 91-172, § 201(d)(4)(A)(i), added non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(3). Pub. L. 91-172, § 201(d)(4)(A)(ii), added non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (e). Pub. L. 91-172, § 201(d)(1), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1958—Subsec. (e). Pub. L. 85-866 substituted "503" for "504".

1956—Subsec. (b). Act Aug. 6, 1956, designated original paragraph as "(1) General rule." and added par. (2).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(2), (3) of this section by section 201(d)(4)(A) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment of subsec. (e) by section 201(d)(1) of Pub. L. 91-172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act Aug. 6, 1956, provided that: "The amendments made by this Act [to subsec. (b) of this section and section 6503 (e, f) of this title] shall apply in the case of decedents dying after August 16, 1954."

CROSS REFERENCES

Alternate valuation of gross estate, see section 2032 of this title.

Credit for taxes, see sections 2012, 2013, 2014 of this title.

Disallowance of deductions, income tax, see sections 503, 681 of this title.

Gifts and bequests accepted by Secretary of Commerce under Bureau of Standards Act as gifts and bequests to United States, see section 278a of Title 15, Commerce and Trade.

Suspension of running of period of limitations, see section 6503 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 2012, 2013, 2014, 2032, 2053, 2106, 4947, 4948, 6503 of this title.

§ 2056. Bequests, etc., to surviving spouse.

(a) Allowance of marital deduction.

For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsections (b), (c), and (d), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) Limitation in the case of life estate or other terminable interest.

(1) General rule.

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest—

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))—

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(2) Interest in unidentified assets.

Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(3) Interest of spouse conditional on survival for limited period.

For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if—

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

(4) Valuation of interest passing to surviving spouse.

In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(5) Life estate with power of appointment in surviving spouse.

In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1) (A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(6) Life insurance or annuity payments with power of appointment in surviving spouse.

In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse—

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of such amounts shall, for purposes of paragraph (1) (A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(c) Limitation on aggregate of deductions.

(1) General rule.

The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed 50 percent of the value of the adjusted gross estate, as defined in paragraph (2).

(2) Computation of adjusted gross estate.

(A) General rule.

Except as provided in subparagraph (B) of this paragraph, the adjusted gross estate shall, for purposes of subsection (c) (1), be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by sections 2053 and 2054.

(B) Special rule in cases involving community property.

If the decedent and his surviving spouse at any time, held property as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, then the adjusted gross estate shall, for purposes of subsection (c) (1), be determined by subtracting from the entire value of the gross estate the sum of—

(i) the value of property which is at the time of the death of the decedent held as such community property; and

(ii) the value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

(iii) the amount receivable as insurance under policies on the life of the decedent, to the extent purchased with premiums or other consideration paid out of property held as such community property; and

(iv) an amount which bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054 which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For purposes of clauses (i), (ii), and (iii), community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not "held as such community property" as of any moment of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of his gross estate without regard to the provisions of section 402 (b) of the Revenue Act of 1942. The amount to be subtracted under clauses (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

(C) Community property—conversion into separate property.

(i) After December 31, 1941.

If after December 31, 1941, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of coownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as "held as such community property."

(ii) Limitation.

Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent.

(d) Disclaimers.

(1) By surviving spouse.

If under this section an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this section, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.

(2) By any other person.

If under this section an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then—

(A) if the disclaimer of such interest is made by such person before the date prescribed for the filing of the estate tax return and if such person does not accept such interest before making the disclaimer, such interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse, and

(B) if subparagraph (A) does not apply, such interest shall, for purposes of this section, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

(e) Definition.

For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if—

(1) such interest is bequeathed or devised to such person by the decedent;

(2) such interest is inherited by such person from the decedent;

(3) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;

(4) such interest has been transferred to such person by the decedent at any time;

(5) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;

(6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or

(7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b) (1), be considered as passing from the

decedent to a person other than the surviving spouse. (Aug. 16, 1954, ch. 736, 68A Stat. 392; Oct. 4, 1966, Pub. L. 89-621, § 1(a), 80 Stat. 872.)

AMENDMENTS

1966—Subsec. (d)(2). Pub. L. 89-621 provided that if the disclaimer is made by the person before the date prescribed for the filing of the estate tax return and if the person does not accept the interest before making the disclaimer, the interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 1(b) of Pub. L. 89-621 provided that: "The amendment made by subsection (a) [amending subsec. (d)(2) of this section] shall apply with respect to estates of decedents dying on or after the date of the enactment of this Act [Oct. 4, 1966]."

DISCLAIMER OF INTEREST ARISING FROM ESTATES OF PERSONS DYING BEFORE OCT. 4, 1966, HAVING ESTATE TAX RETURN FILING DATE ON OR AFTER JAN. 1, 1965.

Section 1(c) of Pub. 89-621 provided that:

"In the case of the estate of a decedent dying before the date of the enactment of this Act [Oct. 4, 1966] for which the date prescribed for the filing of the estate tax return (determined without regard to any extension of time for filing) occurs on or after January 1, 1965, if, under section 2056 of the Internal Revenue Code of 1954 [this section], an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for purposes of such section, be considered as passing from the decedent to the surviving spouse, if—

"(1) the interest disclaimed was bequeathed or devised to such person,

"(2) before the date prescribed for the filing of the estate tax return such person disclaimed all bequests and devices under such will, and

"(3) such person did not accept any property under any such bequest or devise before making the disclaimer.

The amount of the deductions allowable under section 2056 of such Code [this section] by reason of this subsection, when added to the amount of the deductions allowable under such section without regard to this subsection, shall not exceed the greater of (A) the amount of the deductions which would be allowable under such section without regard to the disclaimer if the surviving spouse elected to take against the will, or (B) an amount equal to one-third of the adjusted gross estate (within the meaning of subsection (c)(2) of such section [subsec. (c)(2) of this section])."

CROSS REFERENCES

Alternate valuation, see section 2032 of this title.

Credits against tax, see sections 2012, 2013, 2014 of this title.

Liability of life insurance beneficiaries, see section 2206 of this title.

Liability of recipient of property over which decedent had power of appointment, see section 2207 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2012, 2013, 1014, 2032, 2206, 2207 of this title.

Subchapter B.—Estates of Nonresidents Not Citizens

Sec.
2101. Tax imposed.
2102. Credits against tax.
2103. Definition of gross estate.
2104. Property within the United States.
2105. Property without the United States.
2106. Taxable estate.
2107. Expatriation to avoid tax.
2108. Application of pre-1967 estate tax provisions.

AMENDMENTS

1966—Pub. L. 89-809, title I, § 108(h), Nov. 13, 1966, 80 Stat. 1574, added items 2107 and 2108.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2014, 2053 of this title; title 42 section 418.

§ 2101. Tax imposed.

(a) Rate of tax.

Except as provided in section 2107, a tax computed in accordance with the following table is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States:

If the taxable estate is:	The tax shall be:
Not over $100,000	5% of the taxable estate.
Over $100,000 but not over $500,000.	$5,000, plus 10% of excess over $100,000.
Over $500,000 but not over $1,000,000.	$45,000, plus 15% of excess over $500,000.
Over $1,000,000 but not over $2,000,000.	$120,000, plus 20% of excess over $1,000,000.
Over $2,000,000	$320,000, plus 25% of excess over $2,000,000.

(b) Property held by Alien Property Custodian.

For taxes in connection with property or interests transferred to or vested in the Alien Property Custodian, see section 36 of the Trading with the Enemy Act, as added by the act of August 8, 1946 (60 Stat. 929; 50 U. S. C. App. 36.)

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Nov. 13, 1966, Pub. L. 89-809, title I, § 108(a), 80 Stat. 1571.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809 substituted the table to be used in computing the tax imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States for provisions sending the taxpayer to the table in section 2001 for the computation of the tax imposed.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 108(i) of Pub. L. 89-809 provided that: "The amendments made by this section [amending subsec. (a) of this section and sections 2102, 2104, 2105, 2106, and 6018 of this title and adding sections 2107 and 2108 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Nov. 13, 1966]."

CROSS REFERENCES

Credits against tax, see sections 2011, 2013—2015 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1022, 2011, 2013, 2015, 2102, 2103, 2105, 2106, 2108 of this title.

§ 2102. Credits against tax.

(a) In general.

The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2011 to 2013, inclusive (relating to State death taxes, gift tax, and tax on prior transfers), subject to the special limitation provided in subsection (b).

(b) Special limitation.

The maximum credit allowed under section 2011 against the tax imposed by section 2101 for State death taxes paid shall be an amount which bears the same ratio to the credit computed as provided in section 2011(b) as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included

in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this subsection, the term "State death taxes" means the taxes described in section 2011(a). (Aug. 16, 1954, ch. 736, 68A Stat. 397; Nov. 13, 1966, Pub. L. 89-809, title I, § 108(b), 80 Stat. 1572.)

AMENDMENTS

1966—Pub. L. 89-809 redesignated existing provisions as subsec. (a), inserted therein reference to the special limitation provided in subsec. (b), and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1022, 2107, 2108 of this title.

§ 2103. Definition of gross estate.

For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2031) which at the time of his death is situated in the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 397.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2102, 2106, 2107 of this title.

§ 2104. Property within the United States.

(a) Stock in corporation.

For purposes of this subchapter shares of stock owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

(b) Revocable transfers and transfers in contemplation of death.

For purposes of this subchapter, any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or at the time of the decedent's death.

(c) Debt obligations.

For purposes of this subchapter, debt obligations of—

(1) a United States person, or

(2) the United States, a State or any political subdivision thereof, or the District of Columbia,

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. With respect to estates of decedents dying after December 31, 1969, deposits with a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies or to a debt obligation of a domestic corporation if any interest on such obligation, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(B) as income from sources without the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 397; Nov. 13, 1966, Pub. L. 89-809, title I, § 108(c), 80 Stat. 1572; Dec. 30, 1969, Pub. L. 91-172, title IV, § 435(b), 83 Stat. 625.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-172 substituted "December 31, 1969" for "December 31, 1972" in provisions deeming deposit with a domestic branch of a foreign corporation if such branch is engaged in the commercial banking business to be property within the United States.

1966—Subsec. (c). Pub. L. 89-809 added subsec. (c).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

§ 2105. Property without the United States.

(a) Proceeds of life insurance.

For purposes of this subchapter, the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.

(b) Certain bank deposits, etc.

For purposes of this subchapter—

(1) amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and

(2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business,

shall not be deemed property within the United States.

(c) Works of art on loan for exhibition.

For purposes of this subchapter, works of art owned by a nonresident not a citizen of the United States shall not be deemed property within the United States if such works of art are—

(1) imported into the United States solely for exhibition purposes,

(2) loaned for such purposes, to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and

(3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Nov. 13, 1966, Pub. L. 89-809, title I, § 108(d), 80 Stat. 1572.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-809 substituted amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business for moneys deposited with any person carrying on the banking business by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death as the property not to be deemed property within the United States for purposes of this subchapter.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2104 of this title.

§ 2106. Taxable estate.

(a) Definition of taxable estate.

For purposes of the tax imposed by section 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) Expenses, losses, indebtedness, and taxes.

That proportion of the deductions specified in sections 2053 and 2054 (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 2053 in the case of a claim against the estate which was founded on a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (2) if such promise or agreement constituted a bequest.

(2) Transfers for public, charitable, and religious uses.

(A) In general.

The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(i) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(ii) to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; or

(iii) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(B) Powers of appointment.

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this paragraph shall, for purposes of this paragraph, be considered a bequest of such decedent.

(C) Death taxes payable out of bequests.

If the tax imposed by section 2101, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(D) Limitation on deduction.

The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(E) Disallowance of deductions in certain cases.

The provisions of section 2055(e) shall be applied in the determination of the amount allowable as a deduction under this paragraph.

(F) Other cross references.

(1) For option as to time for valuation for purpose of deduction under this paragraph, see section 2032.

(2) For exemption of bequests to or for benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (56 Stat. 765; 2 U. S. C. 161).

(3) For construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(4) For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U. S. C. 419b).

(5) For exemption of bequests to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U. S. C. 19c).

(6) For construction of devises or bequests accepted by the Secretary of State under the Foreign Service Act of 1946 as devises or bequests to or for the use of the United States, see section 1021 (e) of that Act (60 Stat. 1032; 22 U. S. C. 809).

(7) For construction of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 2 of the Act of May 15, 1952, 66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479 (31 U. S. C. 725s–4).

(8) For payment of tax on bequests of United States obligations to the United States, see section 24 of the Second Liberty Bond Act, as amended (59 Stat. 48, § 4; 31 U. S. C. 757e).

(9) For construction of bequests for benefit of or use in connection with the Naval Academy as bequests to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(10) For exemption of bequests for benefit of Naval Academy Museum, see section 4 of the Act of March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119).

(11) For exemption of bequests received by National Archives Trust Fund Board, see section 7 of the National Archives Trust Fund Board Act (55 Stat. 582; 44 U. S. C. 300gg).

(3) Exemption.

(A) General rule.

An exemption of $30,000.

(B) Residents of possessions of the United States.

In the case of a decedent who is considered to be a "nonresident not a citizen of the United States" under the provisions of section 2209, the exemption shall be the greater of (i) $30,000, or (ii) that proportion of the exemption authorized by section 2052 which the value of that part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

(b) Condition of allowance of deductions.

No deduction shall be allowed under paragraphs (1) and (2) of subsection (a) in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 6018 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(c) United States bonds.

For purposes of section 2103, the value of the gross estate (determined as provided in section 2031) of a decedent who was not engaged in business in the United States at the time of his death—

(1) shall not include obligations issued by the United States before March 1, 1941; and

(2) shall include obligations issued by the United States on or after March 1, 1941.

(Aug. 16, 1954, ch. 736, 68A Stat. 398; Sept. 2, 1958, Pub. L. 85–866, title I, § 30(d), 72 Stat. 1631; Sept. 14, 1960, Pub. L. 86–779, § 4(c), 74 Stat. 1000; Nov. 13, 1966, Pub. L. 89–809, title I, § 108(e), 80 Stat. 1572; Dec. 30, 1969, Pub. L. 91–172, title II, § 201(d)(2), (4)(B), 83 Stat. 561.)

REFERENCES IN TEXT

Section 2 of act August 8, 1946 (60 Stat. 924; 5 U.S.C. 393), referred to in par. (3) of subsec. (a)(2)(F), was repealed by Pub. L. 86–682, § 12(c), Sept. 2, 1960, 74 Stat. 708. See section 2101 of Title 39, The Postal Service.

Section 2 of act March 4, 1937 (50 Stat. 25; 5 U.S.C. 419b), referred to in par. (4) of subsec. (a) (2) (F), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. See section 7222 of Title 10, Armed Forces.

Section 5 of act July 10, 1935 (49 Stat. 478; 16 U.S.C. 19c), referred to in par. (5) of subsec. (a)(2)(F), was repealed by Pub. L. 90–209, § 2, Dec. 18, 1967, 81 Stat. 656. See section 19g of Title 16, Conservation.

Section 3 of act March 31, 1944 (58 Stat. 135, 34 U. S. C. 1115b), referred to in par. (9) of subsec. (a) (2) (F), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741. See section 6973 of Title 10, Armed Forces.

Section 4 of act March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119), referred to in par. (10) of subsec. (a) (2) (F), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741. See section 6974 of Title 10, Armed Forces.

Section 7 of National Archives Trust Fund Board Act (55 Stat. 582; 44 U.S.C. 300gg), referred to in par. 11 of subsec. (a)(2)(F), was repealed by Pub. L. 90–620, § 3, Oct. 22, 1968, 82 Stat. 1306. See section 2308 of Title 44, Public Printing and Documents.

AMENDMENTS

1969—Subsec. (a)(2)(A)(ii). Pub. L. 91–172, § 201(d)(4)(B)(i), added non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(2)(A)(iii). Pub. L. 91–172, § 201(d)(4)(B)(ii), added non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(2)(E). Pub. L. 91–172, § 201(d)(2), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1966—Subsec. (a)(3). Pub. L. 89–809 substituted "$30,000" for "$2,000" as the size of the exemption in subpar. (A) and "$30,000" for "$2,000" as item (i) in the formula set out in subpar. (B).

1960—Subsec. (a)(3). Pub. L. 86–779 designated existing provisions as subpar. (A) and added subpar. (B).

1958—Subsec. (a)(2)(E). Pub. L. 85–866 substituted "503" for "504".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(2)(A) of this section by section 201(d)(4)(B) of Pub. L. 91–172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201 (g)(4) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment of subsec. (a)(2)(E) of this section by section 201(d)(2) of Pub. L. 91–172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(e)(2) of Pub. L. 86–779 provided that: "The amendments made by subsections (b) and (c) [adding section 2209 of this title and amending subsec. (a)(3) of this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Sept. 14, 1960]."

CROSS REFERENCES

Alternate valuation, see section 2032 of this title.

Credits against tax, see sections 2012, 2013 of this title.

Income taxes—

Disallowance of certain charitable deductions, see sections 503, 681 of this title.

Distributions in redemption of stock to pay death taxes, see section 303 of this title.

Liability of recipient of property over which decedent had power of appointment, see section 2207 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 508, 2012, 2013, 2032, 2053, 2101, 2107, 2108, 2207, 4947, 4948 of this title.

§ 2107. Expatriation to avoid tax.

(a) Rate of tax.

A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after the date of enactment of this section, if after March 8, 1965, and within the 10-year period ending with the date of death such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

(b) Gross estate.

For purposes of the tax imposed by subsection (a), the value of the gross estate of every decedent to whom subsection (a) applies shall be determined as provided in section 2103, except that—

(1) if such decedent owned (within the meaning of section 958(a)) at the time of his death 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

(2) if such decedent owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of his death, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation,

then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death, shall be included in the gross estate of such decedent. For purposes of the preceding sentence, a decedent shall be treated as owning stock of a foreign corporation at the time of his death if, at the time of a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

(c) Credits.

The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with section 2102.

(d) Exception for loss of citizenship for certain causes.

Subsection (a) shall not apply to the transfer of the estate of a decedent whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401 (b), 1482, or 1487).

(e) Burden of proof.

If the Secretary or his delegate establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction in the estate, inheritance, legacy, and succession taxes in respect of the transfer of his estate, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on the executor of such individual's estate. (Added Pub. L. 89–809, title I, § 108(f), Nov. 13, 1966, 80 Stat. 1573.)

REFERENCES IN TEXT

Sections 301(b), 350, and 355 of the Immigration and Nationality Act, as amended, referred to in subsec. (d), are classified to sections 1401(b), 1482, and 1487 respectively of Title 8, Aliens and Nationality.

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2101 of this title.

§ 2108. Application of pre-1967 estate tax provisions.

(a) Imposition of more burdensome tax by foreign country.

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, a more burdensome tax is imposed by such foreign country on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such tax so that it is no more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with this section to the transfer of estates of decedents who were residents of such foreign country,

the President shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to amendments made to sections 2101 (relating to tax imposed), 2102 (relating to credits against tax), 2106 (relating to taxable estate), and 6018 (relating to estate tax returns) on or after the date of enactment of this section.

(b) Alleviation of more burdensome tax.

Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that the tax on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country is no longer more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, he shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to subsection (a).

(c) Notification of Congress required.

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(d) Implementation by regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary or appropriate to implement this section. (Added Pub. L. 89–809, title I, § 108(f), Nov. 13, 1966, 80 Stat. 1573.)

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

Subchapter C.—Miscellaneous

Sec.
2201. Members of the Armed Forces dying during an induction period.
2202. Missionaries in foreign service.
2203. Definition of executor.
2204. Discharge of fiduciary from personal liability.
2205. Reimbursement out of estate.
2206. Liability of life insurance beneficiaries.

Sec.
2207. Liability of recipient of property over which decedent had power of appointment.
2208. Certain residents of possessions considered citizens of the United States.
2209. Certain residents of possessions considered nonresidents not citizens of the United States.

AMENDMENTS

1970—Pub. L. 91-614, title I, § 101(d)(3), Dec. 31, 1970, 84 Stat. 1837, substituted "Discharge of fiduciary from personal liability" for "Discharge of executor from personal liability" in item 2204.

1960—Pub. L. 86-779, § 4(b)(2), Sept. 14, 1960, 74 Stat. 1000, added item 2209.

1958—Pub. L. 85-866, title I, § 102(c)(4), Sept. 2, 1958, 72 Stat. 1675, added item 2208.

§ 2201. Members of the Armed Forces dying during an induction period.

The additional estate tax as defined in section 2011 (d) shall not apply to the transfer of the taxable estate of a citizen or resident of the United States dying during an induction period (as defined in sec. 112 (c) (5)), while in active service as a member of the Armed Forces of the United States, if such decedent—

(1) was killed in action while serving in a combat zone, as determined under section 112 (c); or

(2) died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 112(c), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

(Aug. 16, 1954, ch. 736, 68A Stat. 401).

§ 2202. Missionaries in foreign service.

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, or the District of Columbia wherein they respectively resided at the time of their commission and their departure for such foreign service. (Aug. 16, 1954, ch. 736, 68A Stat. 401, June 25, 1959, Pub. L. 86-70, § 22(a), 73 Stat. 146; July 12, 1960, Pub. L. 86-624, § 18(b), 74 Stat. 416.)

AMENDMENTS

1960—Pub. L. 86-624 substituted "the State or the District of Columbia" for "the State, the District of Columbia, or Hawaii."

1959—Pub. L. 86-70 eliminated "Alaska," preceding "or Hawaii."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 18(k) of Pub. L. 86-624 provided that: "The amendments contained in subsections (a) through (j) of this section [amending this section and sections 3121, 3306, 4221, 4233, 4262, 4502, 4774, 7653 and 7701 of this title] shall be effective as of August 21, 1959."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 22(i) of Pub. L. 86-70 provided that the amendments of this section and sections 3306(j), 4221(d)(4), 4233(b), 4262(c)(1), 4502(5), 4774, 7621(b), 7653(d) and 7701(a) (9), (10) shall be effective as of Jan. 3, 1959.

§ 2203. Definition of executor.

The term "executor" wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent. (Aug. 16, 1954, ch. 736, 68A Stat. 401.)

CROSS REFERENCES

Notice of qualification, see section 6036 of this title.

§ 2204. Discharge of fiduciary from personal liability.

(a) General rule.

If the executor makes written application to the Secretary or his delegate for determination of the amount of the tax and discharge from personal liability therefor, the Secretary or his delegate (as soon as possible, and in any event within 1 year after the making of such application, or, if the application is made before the return is filed, then within 1 year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 6501) shall notify the executor of the amount of the tax. The executor, on payment of the amount of which he is notified (other than any amount the time for payment of which is extended under section 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment is extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(b) Fiduciary other than the executor.

If a fiduciary (not including a fiduciary in respect of the estate of a nonresident decedent) other than the executor makes written application to the Secretary or his delegate for determination of the amount of any estate tax for which the fiduciary may be personally liable, and for discharge from personal liability therefor, the Secretary or his delegate upon the discharge of the executor from personal liability under subsection (a), or upon the expiration of 6 months after the making of such application by the fiduciary, if later, shall notify the fiduciary (1) of the amount of such tax for which it has been determined the fiduciary is liable, or (2) that it has been determined that the fiduciary is not liable for any such tax. Such application shall be accompanied by a copy of the instrument, if any, under which such fiduciary is acting, a description of the property held by the fiduciary, and such other information for purposes of carrying out the provisions of this section as the Secretary or his delegate may require by regulations. On payment of the amount of such tax for which it has been determined the fiduciary is liable (other than any amount the time for payment of which has not been extended under section 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment has been extended, or on receipt by him of notification of a determination that he is not liable for any such tax, the fiduciary shall be discharged from personal liability for any deficiency in such tax thereafter found to be due and shall be entitled to a receipt or writing evidencing such discharge. (Aug. 16, 1954, ch. 736, 68A Stat. 401; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(d)(1), 84 Stat. 1836.)

ESTATES OF DECEDENTS DYING AFTER DECEMBER 31, 1973

Pub. L. 91–614, title I, § 101(f), Dec. 31, 1970, 84 Stat. 1838, provided that, effective with respect to the estates of decedents dying after December 31, 1973, this section is amended by substituting "9 months" for "1 year".

AMENDMENTS

1970—Pub. L. 91–614, § 101(d)(1)(A), substituted "fiduciary" for "executor" in the section catchline.

Subsec. (a). Pub. L. 91–614, § 101(d)(1)(B), (C), designated existing material as subsec. (a) and as so designated added "General Rule—" immediately preceding the first sentence and permitted a discharge of the executor even where an extension of time has been granted under sections 6161, 6163, or 6166 of this title, where a bond, if required, is provided to assure payment of taxes for which the extension was granted.

Subsec. (b). Pub. L. 91–614, § 101(d)(1)(D), added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6324, 6905 of this title.

§ 2205. Reimbursement out of estate.

If the tax or any part thereof is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this chapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. (Aug. 16, 1954, ch. 736, 68A Stat. 402.)

§ 2206. Liability of life insurance beneficiaries.

Unless the decedent directs otherwise in his will, if any part of the gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such section. (Aug. 16, 1954, ch. 736, 68A Stat. 402.)

§ 2207. Liability of recipient of property over which decedent had power of appointment.

Unless the decedent directs otherwise in his will, if any part of the gross estate on which the tax has been paid consists of the value of property included in the gross estate under section 2041, the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106 (a), as the case may be. If there is more than one such person, the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section. (Aug. 16, 1954, ch. 736, 68A Stat. 402.)

§ 2208. Certain residents of possessions considered citizens of the United States.

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States. (Added Pub. L. 85–866, title I, § 102 (a), Sept. 2, 1958, 72 Stat. 1674.)

EFFECTIVE DATE

Section applicable to estates of decedents dying after Sept. 2, 1958, see section 102 (d) of Pub. L. 85–866, set out as a note under section 2011 of this title.

§ 2209. Certain residents of possessions considered nonresidents not citizens of the United States.

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States. (Added Pub. L. 86–779, § 4(b)(1), Sept. 14, 1960, 74 Stat. 999.)

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Sept. 14, 1960, see section 4(e)(2) of Pub. L. 86–779, set out as a note under section 2106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2106 of this title.

Chapter 12.—GIFT TAX

Subchapter

A. Determination of Tax Liability.

B. Transfers.

C. Deductions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1015, 2012, 6103, 6324 of this title.

Subchapter A.—Determination of Tax Liability

Sec.

2501. Imposition of tax.

2502. Rate of tax.

2503. Taxable gifts.

2504. Taxable gifts for preceding years and quarters.

AMENDMENTS

1970—Pub. L. 91-614, title I, § 102(a)(4)(B), Dec. 31, 1970, 84 Stat. 1840, substituted "Taxable gifts for preceding years and quarters" for "Taxable gifts for preceding years" in item 2504.

§ 2501. Imposition of tax.

(a) Taxable transfers.

(1) General rule.

For the first calendar quarter of calendar year 1971 and each calendar quarter thereafter a tax, computed as provided in section 2502, is hereby imposed on the transfer of property by gift during such calendar quarter by any individual resident or nonresident.

(2) Transfers of intangible property.

Except as provided in paragraph (3), paragraph (1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

(3) Exceptions.

Paragraph (2) shall not apply in the case of a donor who at any time after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship unless—

(A) such donor's loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487), or

(B) such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

(4) Burden of proof.

If the Secretary or his delegate establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for paragraph (3), result in a substantial reduction for the calendar quarter in the taxes on the transfer of property by gift, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on such individual.

(b) Certain residents of possessions considered citizens of the United States.

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(c) Certain residents of possessions considered nonresidents not citizens of the United States.

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(d) Cross references.

(1) For increase in basis of property acquired by gift for gift tax paid, see section 1015 (d).

(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 43(b), 102(b), 72 Stat. 1641, 1674; Sept. 14, 1960, Pub. L. 86-779, § 4(d), 74 Stat. 1000; Nov. 13, 1966, Pub. L. 89-809, title I, § 109(a), 80 Stat. 1574; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(a)(1), 84 Stat. 1838.)

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91-614, § 102(a)(1)(A), substituted "For the first calendar quarter of the calendar year 1971 and each calendar quarter thereafter" for "For the calendar year 1955 and each calendar year thereafter" and "during such calendar quarter" for "during such calendar year".

Subsec. (a)(4). Pub. L. 91-614, § 102(a)(1)(B), substituted "calendar quarter" for "calendar year".

1966—Subsec. (a). Pub. L. 89-809 redesignated existing provisions as par. (1), struck out from par. (1) as so redesignated ", except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year" following "resident or nonresident", and added pars. (2)—(4).

1960—Subsec. (a). Pub. L. 86-779, § 4(d)(2), deleted "who is" preceding "not a citizen."

Subsec. (c). Pub. L. 86-779, § 4(d)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86-779, § 4(d)(1), redesignated former subsec. (c) as (d).

1958—Subsec. (b). Pub. L. 85-866, § 102(b), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85-866, § 102(b), redesignated former subsec. (b) as (c) and Pub. L. 85-866, § 43(b), made the catchline read in the plural, designated existing provisions as par. (2) and added par. (1).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 102(e) of Pub. L. 91-614 provided that: "The amendments made by this section [amending this section and sections 1015, 2012, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 6019, 6075, 6212, 6214, 6324, 6501 and 6512 of this title and enacting provisions set out as a note under this section] shall apply with respect to gifts made after December 31, 1970."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 109(c) of Pub. L. 89-809 provided that: "The amendments made by this section [amending this section and section 2511 of this title] shall apply with respect to the calendar year 1967 and all calendar years thereafter."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(e)(3) of Pub. L. 86-779 provided that: "The amendments made by subsection (d) [to this section] shall apply with respect to gifts made after the date of the enactment of this Act [Sept. 14, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (b) and (c) by Pub. L. 85-866 applicable to gifts made after September 2, 1958, see section 102 (d) of Pub. L. 85-866, set out as a note under section 2011 of this title.

Amendment of subsec. (c) of this section by Pub. L. 85-866, § 43(b), applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Calendar quarter defined, see section 2502 of this title.

Gross income as not including gifts, see section 102 of this title.

Taxable gifts defined, see section 2503 of this title.

Transfers, see section 2511 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2511 of this title.

§ 2502. Rate of tax.

(a) Computation of tax.

The tax imposed by section 2501 for each calendar quarter shall be an amount equal to the excess of—

(1) a tax, computed in accordance with the rate schedule set forth in this subsection, on the aggregate sum of the taxable gifts for such calendar quarter and for each of the preceding calendar years and calendar quarters, over

(2) a tax, computed in accordance with such rate schedule, on the aggregate sum of the taxable gifts for each of the preceding calendar years and calendar quarters.

RATE SCHEDULE

If the taxable gifts are:	The tax shall be:
Not over $5,000	2¼% of the taxable gifts.
Over $5,000 but not over $10,000.	$112.50, plus 5¼% of excess over $5,000.
Over $10,000 but not over $20,000.	$375, plus 8¼% of excess over $10,000.
Over $20,000 but not over $30,000.	$1,200, plus 10½% of excess over $20,000.
Over $30,000 but not over $40,000.	$2,250, plus 13½% of excess over $30,000.
Over $40,000 but not over $50,000.	$3,600, plus 16½% of excess over $40,000.
Over $50,000 but not over $60,000.	$5,250, plus 18¾% of excess over $50,000.
Over $60,000 but not over $100,000.	$7,125, plus 21% of excess over $60,000.
Over $100,000 but not over $250,000.	$15,525, plus 22½% of excess over $100,000.
Over $250,000 but not over $500,000.	$49,275, plus 24% of excess over $250,000.
Over $500,000 but not over $750,000.	$109,275, plus 26¼% of excess over $500,000.
Over $750,000 but not over $1,000,000.	$174,900, plus 27¾% of excess over $750,000.
Over $1,000,000 but not over $1,250,000.	$244,275, plus 29¼% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000.	$317,400, plus 31½% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000.	$396,150, plus 33¾% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000.	$564,900, plus 36¾% of excess over $2,000,000.
Over $2,500,000 but not over $3,000,000.	$748,650, plus 39¾% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000.	$947,400, plus 42% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000	$1,157,400, plus 44¼% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000.	$1,378,650, plus 47¼% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000.	$1,851,150, plus 50¼% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000.	$2,353,650, plus 52½% of excess over $6.000,000.
Over $7,000,000 but not over $8,000,000.	$2,878,650, plus 54¾% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,000.	$3,426,150, plus 57% of excess over $8,000,000.
Over $10,000,000	$4,566,150, plus 57¾% of excess over $10,000,000.

(b) Calendar quarter.

Wherever used in this title in connection with the gift tax imposed by this chapter, the term "calendar quarter" includes only the first calendar quarter of the calendar year 1971 and succeeding calendar quarters.

(c) Preceding calendar years and quarters.

Wherever used in this title in connection with the gift tax imposed by this chapter—

(1) The term "preceding calendar years" means calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970. The term "calendar year 1932" includes only the portion of such year after June 6, 1932.

(2) The term "preceding calendar quarters" means the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the calendar quarter for which the tax is being computed.

(d) Tax to be paid by donor.

The tax imposed by section 2501 shall be paid by the donor. (Aug. 16, 1954, ch. 736, 68A Stat. 403; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(a)(2), 84 Stat. 1839.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-614, § 102(a)(2)(A), substituted a computation of tax formula based on the current calendar quarter, preceding calendar quarters, and preceding calendar years for a formula based entirely on the current and preceding calendar years.

Subsec. (b). Pub. L. 91-614, § 102(a)(2)(B), substituted the definition of "calendar quarter" for the definition of "calendar year".

Subsec. (c). Pub. L. 91-614, § 102(a)(2)(B), substituted the definition of "preceding calendar years and quarters" for the definition of "preceding calendar years".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Taxable gifts, see section 2503 of this title.

Valuation of certain gifts for preceding calendar years, see section 2504 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2501, 2504, 4947, 4948 of this title.

§ 2503. Taxable gifts.

(a) General definition.

The term "taxable gifts" means, in the case of gifts made after December 31, 1970, the total amount of gifts made during the calendar quarter, less the deductions provided in subchapter C (sec. 2521 and following). In the case of gifts made before January 1, 1971, such term means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C.

(b) Exclusions from gifts.

In computing taxable gifts for the calendar quarter, in the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1971 and subsequent calendar years, $3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not, for purposes of subsection (a), be included in the total amount of gifts made during such quarter. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(c) Transfer for the benefit of minor.

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 404; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(a)(3), 84 Stat. 1839.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-614, § 102(a)(3)(A), divided the definition of "taxable gifts" into gifts made after Dec. 31, 1970, where taxable gifts are based on the total amount of gifts made during the calendar quarter, less the applicable deductions, and gifts made before Jan. 1, 1971, where taxable gifts are based on the total amount of gifts made during the calendar year, less the applicable deductions.

Subsec. (b). Pub. L. 91-614, § 102(a)(3)(B), substituted provisions with regard to computing taxable gifts for the calendar quarter, in the case of gifts made to any persons by the donor during the calendar year 1971 and subsequent calendar years, $3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not be included in the total amount of gifts made during such quarter for provisions requiring in the case of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first $3,000 of such gifts to such person shall not be included in the total amount of gifts made during such year.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Calendar quarter defined, see section 2502 of this title.

Computation of tax, see section 2502 of this title.

Estate tax credit for gift tax, see section 2012 of this title.

Gift tax returns, see section 6019 of this title.

Tenancies by entirety, see section 2515 of this title.

Transfers in general, see section 2511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1015, 2012, 2515, 6019 of this title.

§ 2504. Taxable gifts for preceding years and quarters.

(a) In general.

In computing taxable gifts for preceding calendar years or calendar quarters for the purpose of computing the tax for any calendar quarter, there shall be treated as gifts such transfers as were considered to be gifts under the gift tax laws applicable to the years or calendar quarters in which the transfers were made and there shall be allowed such deductions as were provided for under such laws; except that the specific exemption in the amount, if any, allowable under section 2521 shall be applied in all computations in respect to previous calendar years or calendar quarters for the purpose of computing the tax for any calendar year or calendar quarter.

(b) Exclusions from gifts for preceding years and quarters.

In the case of gifts made to any person by the donor during preceding calendar years and calendar quarters, the amount excluded, if any, by the provisions of gift tax laws applicable to the years and calendar quarters in which the gifts were made shall not, for purposes of subsection (a), be included in the total amount of the gifts made during such years and calendar quarters.

(c) Valuation of certain gifts for preceding calendar years and quarters.

If the time has expired within which a tax may be assessed under this chapter or under corresponding provisions of prior laws on the transfer of property by gift made during a preceding calendar year or calendar quarter, as defined in section 2502(c), and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar year or calendar quarter, the value of such gift made in such preceding calendar year or calendar quarter shall, for purposes of computing the tax under this chapter for any calendar quarter, be the value of such gift which was used in computing the tax for the last preceding calendar year or calendar quarter for which a tax under this chapter or under corresponding provisions of prior laws was assessed or paid.

(d) Net gifts.

The term "net gifts" as used in the corresponding provisions of prior laws shall be read as "taxable gifts" for purposes of this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 405; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(a)(4)(A), 84 Stat. 1839.)

AMENDMENTS

1970—Pub. L. 91-614 substituted "Taxable gifts for preceding years and quarters" for "Taxable gifts for preceding years" in the section catchline.

Subsec. (a). Pub. L. 91-614 substituted "In computing taxable gifts for the preceding calendar years or calendar quarters for the purpose of computing the tax for any calendar quarter," for "In computing taxable gifts for the calendar year 1954 and preceding calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter," provided that the laws applicable in the calendar quarters as well as the years in which the transfers in question were made shall apply, and substituted "previous calendar years or calendar quarters for the purpose of computing the tax for any calendar year or calendar quarter" for "the calendar year 1954 and previous calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter".

Subsec. (b). Pub. L. 91-614 added reference to calendar quarters in the subsec. catchline, substituted "during preceding calendar years and calendar quarters," for "during the calendar year 1954 and preceding calendar years," made reference to the amount excluded by gift tax laws applicable to the calendar quarters as well as years in which the gifts were made, and substituted "during such years and calendar quarters" for "during such year".

Subsec. (c). Pub. L. 91-614 added reference to calendar quarters in the subsec. catchline added "or calendar quarter" following "calendar year" in four places, and substituted "for any calendar quarter," for "for the calendar year 1955 and subsequent calendar years,".

Subsec. (d). Pub. L. 91-614 struck out "For years before the calendar year 1955" from the explanation of the term "net gifts" as used in corresponding provisions of prior laws.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

Subchapter B.—Transfers

Sec.
2511. Transfers in general.
2512. Valuation of gifts.
2513. Gift by husband or wife to third party.
2514. Powers of appointment.
2515. Tenancies by the entirety.
2516. Certain property settlements.
2517. Certain annuities under qualified plans.

AMENDMENTS

1958—Pub. L. 85-866, title I, § 68(b), Sept. 2, 1958, 72 Stat. 1659, added item 2517.

§ 2511. Transfers in general.

(a) Scope.

Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) Intangible property.

For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501 (a)(2)—

(1) shares of stock issued by a domestic corporation, and

(2) debt obligations of—

(A) a United States person, or

(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 406; Nov. 13, 1966, Pub. L. 89-809, title I, § 109(b), 80 Stat. 1575.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-809 inserted reference to nonresidents who are excepted from the application of section 2501(a)(2) and expanded the section to include debt obligations of United States persons or the United States, a State or any political subdivision thereof, or the District of Columbia.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to the calendar year 1967 and all calendar years thereafter, see section 109(c) of Pub. L. 89-809, set out as a note under section 2501 of this title.

§ 2512. Valuation of gifts.

(a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar quarter. (Aug. 16, 1954, ch. 736, 68A Stat. 406; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(b)(1), 84 Stat. 1840.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-614 substituted "calendar quarter" for "calendar year".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Calendar quarter defined, see section 2502 of this title.

Certain property settlements, see section 2516 of this title.

Gross estate upon transfers for insufficient consideration, see section 2043 of this title.

Valuation and alternate valuation of gross estate, see sections 2031, 2032 of this title.

§ 2513. Gift by husband or wife to third party.

(a) Considered as made one-half by each.

(1) In general.

A gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514 (c), over such interest. For purposes of this section, an individual shall be considered as the

spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar quarter.

(2) Consent of both spouses.

Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar quarter by either while married to the other.

(b) Manner and time of signifying consent.

(1) Manner.

A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary or his delegate.

(2) Time.

Such consent may be so signified at any time after the close of the calendar quarter in which the gift was made, subject to the following limitations—

(A) the consent may not be signified after the 15th day of the second month following the close of such calendar quarter, unless before such 15th day no return has been filed for such calendar quarter by either spouse, in which case the consent may not be signified after a return for such calendar quarter is filed by either spouse;

(B) the consent may not be signified after a notice of deficiency with respect to the tax for such calendar quarter has been sent to either spouse in accordance with section 6212 (a).

(c) Revocation of consent.

Revocation of a consent previously signified shall be made in such manner as is provided under regulations prescribed by the Secretary or his delegate, but the right to revoke a consent previously signified with respect to a calendar quarter—

(1) shall not exist after the 15th day of the second month following the close of such calendar quarter if the consent was signified on or before such 15th day; and

(2) shall not exist if the consent was not signified until after such 15th day.

(d) Joint and several liability for tax.

If the consent required by subsection (a) (2) is signified with respect to a gift made in any calendar quarter, the liability with respect to the entire tax imposed by this chapter of each spouse for such calendar quarter shall be joint and several. (Aug. 16, 1954, ch. 736, 68A Stat. 406; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(b)(2), 84 Stat. 1840.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-614, § 102(b)(2)(A), substituted "calendar quarter" for "calendar year" in two places.

Subsec. (b)(2). Pub. L. 91-614, § 102(b)(2)(A), substituted "calendar quarter" for "calendar year".

Subsec. (b)(2)(A). Pub. L. 91-614, § 102(b)(2)(B), substituted "the 15th day of the second month" for "the 15th day of April" and substituted "such calendar quarter" for "such year" in three places.

Subsec. (b)(2)(B). Pub. L. 91-614, § 102(b)(2)(C), substituted "such calendar quarter" for "such year".

Subsec. (c). Pub. L. 91-614, § 102(b)(2)(A), substituted "calendar quarter" for "calendar year".

Subsec. (c)(1). Pub. L. 91-614, § 102(b)(2)(D), substituted "15th day of the second month following the close of such calendar quarter" for "15th day of April following the close of such year".

Subsec. (d). Pub. L. 91-614, § 102(b)(2)(A, (E), substituted "calendar quarter" for "calendar year" and "such calendar quarter" for "such year".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Estate tax credit for gift taxes, see section 2012 of this title.

Gift tax returns—

Generally, see section 6019 of this title.

Time for filing, see section 6075 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1015, 2012 of this title.

§ 2514. Powers of appointment.

(a) Powers created on or before October 21, 1942.

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(1) such partial release occurred before November 1, 1951, or

(2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) Powers created after October 21, 1942.

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.

(c) Definition of general power of appointment.

For purposes of this section, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the "possessor"), his estate, his creditors, or the creditors of his estate; except that—

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) Creation of another power in certain cases.

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) Lapse of power.

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) $5,000, or

(2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) Date of creation of power.

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942. (Aug. 16, 1954, ch. 736, 68A Stat. 407.)

CROSS REFERENCES

Gift by husband or wife to third party, see section 2513 of this title.

Transfers for benefit of minors, see section 2503 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2503, 2513 of this title.

§ 2515. Tenancies by the entirety.

(a) Creation.

The creation of a tenancy by the entirety in real property, either by one spouse alone or by both spouses, and additions to the value thereof in the form of improvements, reductions in the indebtedness thereon, or otherwise, shall not be deemed transfers of property for purposes of this chapter, regardless of the proportion of the consideration furnished by each spouse, unless the donor elects to have such creation of a tenancy by the entirety treated as a transfer, as provided in subsection (c).

(b) Termination.

In the case of the termination of a tenancy by the entirety, other than by reason of the death of a spouse, the creation of which, or additions to which, were not deemed to be transfers by reason of subsection (a), a spouse shall be deemed to have made a gift to the extent that the proportion of the total consideration furnished by such spouse multiplied by the proceeds of such termination (whether in form of cash, property, or interests in property) exceeds the value of such proceeds of termination received by such spouse.

(c) Exercise of election.

The election provided by subsection (a) shall be exercised by including such creation of a tenancy by the entirety or additions made to the value thereof as a transfer by gift, to the extent such transfer constitutes a gift, determined without regard to this section, in the gift tax return of the donor for the calendar quarter in which such tenancy by the entirety was created or additions made to the value thereof, filed within the time prescribed by law, irrespective of whether or not the gift exceeds the exclusion provided by section 2503 (b).

(d) Certain joint tenancies included.

For purposes of this section, the term "tenancy by the entirety" includes a joint tenancy between husband and wife with right of survivorship. (Aug. 16, 1954, ch. 736, 68A Stat. 409; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(b)(3), 84 Stat. 1841.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-614 substituted "calendar quarter" for "calendar year".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

§ 2516. Certain property settlements.

Where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within 2 years thereafter (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

(1) to either spouse in settlement of his or her marital or property rights, or

(2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth. (Aug. 16, 1954, ch. 736, 68A Stat. 409.)

§ 2517. Certain annuities under qualified plans.

(a) General rule.

The exercise or nonexercise by an employee of an election or option whereby an annuity or other payment will become payable to any beneficiary at or after the employee's death shall not be considered a transfer for purposes of this chapter if the option or election and annuity or other payment is provided for under—

(1) an employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401 (a);

(2) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(3) a retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust), and which is exempt from tax under section 501(a); or

(4) chapter 73 of title 10 of the United States Code.

(b) Transfers attributable to employee contributions.

If the annuity or other payment referred to in subsection (a) (other than paragraph (4)), is attributable to any extent to payments or contributions made by the employee, then subsection (a) shall not apply to that part of the value of such annuity or other payment which bears the same proportion to the total value of the annuity or other payment as the total payments or contributions made by the employee bear to the total payments or contributions made. For purposes of the preceding sentence, payments or contributions made by the employee's employer or former employer toward the purchase of an annuity contract described in subsection (a)(3) shall, to the extent not excludable from gross income under section 403(b), be considered to have been made by the employee. For purposes of this subsection, payments or contributions on behalf of an individual while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in subsection (a) (1) or (2) shall be considered to be payments or contributions made by the employee.

(c) Employee defined.

For purposes of this section, the term "employee" includes a former employee. (Added and amended Pub. L. 85-866, title I, §§ 23 (f), 68 (a), Sept. 2, 1958, 72 Stat. 1623, 1659; Pub. L. 87-792, § 7(j), Oct. 10, 1962, 76 Stat. 830; Mar. 8, 1966, Pub. L. 89-365, § 2 (b), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(24), 83 Stat. 528.)

AMENDMENTS

1969—Subsec. (a)(3). Pub. L. 91-172 substituted "section 170(b)(1)(A) (ii) or (vi), or which is a religious organization (other than a trust)," for "section 503(b)(1), (2), or (3),".

1966—Subsec. (a). Pub. L. 89-365, § 2(b)(1), added par. (4).

Subsec. (b). Pub. L. 89-365, § 2(b)(2), inserted "(other than paragraph (4))" after "referred to in subsection (a)".

1962—Subsec. (a)(2). Pub. L. 87-792, § 7(j)(1), substituted "was a plan described in section 403(a)" for "met the requirements of section 401(a) (3), (4), (5), and (6).

Subsec. (b). Pub. L. 87-792, § 7(j)(2), inserted sentence providing, for purposes of this subsection, that payments or contributions on behalf of an individual while he was an employee within the meaning of section 401 (c)(1) made under a trust or plan described in subsection (a) (1) or (2) shall be considered to be payments or contributions made by the employee.

1958—Subsec. (a)(3). Pub. L. 85-866, § 23(f)(2), added subsec. (a)(3).

Subsec. (b). Pub. L. 85-866, § 23(f)(3), added sentence providing that payments by employer toward purchase of annuity contract shall, to the extent not excludable from gross income, be considered to have been made by employee.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89-365 applicable with respect to calendar years after 1965, see section 2(c) of Pub. L. 89-365, set out as a note under section 2039 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a) and (b) of this section by Pub. L. 85-866, § 23(f), applicable with respect to calendar years after 1957, see section 23(g) of Pub. L. 85-866, set out as a note under section 403 of this title.

EFFECTIVE DATE

Section 68 (c) of Pub. L. 85-866 provided that: "The amendments made by this section [adding this section] shall apply with respect to the calendar year 1955 and all calendar years thereafter. For calendar years before 1955, the determination as to whether the exercise or nonexercise by an employee of an election or option described in section 2517 of the Internal Revenue Code of 1954 (as added by subsection (a)) [this section] is a transfer for purposes of chapter 4 of the Internal Revenue Code of

1939 shall be made as if this section had not been enacted and without inferences drawn from the fact that this section is not made applicable with respect to calendar years before 1955."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 406, 407 of this title.

Subchapter C.—Deductions

Sec.
2521. Specific exemption.
2522. Charitable and similar gifts.
2523. Gift to spouse.
2524. Extent of deductions.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2503 of this title.

§ 2521. Specific exemption.

In computing taxable gifts for a calendar quarter, there shall be allowed as a deduction in the case of a citizen or resident an exemption of $30,000, less the aggregate of the amounts claimed and allowed as a specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years and calendar quarters intervening between that calendar year and the calendar quarter for which the tax is being computed under the laws applicable to such years or calendar quarters. (Aug. 16, 1954, ch. 736, 68A Stat. 410; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(c)(1), 84 Stat. 1841.)

AMENDMENTS

1970—Pub. L. 91-614 substituted "calendar quarter" for "calendar year" in two places and provided for that the $30,000 exemption applicable for the calendar year 1932 and all intervening calendar years be applicable to intervening calendar quarters as well between that calendar year and the calendar quarter for which the tax is being computed under the laws applicable to such years or calendar quarters.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Calendar quarter defined, see section 2502 of this title.
Taxable gifts—
Defined, see section 2503 of this title.
For preceding years, see section 2504 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1015, 2504 of this title.

§ 2522. Charitable and similar gifts.

(a) Citizens or residents.

In computing taxable gifts for the calendar quarter, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such quarter to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(b) Nonresidents.

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such quarter to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or

any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(c) Disallowance of deductions in certain cases.

(1) No deduction shall be allowed under this section for a gift of[1] for the use of an organization or trust described in section 508(d) or 4948 (c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property) to a person, or for a use, described in subsection (a) or (b) and in interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(d) Other cross references.

(1) For exemption of gifts to or for benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (56 Stat. 765; 2 U. S. C. 161).

(2) For construction of gifts for benefit of library of Post Office Department as gifts to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(3) For exemption of gifts for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U. S. C. 419b).

(4) For exemption of gifts to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U. S. C. 19c).

(5) For construction of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021 (e) of that Act (60 Stat. 1032; 22 U. S. C. 809).

(6) For construction of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 2 of the Act of May 15, 1952, 66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479 (31 U. S. C. 725s-4).

(7) For payment of tax on gifts of United States obligations to the United States, see section 24 of the Second Liberty Bond Act, as amended (59 Stat. 48, § 4; 31 U. S. C. 757e).

(8) For construction of gifts for benefit of or use in connection with Naval Academy as gifts to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(9) For exemption of gifts for benefit of Naval Academy Museum, see section 4 of the Act of March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119).

(10) For exemption of gifts received by National Archives Trust Fund Board, see section 7 of the National Archives Trust Fund Board Act (55 Stat. 582; 44 U. S. C. 300gg).

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Sept. 2, 1958, Pub. L. 85-866, title I, § 30(d), 72 Stat. 1631; Dec. 30, 1969, Pub. L. 91-172, title II, § 201(d)(3), (4)(C), (D), 83 Stat. 561, 562; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(c)(2), 84 Stat. 1841.)

[1] So in original.

REFERENCES IN TEXT

Section 2 of act August 8, 1946 (60 Stat. 924; 5 U.S.C. 393), referred to in par. (2) of subsec. (d), was repealed by Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 708. See section 2101 of Title 39, The Postal Service.

Section 2 of act March 4, 1937 (50 Stat. 25; 5 U.S.C. 419b), referred to in par. (3) of subsec. (d), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. See section 7222 of Title 10, Armed Forces.

Section 5 of act July 10, 1935 (49 Stat. 478; 16 U.S.C. 19c), referred to in par. (4) of subsec. (d) was repealed by Pub. L. 90-209, § 2, Dec. 18, 1967, 81 Stat. 656. See section 19g of Title 16, Conservation.

Section 3 of act March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b), referred to in par. (8) of subsec. (d), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741. See section 6973 of Title 10, Armed Forces.

Section 4 of act March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119), referred to in par. (9) of subsec. (d), was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 741. See section 6974 of Title 10, Armed Forces.

Section 7 of National Archives Trust Fund Board Act (55 Stat. 582; 44 U.S.C. 300gg), referred to in par. 10 of subsec. (d), was repealed by Pub. L. 90-620, § 3, Oct. 22, 1968, 82 Stat. 1306. See section 2308 of Title 44, Public Printing and Documents.

AMENDMENTS

1970—Pub. L. 91-614 substituted "quarter" for "year" in three places.

1969—Subsec. (a)(2). Pub. L. 91-172, § 201(d)(4)(C), added non-participation and non intervention in political campaigns as an additional qualification.

Subsec. (b)(2). Pub. L. 91-172, § 201(d)(4)(D)(i), added non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (b)(3). Pub. L. 91-172, § 201(d)(4)(D)(ii), added non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (c). Pub. L. 91-172, § 201(d)(3), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1958—Subsec. (c). Pub. L. 85-866 substituted "502" for "504".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsecs. (a)(2) and (b)(2), (3) of this section by section 201(d)(4)(C), (D) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment of subsec. (c) of this section by section 201(d)(3) of Pub. L. 91-172 applicable to gifts made after Dec. 31, 1969, except that the amendmentof par. (2) of subsec. (c), applicable to gifts made after July 31, 1969, see section 201(g)(4)(D) of Pub. L. 91-172, set out as a note under section 170 of this title.

CROSS REFERENCES

Calendar quarter defined, see section 2502 of this title.

Disallowance of certain charitable, etc., deductions, see sections 503, 681 of this title.

Estate tax credit for gift tax, see section 2012 of this title.

Extent of deductions, see section 2524 of this title.

Gifts and bequests accepted by the Secretary of Commerce as gifts and bequests to United States, see section 1522 of Title 15, Commerce and Trade.

Income tax deductions for charitable, etc., contributions and gifts, see section 170 of this title.

Taxable gifts defined, see section 2503 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 1015, 2012 of this title; title 16 section 1285.

§ 2523. Gift to spouse.

(a) In general.

Where a donor who is a citizen or resident transfers during the calendar quarter by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar quarter an amount with respect to such interest equal to one-half of its value.

(b) Life estate or other terminable interest.

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse. For purposes of this parateresst in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse has a power to appoint an ingraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (e), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

(c) Interest in unidentified assets.

Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(d) Joint interests.

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

(e) Life estate with power of appointment in donee spouse.

Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse—

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b) (1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(f) Community property.

(1) A deduction otherwise allowable under this section shall be allowed only to the extent that the transfer can be shown to represent a gift of property which is not, at the time of the gift, held as community property under the law of any State, Territory, or possession of the United States, or of any foreign country.

(2) For purposes of paragraph (1), community property (except property which is considered as community property solely by reason of paragraph (3)) shall not be considered as "held as community property" if the entire value of such property (and not merely one-half thereof) is treated as the amount of the gift.

(3) If during the calendar year 1942 or in succeeding calendar years, property held as such community property (unless considered by reason of paragraph (2) as not so held) was by the donor and the donee spouse converted, by one transaction or a series of transactions, into separate property of the donor and such spouse (including any form of co-ownership by them), the separate property so acquired by the donor and any property acquired at any time by the donor in exchange therefor (by one exchange or a series of exchanges) shall, for purposes of paragraph (1), be considered as "held as community property."

(4) Where the value (at the time of such conversion) of the separate property so acquired by the donor exceeded the value (at such time) of the separate property so acquired by such spouse, paragraph (3) shall apply only with respect to the same portion of such separate property of the donor as the portion which the value (as of such time) of such separate property so acquired by such spouse is of the value (as of such time) of the separate property so acquired by the donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 412; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(c)(3), 84 Stat. 1841.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-614 substituted "quarter" for "year" in two places.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1015 of this title.

§ 2524. Extent of deductions.

The deductions provided in sections 2522 and 2523 shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 414.)

CROSS REFERENCES

Estate tax credit for gift tax, see section 2012 of this title.

Subtitle C.—Employment Taxes

Chapter
21. Federal insurance contributions act.
22. Railroad retirement tax act.
23. Federal unemployment tax act.
24. Collection of income tax at source on wages.
25. General provisions relating to employment taxes.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1314 of this title.

Chapter 21.—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter
A. Tax on employees.
B. Tax on employers.
C. General provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1402, 6011, 6501, 6513 of this title, title 5 section 5901; title 42 sections 401, 405, 408, 418, 2705; title 48 section 1421h.

Subchapter A.—Tax on Employees

Sec.
3101. Rate of tax.
3102. Deduction of tax from wages.

§ 3101. Rate of tax.

(a) Old-age, survivors, and disability insurance.

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar year 1968, the rate shall be 3.8 percent;

(2) with respect to wages received during the calendar years 1969 and 1970, the rate shall be 4.2 percent;

(3) with respect to wages received during the calendar years 1971 and 1972, the rate shall be 4.6 percent; and

(4) with respect to wages received after December 31, 1972, the rate shall be 5.0 percent.

(b) Hospital insurance.

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.60 percent;

(2) with respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 0.65 percent;

(3) with respect to wages received during the calendar years 1976, 1977, 1978, and 1979, the rate shall be 0.70 percent;

(4) with respect to wages received during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.80 percent; and

(5) with respect to wages received after December 31, 1986, the rate shall be 0.90 percent.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, § 208(b), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, § 202(b), 70 Stat. 845; Aug. 28, 1958, Pub. L. 85-840, title IV, § 401(b), 72 Stat. 1041; June 30, 1961, Pub. L. 87-64, title II, § 201(b), 75 Stat. 141; July 30, 1965, Pub. L. 89-97, title I, § 111(c)(5), title III, § 321(b), 79 Stat. 342, 395; Jan. 2, 1968, Pub. L. 90-248, title I, § 109(a)(2), (b)(2), 81 Stat. 836.)

AMENDMENTS

1968—Subsec. (a)(1)—(4). Pub. L. 90-248, § 109(a)(2), substituted "1968" and "3.8 for "1968" and "3.85" in par. (1) and "1969 and 1970" and "4.2" for "1967 and 1968" and "3.9" in par. (2), deleted reference to calendar years 1969 and 1970 from par. (3) and substituted therein "4.6" and "4.4", and substituted "5.0" for "4.85" in par. (4).

Subsec. (b)(1)—(5). Pub. L. 90-248, § 109(b)(2), struck out par. (1) provision for employee rate of 0.35 percent of wages received with respect to employment during calendar year 1966, redesignated former pars. (2)—(6) as (1)—(5), struck out reference to "1967" in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1)—(5), respectively.

1965—Pub. L. 89-97, § 321(b), divided the total tax imposed under the entire section upon income through a tax equal to percentages of wages into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 4⅛ percent to 4.20 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 4⅛ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 4⅝ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1968, (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 4.90 percent the rate for calendar years 1969, 1970, 1971, and 1972 (resulting from

a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975, (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 4⅝ percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 4⅝ percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate for calendar years after Dec. 31, 1986, to 5.65 percent (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89–97, § 111(c)(5), struck out ", but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees" following "as defined in section 3121(b)".

1961—Pub. L. 87–64 increased the rate of tax for calendar year 1962 from 3 to 3⅛ percent, calendar years 1963 to 1965, inclusive, from 3½ to 3⅝ percent, calendar years 1966 and 1967 from 4 to 4⅛ percent, calendar year 1968 from 4 to 4⅝ percent, and for calendar years after December 31, 1968, from 4½ to 4⅝ percent.

1958—Pub. L. 85–840 increased the rate of tax by substituting provisions imposing a tax of 2½% for calendar year 1959, 3% for calendar years 1960—1962, 3½% for calendar years 1963—1965, 4% for calendar years 1966—1968, and 4½% for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼% for calendar years 1957—1959, 2¾% for calendar years 1960—1964, 3¼% for calendar years 1965—1969, 3¾% for calendar years 1970—1974, and 4¼% for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased the rate of tax with respect to wages received during the calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased the 3¼ percent rate of tax for the calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 109 of Pub. L. 90–248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90–248, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 321 of Pub. L. 89–97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89–97, set out as a note under section 1401 of this title.

Amendment of subsec. (b) of this section by Pub. L. 89–97, § 111(c)(5), applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as a note under section 228s–2 of Title 45, Railroads.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87–64, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401 (d) of Pub. L. 85–840, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202 (d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

REFERENCES TO SOCIAL SECURITY ACT

Section 402 of act Sept. 1, 1954, provided that:

"References in the Internal Revenue Code of 1939, the Internal Revenue Code of 1954, the Railroad Retirement Act of 1937, as amended [section 228a et seq. of Title 45], or any other law of the United States to any section or subdivision of a section of the Social Security Act [chapter 7 of Title 42] redesignated by this Act shall be deemed to refer to such section or subdivision of a section as so redesignated."

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 (a) of this title.

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 (e) of this title.

Assessment for underpayment of tax imposed by this section, see section 6205 (b) of this title.

Effective date of this subtitle, see section 7851 (a) (3) of this title.

Nondeductibility of taxes imposed by this section as deduction from gross income, see section 3502(a) of this title.

Priority of debts due to United States, see section 191 of Title 31, Money and Finance.

Tax paid by employer not included in definition of wages under title II of Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275, 406, 3102, 3121, 3201, 3211, 3306, 3502, 6051, 6053, 6205, 6413, 6521, 6652 of this title; title 42 sections 401, 418, 907, 1395i; title 45 section 228c–1.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46–301 of the District of Columbia Code.

§ 3102. Deduction of tax from wages.

(a) Requirement.

The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7) (B) or (C) or (10) of section 3121 (a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar quarter is less than $50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8) (B) of section 3121 (a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer.

Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(c) Special rule for tips.

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

(3) The Secretary or his delegate may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such quarter as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the quarter to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the quarter.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, § 205A, 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 201(h)(3), 70 Stat. 841; July 30, 1965, Pub. L. 89-97, title III, § 313(c) (1), (2), 79 Stat. 382, 383.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-97, § 313(c)(2), added provisions at the end of second sentence allowing a deduction from any wages of an employee of an amount equivalent to the tax on tips when an employer is furnished with a written statement of tips received by an employee.

Subsec. (c). Pub. L. 89-97, § 313(c)(1), added subsec. (c).

1956—Subsec. (a). Act Aug. 1, 1956, substituted "$150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis" for "$100."

1954—Subsec. (a). Act Sept. 1, 1954, added a new sentence at the end permitting in certain instances an employer to deduct employee tax even though payment to the employee is less than $50 for the calendar quarter or $100 for the calendar year.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of this section by Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as a note under section 6053 of this title.

CROSS REFERENCES

Deductions as constructive payment, see section 3123 of this title.

Receipts for employees for taxes deducted by employers, see section 6051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3505, 6053 of this title.

Subchapter B.—Tax on Employers

Sec.
3111. Rate of tax.
3112. Instrumentalities of the United States.
3113. District of Columbia credit unions.

AMENDMENTS

1956—Act Aug. 1, 1956, ch. 836, title II, § 201(a)(2), 70 Stat. 839, added item 3113.

§ 3111. Rate of tax.

(a) Old-age, survivors, and disability insurance.

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar year 1968, the rate shall be 3.8 percent;

(2) with respect to wages paid during the calendar years 1969 and 1970, the rate shall be 4.2 percent;

(3) with respect to wages paid during the calendar years 1971 and 1972, the rate shall be 4.6 percent; and

(4) with respect to wages paid after December 31, 1972, the rate shall be 5.0 percent.

(b) Hospital insurance.

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.60 percent;

(2) with respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 0.65 percent;

(3) with respect to wages paid during the calendar years 1976, 1977, 1978, and 1979, the rate shall be 0.70 percent;

(4) with respect to wages paid during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.80 percent; and

(5) with respect to wages paid after December 31, 1986, the rate shall be 0.90 percent.

(Aug. 16, 1954, ch. 736, 68A Stat. 416; Sept. 1, 1954, ch. 1206, title II, § 208 (c), 68 Stat. 1094; Aug. 1, 1956. ch. 836, title II, § 202 (c), 70 Stat. 845; Aug. 28, 1958. Pub. L. 85–840, title IV, § 401(c), 72 Stat. 1042; June 30, 1961, Pub. L. 87–64, title II, § 201(c), 75 Stat. 141; July 30, 1965, Pub. L. 89–97, title I, § 111(c)(6), title III, § 321(c), 79 Stat. 343, 396; Jan. 2, 1968, Pub. L. 90–248, title I, § 109(a)(3), (b)(3), 81 Stat. 836, 837.)

AMENDMENTS

1968—Subsec. (a)(1)—(4). Pub. L. 90–248, § 109(a)(3), substituted "1968" and "3.8" for "1966" and "3.85" in par. (1) and "1969 and 1970" and "4.2" for "1967 and 1968" and "3.9" in par. (2), deleted reference to calendar years 1969 and 1970 from par. (3) and substituted therein "4.6" for "4.4", and substituted "5.0" for "4.85" in par. (4).

Subsec. (b)(1)—(5). Pub. L. 90–248, § 109(b)(3), struck out par. (1) provision for employer rate of 0.35 percent of wages paid with respect to employment during calendar year 1966, redesignated former pars. (2)—(6) as (1)—(5), struck out reference to "1967" in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1)—(5), respectively.

1965—Pub. L. 89–97, § 321(c), divided the total excise tax imposed under the entire section upon employers through a tax equal to percentages of wages paid by him into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance, and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 4⅛ percent to 4.20 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 4⅛ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 4⅝ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1968 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 4.90 percent the rate of total tax imposed by the entire section upon wages paid during the calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975 (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 4⅝ percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 4⅝ percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate from 4⅝ percent to 5.65 percent for calendar years after December 31, 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. 89–97, § 111(c)(6), deleted ", but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees" following "as defined in section 3121(b)".

1961—Pub. L. 87–64 increased the rate of tax for calendar year 1962 from 3 to 3⅛ percent, calendar years 1963 to 1965, inclusive, from 3½ to 3⅝ percent, calendar years 1966 and 1967 from 4 to 4⅛ percent, calendar year 1968 from 4 to 4⅝ percent, and for calendar years after December 31, 1968, from 4½ to 4⅝ percent.

1958—Pub. L. 85–840 increased the rate of tax by substituting provisions imposing a tax of 2½ percent for calendar year 1959, 3 percent for calendar years 1960–62, 3½ percent for calendar years 1963–65, 4 percent for calendar years 1966–68, and 4½ percent for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼ percent for calendar years 1957–59, 2¾ percent for calendar years 1960–64, 3¼ percent for calendar years 1965–69, 3¾ percent for calendar years 1970–74, and 4¼ percent for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased the rate of tax with respect to wages paid during the calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased the 3¼ percent rate of tax for the calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 109 of Pub. L. 90–248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90–248, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 321 of Pub. L. 89–97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89–97, set out as a note under section 1401 of this title.

Amendment of subsec. (b) of this section by Pub. L. 89–97, § 111(c)(6), applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as a note under section 228s–2 of Title 45, Railroads.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87–64, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401 (d) of Pub. L. 85–840, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202 (d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 (a) (1) of this title.

Assessment for underpayment of tax imposed by this section, see section 6205 (b) of this title.

Erroneous payments under this chapter as credit on other taxes or refunded, see section 3503 of this title.

Services which are exempt or immune from this tax not included in definition of employment under Title II of the Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 3112, 3113, 3121, 3122, 3125, 3221, 6205, 6413 of this title; title 42 sections 401, 401a, 418, 907 and 1395i; title 45 section 228c–1.

§ 3112. Instrumentalities of the United States.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section. (Aug. 16, 1954, ch. 736, 68A Stat. 416.)

§ 3113. District of Columbia credit unions.

Notwithstanding the provisions of section 16 of the Act of June 23, 1932 (D. C. Code, sec. 26-516; 47 Stat. 331), or any other provision of law (whether enacted before or after the enactment of this section) which grants to any credit union chartered pursuant to such Act of June 23, 1932, an exemption from taxation, such credit union shall not be exempt from the tax imposed by section 3111. (Added Aug. 1, 1956, ch. 836, title II, § 201 (a) (1), 70 Stat. 839.)

REFERENCES IN TEXT

The enactment of this section, referred to in the text, means Aug. 1, 1956, which was the date of enactment of act Aug. 1, 1956, ch. 836.

EFFECTIVE DATE

Section applicable with respect to remuneration paid after 1956, see section 201 (m) of act Aug. 1, 1956, set out as a note under section 3121 of this title.

Subchapter C.—General Provisions

Sec.
3121. Definitions.
3122. Federal service.
3123. Deductions as constructive payments.
3124. Estimate of revenue reduction.
3125. Returns in the case of governmental employees in Guam, American Samoa, and the District of Columbia.
3126. Short title.

AMENDMENTS

1965—Pub. L. 89-97, title III, § 317(c)(3), July 30, 1965, 79 Stat. 389, inserted reference to the District of Columbia in item 3125.

1960—Pub. L. 86-778, title I, § 103(q)(2), Sept. 13, 1960, 74 Stat. 940, added item 3125 and redesignated former item 3125 as 3126.

§ 3121. Definitions.

(a) Wages.

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection equal to $7,800 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,800 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death;

(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a), or

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) of any payment required from an employee under a State unemployment compensation law;

(7) (A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "domestic service in a private home of the employer" does not include service described in subsection (g) (5);

(C) cash remuneration paid by an employer in any calendar quarter to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "service not in the course of the empolyer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g) (5);

(8) (A) remuneration paid in any medium other than cash for agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (ii) the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis;

(9) any payment (other than vacation or sick pay) made to an employee after the month in which—

(A) in the case of a man, he attains the age of 65, or

(B) in the case of a woman, she attains the age of 62,

if such employee did not work for the employer in the period for which such payment is made;

(10) remuneration paid by an employer in any calendar quarter to an employee for service described in subsection (d) (3) (C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217;

(12) (A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more; or

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated.

(b) Employment.

For purposes of this chapter, the term "employment" means any service performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that, in the case of service performed after 1954, such term shall not include—

(1) service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (65 Stat. 119; 7 U. S. C. 1461—1468), or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) (A) service performed by an individual in the employ of his spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual

in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(6) (A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) service performed, by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an inmate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate, or

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis;

(8) (A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(B) service performed in the employ of a religious, charitable, educational, or other organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (k) (or the corresponding subsection of prior law), is in effect if such service is performed by an employee—

(i) whose signature appears on the list filed by such organization under subsection (k) (or the corresponding subsection of prior law),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii) was filed, or

(iii) who, after the calendar quarter in which the certificate was filed with respect to a group described in section 3121 (k) (1) (E), became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in section 3121 (k) (1) (E) with respect to which no certificate is in effect;

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) (A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a) or under section 521, if the remuneration for such service is less than $50;

(B) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14) (A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization;

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) service in the employ of any organization which is performed (A) in any quarter during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)); or

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

(c) Included and excluded service.

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b)(9).

(d) Employee.

For purposes of this chapter, the term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(e) State, United States, and citizen.

For purposes of this chapter—

(1) State.

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States.

The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(f) American vessel and aircraft.

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any

State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(g) Agricultural labor.

For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U. S. C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) (A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) American employer.

For purposes of this chapter, the term "American employer" means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

(i) Computation of wages in certain cases.

(1) Domestic service.

For purposes of this chapter, in the case of domestic service described in subsection (a) (7) (B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a) (7) (B).

(2) Service in the uniformed services.

For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m) (1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) (1) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102 (10) of the Servicemen's and Veterans' Survivor Benefits Act.

(3) Peace Corps volunteer service.

For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

(j) Covered transportation service.

For purposes of this chapter—

(1) Existing transportation systems—General rule.

Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute

covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Existing transportation systems—Cases in which no transportation employees, or only certain employees, are covered.

Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) Transportation systems acquired after 1950.

All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) Definitions.

For purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of—

(i) a State,

(ii) one or more political subdivisions of a State, or

(iii) a State and one or more of its political subdivisions.

(k) Exemption of religious, charitable, and certain other organizations.

(1) Waiver of exemption by organization.

(A) An organization described in section 501(c)(3) which is exempt from income tax under section 501(a) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee (if any) who concurs in the filing of the certificate. Such list may be amended at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed by filing with the prescribed official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this chapter.

(B) The certificate shall be in effect (for purposes of subsection (b)(8)(B) and for purposes of section 210(a)(8)(B) of the Social Security Act) for the period beginning with whichever of the following may be designated by the organization:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

(C) In the case of service performed by an employee whose name appears on a supplemental list filed after the first month following the calendar quarter in which the certificate is filed, the certificate shall be in effect (for purposes of subsection (b) (8) (B) and for purposes of section 210 (a) (8) (B) of the Social Security Act) only with respect to service performed by such individual for the period beginning with the first day of the calendar quarter in which such supplemental list is filed.

(D) The period for which a certificate filed pursuant to this subsection or the corresponding subsection of prior law is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving 2 years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than 8 years. The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations made under this chapter.

(E) If an organization described in subparagraph (A) employs both individuals who are in positions covered by a pension, annity, retirement, or similar fund or system established by a State or by a political subdivision thereof and individuals who are not in such positions, the organization shall divide its employees into two separate groups. One group shall consist of all employees who are in positions covered by such a fund or system and (i) are members of such fund or system, or (ii) are not members of such fund or system but are eligible to become members thereof; and the other group shall consist of all remaining employees. An organization which has so divided its employees into two groups may file a certificate pursuant to subparagraph (A) with respect to the employees in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group.

(F) An organization which filed a certificate under this subsection after 1955 but prior to the enactment of this subparagraph may file a request at any time before 1960 to have such certificate effective, with respect to the service of individuals who concurred in the filing of such certificate (initially or through the filing of a supplemental list) prior to enactment of this subparagraph and who concur in the filing of such new request, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which it was effective and following the last calendar quarter of 1955. Such request shall be filed with such official and in such form and manner as may be prescribed by regulations made under this chapter. If a request is filed pursuant to this subparagraph—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return or pay tax), the due date for the reutrn and payment of the tax for any calendar quarter resulting from the filing of such request shall be the last day of the calendar month following the calendar quarter in which the request is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

(G) If a certificate filed pursuant to this paragraph is effective for one or more calendar quarters prior to the quarter in which the certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return or pay tax), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

(H) An organization which files a certificate under subparagraph (A) before 1966 may amend such certificate during 1965 or 1966 to make the certificate effective with the first day of any calendar quarter preceding the quarter for which such certificate originally became effective, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is so amended. If an organization amends its certificate pursuant to the preceding sentence, such amendment shall be effective with respect to the service of individuals who concurred in the filing of such certificate (initially or through the filing of a supplemental list) and who concur in the filing of such amendment. An amendment to a certificate filed pursuant to this subparagraph shall be filed with such official and in such form and manner as may be prescribed by regulations made under this chapter. If an amendment is filed pursuant to this subparagraph—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return or pay tax), the due date for the return and payment of the tax for any calendar quarter resulting from the filing of such an amendment shall be the last day of the calendar month following the calendar quarter in which the amendment is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of three years from such due date.

(2) Termination of waiver period by Secretary or his delegate.

If the Secretary or his delegate finds that any organization which filed a certificate pursuant to this subsection or the corresponding subsection of prior law has failed to comply substantially with the requirements applicable with respect to the taxes imposed by this chapter or the corresponding provisions of prior law or is no longer able to comply with the requirements applicable with respect to the taxes imposed by this chapter, the Secretary or his delegate shall give such organization not less than 60 days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph to an organization without the prior concurrence of the Secretary of Health, Education, and Welfare.

(3) No renewal of waiver.

In the event the period covered by a certificate filed pursuant to this subsection or the corresponding subsection of prior law is terminated by the organization, no certificate may again be filed by such organization pursuant to this subsection.

(*l*) Agreements entered into by domestic corporations with respect to foreign subsidiaries

(1) Agreement with respect to certain employees of foreign subsidiaries.

The Secretary or his delegate shall, at the request of any domestic corporation, enter into an agreement (in such form and manner as may be prescribed by the Secretary or his delegate) with any such corporation which desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any one or more of its foreign subsidiaries (as defined in paragraph (8)) by all employees who are citizens of the United States, except that the agreement shall not be applicable to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign subsidiary of such domestic corporation. Such agreement shall be applicable with respect to citizens of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign subsidiary specified in the agreement. Such agreement shall provide—

(A) that the domestic corporation shall pay to the Secretary or his delegate, at such time or times as the Secretary or his delegate may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the domestic corporation will comply with such regulations relating to payments and reports as the Secretary or his delegate may prescribe to carry out the purposes of this subsection.

(2) Effective period of agreement.

An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement, but in no case prior to January 1, 1955; except that in case such agreement is amended to include the services performed for any other subsidiary and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other subsidiary only after the calendar quarter in which such amendment is executed.

(3) Termination of period by a domestic corporation.

The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign subsidiaries by the domestic corporation, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the domestic corporation by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign corporation shall terminate at the end of any calendar quarter in which the foreign corporation, at any time in such quarter, ceases to be a foreign subsidiary as defined in paragraph (8).

(4) Termination of period by Secretary.

If the Secretary or his delegate finds that any domestic corporation which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary or his delegate shall give such domestic corporation not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such

notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the domestic corporation. No notice of termination or of revocation thereof shall be given under this paragraph to a domestic corporation without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) No renewal of agreement.

If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the domestic corporation pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary or his delegate pursuant to paragraph (4), the domestic corporation may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign subsidiary, such agreement may not thereafter be amended so as again to make it applicable with respect to such subsidiary.

(6) Deposits in trust funds.

For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary or his delegate pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(7) Overpayments and underpayments.

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary or his delegate.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary or his delegate, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary or his delegate within two years from the time such overpayment was made.

(8) Definition of foreign subsidiary.

For purposes of this subsection and section 210 (a) of the Social Security Act, a foreign subsidiary of a domestic corporation is—

(A) a foreign corporation not less than 20 percent of the voting stock of which is owned by such domestic corporation; or

(B) a foreign corporation more than 50 percent of the voting stock of which is owned by the foreign corporation described in subparagraph (A).

(9) Domestic corporation as separate entity.

Each domestic corporation which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413 (c) (2) (C), relating to special refunds in the case of employees of certain foreign corporations, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) Regulations.

Regulations of the Secretary or his delegate to carry out the purposes of this subsection shall be designed to make the requirements imposed on domestic corporations with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

(m) Service in the uniformed services.

For purposes of this chapter—

(1) Inclusion of service.

The term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) Active duty.

The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act, except that it shall also include "active duty for training" as described in such section.

(3) Inactive duty training.

The term "inactive duty training" means "inactive duty training" as described in such section 102.

(n) Member of a uniformed service.

For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102 (3) of the Servicemen's and Veterans' Survivor Benefits Act), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Universal Military Training and Service Act, has been selected for active military or naval service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(*o*) Crew leader.

For purposes of this chapter, the term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(p) Peace Corps volunteer service.

For purposes of this chapter, the term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

(q) Tips included for employee taxes.

For purposes of this chapter other than for purposes of the taxes imposed by section 3111, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received. (Aug. 16, 1954, ch. 736, 68A Stat. 417; Sept. 1, 1954, ch. 1206, title II, §§ 204 (a), (b), 205(a)—(e), 206(a), 207, 209, 68 Stat. 1091—1094; Aug. 1, 1956, ch. 836, title I, §§ 103 (j), 121(d), title II, §§ 201 (b)—(d), (e)(1), (h) (1), (2), (j)—(*l*), 70 Stat. 824, 839—841, 843; Aug. 1, 1956, ch. 837, title IV, §§ 410, 411(a), 70 Stat. 878; Aug. 28, 1958, Pub. L. 85-840, title IV, §§ 402(b), 404(a), 405 (a), (b), 72 Stat. 1042, 1044—1046; Sept. 2, 1958, Pub. L. 85-866, title I, § 69, 72 Stat. 1659; June 25, 1959, Pub. L. 86-70, § 22(a), 73 Stat. 146; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), title II, § 202 (a), 73 Stat. 387, 389; July 12, 1960, Pub. L. 86-624, § 18(c), 74 Stat. 416; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 103(n)—(p), 104(b), 105(a), 74 Stat. 938, 939, 942; Sept. 21, 1961, Pub. L. 87-256, § 110(e)(1), 75 Stat. 536; Sept. 22, 1961, Pub. L. 87-293, title II, § 202(a) (1), (2), 75 Stat. 626; Feb. 26, 1964, Pub. L. 88-272, title II, § 220(c)(2), 78 Stat. 62; Oct. 13, 1964, Pub. L. 88-650, § 4(b), 78 Stat. 1077; July 30, 1965, Pub. L. 89-97, title III, §§ 311(b) (4), (5), 313(c) (3), (4), 316 (a)(1), (b), 317(b), 320(b)(2), 79 Stat. 381, 383, 386, 388, 393; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 108(b), 123(b), title IV, § 403(i), title V, § 504(a), 81 Stat. 835, 845, 932, 934; Dec. 30, 1969, Pub. L. 91-172, title IX, § 943(c)(1)—(3), 83 Stat. 728.)

REFERENCES IN TEXT

Title V of the Agricultural Act of 1949, as amended, referred to in subsec. (b)(1), is classified to sections 1461-1468 of Title 7, Agriculture.

Section 2 of Act Aug. 4, 1947, referred to in subsec. (b) (6) (C) (iv), (7) (C) (ii) is classified to section 5351 of Title 5, Government Organization and Employees.

The Civil Service Retirement Act, referred to in subsec. (b) (6) (C) (vi), is classified to section 8301 et seq. of Title 5.

The Internal Security Act of 1950, referred to in subsec. (b) (17), is classified to chapter 23 of Title 50, War and National Defense.

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b) (18), (19), is classified to section 1101(a)15) of Title 8, Aliens and Nationality.

Section 15(g) of the Agricultural Marketing Act, as amended, referred to in subsec. (g) (3), is classified to section 1141j of Title 12, Banks and Banking.

Section 102 (3), (10) of the Servicemen's and Veterans' Survivor Benefits Act, referred to in subsecs. (i) (2), (m) (2), and (n) was repealed and is now covered by section 101(27) of Title 38, Veterans' Benefits.

The Peace Corps Act, referred to in subsecs. (i)(3) and (p), is classified to chapter 34 of Title 22, Foreign Relations and Intercourse.

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (i)(3), are sections 5(c) and 6(1) of Pub. L. 87-293, which are classified to sections 2504(c) and 2505(1) of Title 22, Foreign Relations and Intercourse, respectively.

Section 218 of the Social Security Act, referred to in subsec. (j) (2)(D), (4)(B), is classified to section 418 of Title 42, The Public Health and Welfare.

Title II of the Social Security Act, referred to in subsecs. (k)(1)(A) and (*l*)(1), is classified to sections 401—418, 420—423, and 425 of Title 42, The Public Health and Welfare.

Section 210 (a) (8) (B) of the Social Security Act, referred to in subsec. (k)(1) (B), (C) is classified to section 410(a)(8)(B) of Title 42, The Public Health and Welfare.

Prior to the enactment of this subparagraph, referred in subsec. (k) (1) (F), means prior to the enactment of subpar. (F) of subsec. (k) (1) by Pub. L. 85-840, which was enacted on Aug. 28, 1958.

Section 201 of the Social Security Act, referred to in subsec. (*l*) (6), is classified to section 401 of Title 42, The Public Health and Welfare.

Section 210 (a) of the Social Security Act, referred to in subsec. (*l*)(8), is classified to section 410(a) of Title 42, The Public Health and Welfare.

The Universal Military Training and Service Act, referred to in subsec. (n)(5)(B), is classified to sections 451, 453, 454, 455, 456 and 458—471 of Appendix to Title 50, War and National Defense.

AMENDMENTS

1969—Subsec. (k)(1)(F)(i). Pub. L. 91–172, § 943(c)(1), added "or pay tax" after "tax return".

Subsec. (k)(1)(G)(i). Pub. L. 91–172, § 943(c)(2), added "or pay tax" after "tax return".

Subsec. (k)(1)(H)(i). Pub. L. 91–172, § 943(c)(3), added "or pay tax" after "tax return".

1968—Subsec. (a)(1). Pub. L. 90–248, § 108(b)(a), substituted "$7,800" for "$6,600" wherever appearing.

Subsec. (a)(13). Pub. L. 90–248, § 504(a), added par. (13).

Subsec. (b)(3)(B). Pub. L. 90–248, § 123(b), provided for inclusion of family employment in a private home in definition of "employment," upon compliance with conditions described in cls. (i)—(iii).

Subsec. (b)(6)(C)(ii). Pub. L. 90–248, § 403(i)(1), substituted "section 5351(2) of title 5, United States Code" for "section 2 of the Act of August 4, 1967" and struck out"; 5 U.S.C., sec. 1052" at end of text within parentheses.

Subsec. (b)(6)(C)(vi). Pub. L. 90–248, § 403(i)(2), substituted "subchapter III of chapter 83 of title 5, United States Code," for "the Civil Service Retirement Act".

Subsec. (b)(7)(C)(ii). Pub. L. 90–248, § 403(i)(3), substituted "section 5351(2) of title 5, United States Code" for "section 2 of the Act of August 4, 1947" and struck out"; 5 U.S.C. 1052" at end of text within parentheses.

1965—Subsec. (a)(1). Pub. L. 89–97, § 320(b)(2), substituted "$6,600" for "$4,800" wherever appearing.

Subsec. (a)(12). Pub. L. 89–97, § 313(c)(3), added par. (12).

Subsec. (b)(6)(C)(iv). Pub. L. 89–97, § 311(b)(4), inserted ", other than as a medical or dental intern or a medical or dental resident in training".

Subsec. (b)(7)(C). Pub. L. 89–97, § 317(b)(3), added subpar. (C).

Subsec. (b)(13). Pub. L. 89–97, § 311(b)(5), struck out from the definition of employment the exclusion of service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

Subsec. (k)(1)(B)(iii). Pub. L. 89–97, § 316(a)(1), substituted "such date may not be earlier than the first day of the twentieth" for ", in the case of a certificate filed prior to January 1, 1960, such date may not be earlier than January 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth".

Subsec. (k)(1)(H). Pub. L. 89–97, § 316(b), added subpar. (H).

Subsec. (q). Pub. L. 89–97, § 313(c)(4), added subsec. (q).

1964—Subsec. (a). Pub. L. 88–650 added par. (11).

Pub. L. 88–272 substituted "is a plan described in section 403(a), or" for "meets the requirements of section 401(a) (3), (4), (5), and (6)" in subpar. (5)(B), and added subpar. (5)(C).

1961—Subsec. (b)(19). Pub. L. 87–256 added subsec. (b)(19).

Subsec. (i)(3). Pub. L. 87–293, § 202(a)(1), added subsec. (i)(3).

Subsec. (p). Pub. L. 87–293, § 202(a)(2), added subsec. (p).

1960—Subsec. (b)(3). Pub. L. 86–778, § 104(b), designated existing provisions as cl. (A) and eliminated therein provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (b)(7). Pub. L. 86–778, § 103(n), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby.

Subsec. (b)(18). Pub. L. 86–778, § 103(o) added subsec. (b)(18).

Subsec. (e). Pub. L. 86–778, § 103(p), eliminated a reference to Hawaii in cl. (1), and included Guam and American Samoa and cls. (1) and (2).

Pub. L. 86–624 eliminated "Hawaii," preceding "the District of Columbia", in cl. (1).

Subsec. (k)(1)(A). Pub. L. 86–778, § 105(a) (1), (2), eliminated words "and that at least two-thirds of its employees concur in the filing of the certificate" following "extended to service performed by its employees", and substituted "of each employee (if any) who concurs" for "of each employee who concurs."

Subsec. (k)(1)(E). Pub. L. 86–778, § 105(a)(3), substituted "in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group" for "in one of the groups if at least two-thirds of the employees in such group concur in the filing of the certificate. The organization may also file such a certificate with respect to the employees in the other group if at least two-thirds of the employees in such other group concur in the filing of such certificate."

1959—Subsec. (b)(6)(B)(ii). Pub. L. 86–168 substituted "Federal land bank association" for "national farm loan association", and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsec. (e). Pub. L. 86–70 eliminated "Alaska," preceding "Hawaii."

1958—Subsec. (a)(1). Pub. L. 85–840, § 402(b), substituted "$4,800" for "$4,200" wherever appearing.

Subsec. (b)(1). Pub. L. 85–840, § 404(a), eliminated provisions which excluded from the definition of "employment" service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j of Title 12.

Subsec. (b)(8)(B). Pub. L. 85–840, § 405(b), made subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 321 (k)(1)(E) of this title, became a member of such group, and made subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121 (k)(1)(E) of this title with respect to which no certificate is in effect.

Subsec. (k)(1). Pub. L. 85–840, § 405(a), permitted amendment of the list at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed, allowed an organization to provide that the certificate shall be in effect for the period beginning with the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed prior to Jan. 1, 1960, such date may not be earlier than Jan. 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which such certificate is filed, made the certificate effective in the case of services performed by an employee whose name appears on a supplemental list only with respect to service performed by the employee for the period beginning with the first day of the calendar quarter in which the supplemental list is filed, required organizations described in subpar. (A) which employ both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or political subdivision thereof and individuals who are not in such positions, to divide their employees into two separate groups, authorized the filing of requests by organizations which filed certificates after 1955 but prior to Aug. 28, 1958, to have such certificates effective, with respect to services of certain individuals, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which they are effective and following the last calendar quarter of 1955, and provided for the due date and payment of tax for certain calendar quarters and for the expiration of the statutory period of assessment.

Subsec. (*l*)(3). Pub. L. 85–866 substituted "by" for "be" in the catchline.

1956—Subsec. (a)(8)(B). Act Aug. 1, 1956, ch. 836, § 201(h)(1), included within the definition of wages cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Subsec. (a)(9). Act Aug. 1, 1956, ch. 836, § 201(b), excluded payments made to a woman after she attains the age of 62.

Subsec. (b)(1)(B). Act Aug. 1, 1956, ch. 836, § 201(c), excepted from the term "employment" services performed by foreign agricultural workers lawfully admitted from any foreign country or possession thereof, on a temporary basis to perform agricultural labor.

Subsec. (b)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, § 201(d)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (b)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, § 201(d)(2), substituted "Civil Service Retirement Act" for "Civil Service Retirement Act of 1930", and inserted "(other than the retirement system of the Tennessee Valley Authority)" following "retirement system".

Subsecs. (b)(16), (17). Act Aug. 1, 1956, ch. 836, §§ 201(e)(1), and 121d, added subsecs. (b)(16), (17), respectively.

Subsec. (i). Act. Aug. 1, 1956, ch. 837, § 410, designated existing provisions as par. (1) and added par. (2).

Subsec. (k)(1). Act Aug. 1, 1956, ch. 836, § 201(k), (*l*), inserted "or at any time prior to January 1, 1959, whichever is the later" following "the certificate is in effect", and substituted "the first day of the calendar quarter in which such certificate is filed or the first day of the succeeding calendar quarter, as may be specified in the certificate," for "the first day following the close of the calendar quarter in which such certificate is filed".

Subsec. (*l*)(6). Act Aug. 1, 1956, ch. 836, § 103(j), inserted reference to the Federal Disability Insurance Trust Fund.

Subsec. (*l*)(8)(A). Act Aug. 1, 1956, ch. 836, § 201(j), substituted "not less than 20 percent" for "more than 50 percent".

Subsecs. (m) and (n). Act Aug. 1, 1956, ch. 837, § 411(a), added subsecs. (m) and (n).

Subsec. (*o*). Act Aug. 1, 1956, ch. 836, § 201(h)(2), added subsec. (*o*).

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 204(a), substituted "$4,200" for "$3,600" wherever appearing.

Subsec. (a)(7)(B). Act Sept. 1, 1954, § 204(b)(1), made coverage of domestic service dependent solely on receipt of $50 in cash wages in a calendar quarter by an employee from an employer for such service.

Subsec. (a)(7)(C). Act Sept. 1, 1954, § 204(b)(2), added subsec. (a)(7)(C).

Subsec. (a)(8). Act Sept. 1, 1954, § 204(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(3). Act Sept. 1, 1954, § 205(b) deleted par. (3) and redesignated pars. (4)—(14) as (3)—(13), respectively.

Subsec. (b)(4). Act Sept. 1, 1954, § 205(c), amended subsec. (b)(4), as redesignated, to make the exception with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer.

Subsec. (b)(6)(B). Act Sept. 1, 1954, § 205(d)(1)(A), amended subsec. (b)(6), as redesignated, by inserting in subpar (B) "by an individual" after "service is performed" and "and if such service is covered by a retirement system established by such instrumentality" after "December 31, 1950".

Subsec. (b)(6)(B)(v). Act Sept. 1, 1954, § 205(d)(1)(B), amended subsec. (b)(6), as redesignated, by adding clause (v) to subpar (b).

Subsec. (b)(6)(C). Act Sept. 1, 1954, § 205(d)(2), deleted the exception from coverage for services in the following categories: temporary employees in the Post Office Department field service; temporary census taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Commodity Stabilization Service and similar bodies, unless such bodies are composed exclusively of full-time Federal employees, and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (b)(15). Act Sept. 1, 1954, § 205(e), deleted par. (15) and redesignated pars. (16) and (17) as (14) and (15), respectively.

Subsec. (c). Act Sept. 1, 1954, § 205(b), substituted "subsection (b)(9)" for "subsection (b)(10)."

Subsec. (d)(3)(C). Act Sept. 1, 1954, § 206(a), eliminated the requirement that the performance of the services of homeworkers be subject to State licensing requirements.

Subsec. (k)(1). Act Sept. 1, 1954, § 207, provided that the list accompanying any certificate filed by a nonprofit organization with respect to its lay employees may be amended only within a period of two years after the certificate takes effect and provided that a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect shall be in effect only as to those services performed by an individual on the list which are performed by him after the calendar quarter in which the supplemental list is filed.

Subsec. (*l*). Act Sept. 1, 1954, § 209, added subsec. (*l*).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (k) by Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment of subsec. (a)(1) of this section by section 108(b) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Section 504(d) of Pub. L. 90–248 provided that: "The amendments made by this section [adding subsec. (a)(13) of this section and amending section 3306(b) of this title and section 409 of Title 42] shall apply with respect to remuneration paid after the date of the enactment of this Act [Jan. 2, 1968]."

Amendment of subsec. (b)(3)(B) of this section by section 123(b) of Pub. L. 90–248 applicable with respect to services performed after Dec. 31, 1967, see section 123(c) of Pub. L. 90–248 set out as a note under section 410 of Title 42.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsecs. (a) and (q) of this section by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

Amendment of subsecs. (b)(6)(C)(iv) and (b)(13) by Pub. L. 89–97 applicable only with respect to services performed after 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment of subsection (b)(7) of this section by section 317 of Pub. L. 89–97 applicable with respect to services performed after the quarter ending September 30, 1965, and after the quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under the provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Section 316(a)(2) of Pub. L. 89–97 provided that: "The amendment made by paragraph (1) [to subsec. (h)(1)(B)(iii) of this section] shall apply in the case of any certificate filed under section 3121(k)(1)(A) of such Code [this title] after the date of the enactment of this Act [July 30, 1965]."

Section 320(c) of Pub. L. 89–97 provided that: "The amendments made by subsections (a)(1) and (a)(3)(A) [to sections 409(a)(3)(4) and 413(a)(2)(ii) of title 42], and the amendments made by subsection (b) (except paragraph (1) thereof) [to subsec. (a)(1) of this section and sections 3122, 3125 (a), (b), 6413(c)(1) and 6413(c)(2)(A) of this title], shall apply only with respect to remuneration paid after December 1965. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [to section 1402(b)(1) (c) and (d) of this title and sections 411(b)(1), (c), (d) and 413(a)(2)(ii) of Title 42] shall apply only with respect to taxable years ending after 1965. The amendment made by subsection (a)(4) [to

section 415(e)(1) of Title 42] shall apply only with respect to calendar years after 1965."

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 4(d) of Pub. L. 88-650 provided that: "The amendments made by this section [to this section and section 3306 of this title and section 409 of Title 42] shall apply with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after the date of the enactment of this Act [Oct. 13, 1964]."

Amendment of subsec. (a)(5) by Pub. L. 88-272 applicable to taxable years ending after Dec. 31, 1962, see section 220(d) of Pub. L. 88-272, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 202(c) of Pub. L. 87-293 provided that: "The amendments made by subsections (a) and (b) of this section [to this section, sections 3122 and 6051 of this title and sections 405, 409, and 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the date of the enactment of this Act [Sept. 22, 1961]. In the case of any individual who is enrolled as a volunteer or volunteer leader under section 16(a) of this Act [section 2515(a) of Title 22, Foreign Relations and Intercourse] such amendments shall apply with respect to services performed on or after the effective date of such enrollment."

Section 202(c) of Pub. L. 87-293 repealed by Pub. L. 89-572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

Section 110(h)(3) of Pub. L. 87-256 provided that: "The amendments made by subsections (e) and (f) of this section [to this section and section 3306 of this title and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after December 31, 1961."

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment of subsec. (b)(3) of this section by Pub. L. 86-778 applicable only with respect to services performed after 1960, see section 104(c) of Pub. L. 86-778, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment of subsec. (b)(7) of this section by Pub. L. 86-778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42, The Public Health and Welfare, and the amendment of subsec. (b)(7) of this section applicable only as expressly provided therein, see section 103(v)(2) of Pub. L. 86-778, set out as a note under section 402 of Title 42.

Enactment of subsec. (b)(18) of this section and amendment of subsec. (e) of this section by Pub. L. 86-778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Amendment of subsec. (e)(1) by Pub. L. 86-624 effective on August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 2202 of this title.

Section 105(d) of Pub. L. 86-778 provided that:

"(1) The amendments made by subsection (a) [to subsec. (k)(1)(A), (E) of this section] shall apply only with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1954 after the date of the enactment of this Act [Sept. 13, 1960].

"(2) No monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of this section or the amendments made by such subsections [adding section 1402(g) of this title and enacting notes under this section and 1402 of this title], and no lump-sum death payment under such title shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960]."

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment of section by Pub. L. 86-168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86-168, set out as a note under section 640*l* of Title 12, Banks and Banking.

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 402 (e) of Pub. L. 85-840 provided that: "The amendments made by subsections (b) and (c) [to subsec. (a) of this section and section 3122 of this title] shall be applicable only with respect to remuneration paid after 1958."

Section 404 (b) of Pub. L. 85-840 provided that: "The amendment made by subsection (a) [to subsec. (b) (1) of this section] shall apply with respect to service performed after 1958."

Section 405 (c) of Pub. L. 85-840 provided that: "The amendments made by subsections (a) and (b) [to subsec. (b) (8) (B) and (k) (1) of this section] shall apply with respect to certificates filed under section 3121 (k) (1) of the Internal Revenue Code of 1954 [subsec. (k) (1) of this section] after the date of enactment of this Act [August 28, 1958] and requests filed under subparagraph (F) of such section [subsec. (k) (1) (F) of this section] after such date."

Amendment of subsec. (*l*) (3) of this section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 201 (m) of act Aug. 1, 1956, ch. 836, provided that:

"(1) The amendments made by subsection (a) [adding section 3113 of this title] and paragraph (1) of subsection (h) [to subsec. (a) (8) (B) of this section] shall apply with respect to remuneration paid after 1956. The amendment made by subsection (b) [to subsec. (a) (9) of this section] shall apply with respect to remuneration paid after October 1956. The amendments made by subsection (c) [to subsec. (b) (1) (B) of this section] and paragraph (2) of subsection (h) [to subsec. (*o*) of this section] shall apply with respect to service performed after 1956. The amendments made by paragraphs (1) and (2) of subsection (d) [to subsecs. (b) (6) (B) (ii) and (b) (6) (C) (vi) of this section] shall apply with respect to service with respect to which the amendments made by paragraphs (1) and (2) of subsection (b) of section 104 of this Act [to sections 410 (a) (6) (B) (ii) and 410 (a) (6) (C) (vi) of Title 42, the Public Health and Welfare] apply. The amendments made by paragraph (1) of subsection (e) [to subsec. (b) (16) of this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (3) of such subsection shall [to section 1402 (c) (2) of this title] apply with respect to taxable years ending after 1954. The amendments made by paragraph (2)

of subsection (e) [to section 1402 (a) (1) of this title] and by subsection (f) [to section 1402 (c) (5) of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (i) [to section 1402 (a) of this title] shall apply with respect to taxable years ending on or after December 31, 1956. The amendment made by subsection (*l*) [to the fifth sentence of subsec. (k) (*l*) of this title] shall apply with respect to certificates filed after 1956 under section 3121 (k) of the Internal Revenue Code of 1954.

"(2) (A) Except as provided in subparagraph (B), the amendment made by subsection (g) [to section 1402 (a) (8) (B) of this title] shall apply only with respect to taxable years ending after 1956.

"(B) Any individual who, for a taxable year ending after 1954 and prior to 1957, had income which by reason of the amendment made by subsection (g) would have been included within the meaning of "net earnings from self-employment" (as such term is defined in section 1402 (a) of the Internal Revenue Code of 1954), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402 (e) of such Code, may elect to have the amendment made by subsection (g) apply to his taxable years ending after 1954 and prior to 1957. No election made by any individual under this subparagraph shall be valid unless such individual has filed a waiver certificate under section 1402 (e) of such Code prior to the making of such election or files a waiver certificate at the time he makes such election.

"(C) Any individual described in subparagraph (B) who has filed a waiver certificate under section 1402 (e) of such Code prior to the date of enactment of this Act [August 1, 1956], or who files a waiver certificate under such section on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, must make such election on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, or before April 16, 1957, whichever is the later.

"(D) Any individual described in subparagraph (B) who has not filed a waiver certificate under section 1402 (e) of such Code on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957 must make such election on or before the due date of his return (including any extension thereof) for his first taxable year ending after 1956. Any individual described in this subparagraph whose period for filing a waiver certificate under section 1402 (e) of such Code has expired at the time he makes such election may, notwithstanding the provisions of paragraph (2) of such section, file a waiver certificate at the time he makes such election.

"(E) An election under subparagraph (B) shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Notwithstanding the provisions of paragraph (3) of section 1402 (e) of such Code, the waiver certificate filed by an individual who makes an election under subparagraph (B) (regardless of when filed) shall be effective for such individual's first taxable year ending after 1954 in which he had income which by reason of the amendment made by subsection (g) would have been included within the meaning of "net earnings from self-employment" (as such term is defined in section 1402 (a) of such Code), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402 (e) of such Code, or for the taxable year prescribed by such paragraph (3) of section 1402 (e), if such taxable year is earlier, and for all succeeding taxable years.

"(F) No interest or penalty shall be assessed or collected for failure to file a return within the time prescribed by law, if such failure arises solely by reason of an election made by an individual under subparagraph (B), or for any underpayment of the tax imposed by section 1401 of such Code arising solely by reason of such election, for the period ending with the date such individual makes an election under subparagraph (B).

"(3) Any tax under chapter 2 of the Internal Revenue Code of 1954 which is due, solely by reason of the enactment of subsection (f) [amending section 1402 (c) (5) of this title], or paragraph (2) of subsection (e), of this section [amending section 1402 (a) (1) of this title], for any taxable year ending on or before the date of the enactment of this Act [August 1, 1956] shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which this Act is enacted [August 1956]. In no event shall interest be imposed on the amount of any tax due under such chapter solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section for any period before the day after the date of enactment of this Act [August 1, 1956].

"(4) Any tax due under chapter 21 of the Internal Revenue Code of 1954 which is due, solely by reason of the enactment of subsection (d) [amending subsecs. (b) (6) (B) (ii) and (b) (6) (C) (vi) of this section] and an effective date prescribed pursuant to paragraph (2) (B) or (2) (C) of section 104 (i) [set out as a note under section 410 of Title 42, The Public Health and Welfare], for any calendar quarter beginning prior to the day on which the Secretary of Health, Education, and Welfare approves the plan which prescribes such effective date shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which such plan is approved. In no event shall interest be imposed on the amount of any such tax due under such chapter for any period before the day on which the Secretary of Health, Education, and Welfare approves such plan."

Subsecs. (i), (m), and (n), as amended by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957.

EFFECTIVE DATE OF 1954 AMENDMENTS

Section 204 (c) of act Sept. 1, 1954, provided that the amendments to subsec. (a) by said act shall be applicable only with respect to remuneration paid after 1954.

Section 205 (f) of act Sept. 1, 1954, provided that the amendments to subsec. (b) (4), (6) (B), (6) (C), (14), and (15) made by said act shall be applicable only with respect to services performed after 1954 and amendments to subsec. (b) (1) and (3) should be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is after 1954.

Section 206 (b) of act Sept. 1, 1954, provided that the amendment to subsec. (d) (3) (C) by said act shall be applicable only with respect to services performed after 1954.

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(1), (2) of Pub. L. 87–293 repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Coast and Geodetic Survey was consolidated with the Weather Bureau of the Department of Commerce to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All personnel (including commissioned officers) of the Survey and all property held or used by the Survey were deemed transferred to the Administration, and all functions of the Survey, not previously transferred by 1950 Reorg. Plan No. 5, were transferred to the Secretary of Commerce.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PRIOR TO FILING OF WAIVER CERTIFICATE

Section 105(b) (1)—(5) of Pub. L. 86–778, as amended by Pub. L. 89–97, Title III, § 316(c)(1), July 30, 1965, 79 Stat. 386, provided that:

"(b)(1) If—

"(A) an individual performed service in the employ of an organization with respect to which remuneration was paid before the first day of the calendar quarter in which the organization filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1954 [subsec. (h)(1) of this section], and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act [section 410 (a)(8)(B) of Title 42],

"(B) such service would have constituted employment as defined in section 210 of such Act [section 410 of Title 42] if the requirements of section 3121(k)(1) of such Code [subsec. (h)(1) of this section] were satisfied,

"(C) such organization paid, on or before the due date of the tax return for the calendar quarter before the calendar quarter in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code [subsec. (h)(1) of this section], any amount, as taxes imposed by sections 3101 and 3111 of such Code [this title] with respect to such remuneration paid by the organization to the individual for such service,

"(D) such individual, or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of such Act [section 405(c)(1)(c) of Title 42]), requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of such Act [section 401 et seq. of Title 42], and

"(E) the request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), (4), and (5), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of such Act [section 401 et seq. of Title 42].

"(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A), on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of such Code [subsec. (h)(1) of this section].

"(3) Paragraph (1) shall not apply with respect to an individual who is employed by the organization referred to in paragraph (2) on the date the certificate is filed.

"(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of such Code [this title]) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 of such Code) is repaid before January 1, 1968, or, if later, the first day of the third year after the year in which the organization filed a certificate pursuant to section 3121 (k)(1) of such Code [subsec. (k)(1) of this section].

"(5) Paragraph (1) shall not apply to any service performed for the organization in a period for which a certificate filed pursuant to section 3121(k)(1) of such Code [subsec. (k)(1) of this section] is not in effect."

Pub. L. 89–97, title III, § 316(c)(2), July 30, 1965, 79 Stat. 387, provided that: "The amendment [to section 105 (b) of Pub. L. 86–778] made by paragraph (1) [set out in this note] shall take effect on the date of the enactment of this Act [July 30, 1965]. The provisions of section 105 (b) of the Social Security Amendments of 1960 [section 105(b) of Pub. L. 86–778] which were in effect before the date of the enactment of this Act [July 30, 1965] shall be applicable with respect to any request filed under section 105(b)(1) of such Amendments before such date. Nothing in the preceding sentence shall prevent the filing of a request under section 105(b)(1) of such Amendments as amended by this Act."

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS FOR WHICH REMUNERATION WAS PAID BEFORE JULY 30, 1965, BUT AFTER FILING OF WAIVER CERTIFICATE

Section 316(d) of Pub. L. 89–97 provided that:

"If—

"(1) an individual performed service with respect to which remuneration was paid before the date of enactment of this Act by an organization which, before such date, filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code [subsec. (h)(1) of this section],

"(2) such service is excluded from employment under title II of the Social Security Act [section 401 et seq. of Title 42] but would not be excluded therefrom if the requirements of such section 3121(k)(1) [subsec. (h)(1) of this section] had been met with respect to such service,

"(3) such service was performed during the period such certificate was in effect, and

"(4) such individual was listed pursuant to such section 3121(k)(1) [subsec. (h)(1) of this section] at any time during such period and before the date of enactment of this Act [July 30, 1965] as an employee who concurred in the filing of such certificate or such individual filed a request for coverage pursuant to section 105(b) of the Social Security Amendments of 1960 [section 105(b) of Pub. L. 86–778], as in effect prior to the enactment of this Act (but such listing or request was not effective with respect to the service described above),

then, subject to the conditions stated in subparagraphs (B), (C), (D), and (E) of paragraph (1), and paragraph (4), of section 105(b) of the Social Security Amendments of 1960 [section 105(b) of Pub. L. 86–778], as amended by this section [and, as so amended, set out as a note under this section], the remuneration of such individual which was paid with respect to such excluded service shall be deemed to constitute remuneration for employment for purposes of such title II [section 401 et seq. of Title 42]; except that, for purposes of this subsection, in applying subparagraph (C) of paragraph (1) of such section 105(b) the date of enactment of this Act shall be considered to be the date on which the organization filed its certificate under section 3121(k)(1) [subsec. (h)(1) of this section] and any reference, in paragraph (4) of such section, to such paragraph (1) shall be considered a reference to the preceding provisions of this subsection."

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO JULY 1, 1960

Section 105(b) (1—5) of Pub. L. 86–778 provided that:

"(1) If—

"(A) an individual performed service in the employ of an organization after 1950 with respect to which remuneration was paid before July 1, 1960, and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act [section 410(a)(8)(B) of Title 42],

"(B) such service would have constituted employment as defined in section 210 of such Act [section 410 of Title 42] if the requirements of section 3121 (k)(1) of the Internal Revenue Code of 1954 [subsec. (k)(1) of this section] (or corresponding provisions of prior law) were satisfied,

"(C) such organization paid before August 11, 1960, any amount, as taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 [sections 3101 and 3111 of this title] (or corresponding provisions of prior law), with respect to such remuneration paid by the organization to the individual for such service,

"(D) such individual (or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205 (c)(1)(C) of the Social Security Act [section 405(c)(1)(C) of Title 42])) requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of the Social Security Act, [section 401 et seq. of Title 42], and

"(E) the request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), and (4), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of the Social Security Act [section 401 et seq. of Title 42].

"(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A)—

"(A) on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1954 [subsec. (k)(1) of this section] (or corresponding provisions of prior law), or,

"(B) no longer has any individual in its employ for remuneration at the time such request is made.

"(3) Paragraph (1) shall not apply with respect to an individual who was in the employ of the organization referred to in paragraph (2)(A) at any time during the 24-month period following the calendar quarter in which the certificate was filed, unless the organization paid an amount as taxes under sections 3101 and 3111 of the Internal Revenue Code of 1954 [sections 3101 and 3111 of this title] (or corresponding provisions of prior law) with respect to remuneration paid by the organization to the employee during some portion of such 24-month period.

"(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of the Internal Revenue Code of 1954 [this chapter]) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 [section 6611 of this title]) is repaid before January 1, 1963.

"(5) If—

"(A) any remuneration for service performed by an individual is deemed pursuant to paragraph (1) to constitute remuneration for employment for purposes of title II of the Social Security Act [section 401 et seq. of Title 42],

"(B) such individual performs service, on or after the date on which the request is made, in the employ of the organization referred to in paragraph (1)(A), and

"(C) the certificate filed by such organization pursuant to section 3121(k)(1) of the Internal Revenue Code of 1954 [subsec. (k)(1) of this section] (or corresponding provisions of prior law) is not effective with respect to service performed by such individual before the first day of the calendar quarter following the quarter in which the request is made.

then, for purposes of clauses (ii) and (iii) of section 210(a)(8)(B) of the Social Security Act [section 410(a)(8)(B)(ii), (iii) of Title 42] and of clauses (ii) and (iii) of section 3121(b)(8)(B) of the Internal Revenue Code of 1954 [subsec. (b)(8)(B)(ii), (iii) of this section], such individual shall be deemed to have become an employee of such organization (or to have become a member of a group described in section 3121(k)(1)(E) of such Code [subsec. (k)(1)(E) of this section]) on the first day of the calendar quarter following the quarter in which the request is made."

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO 1957

Section 403 of act Sept. 1, 1954, ch. 1206, title IV, 68 Stat. 1098, 1099, as amended Aug. 1, 1956, ch. 836, title IV, § 401, 70 Stat. 855; Aug. 27, 1958, Pub. L. 85-785, §§ 1—3, 72 Stat. 938, provided that:

"(a) In any case in which—

"(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of the Social Security Amendments of 1956 [August 1, 1956], by an organization which is described in section 501 (c) (3) of the Internal Revenue Code of 1954 and which is exempt from income tax under section 501 (a) of such Code but which did not have in effect during the entire period in which the individual was so employed, a valid waiver certificate under section 1426 (*l*) (1) of the Internal Revenue Code of 1939 or section 3121 (k) (1) of the Internal Revenue Code of 1954;

"(2) the service performed by such individual as an employee of such organization during the period subsequent to 1950 and prior to 1957 would have constituted employment (as defined in section 210 of the Social Security Act [sections 410 of Title 42, The Public Health and Welfare] and section 1426 (b) of the Internal Revenue Code of 1939 or section 3121 (b) of the Internal Revenue Code of 1954, as the case may be, at the time such service was performed) if such organization had filed prior to the performance of such service such a certificate accompanied by a list of the signatures of employees who concurred in the filing of such certificate and such individual's signature had appeared on such list;

"(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 or sections 3101 and 3111 of the Internal Revenue Code of 1954, as the case may be, have been paid with respect to any part of the remuneration paid to such individual by such organization for such service performed during the period in which such organization did not have a valid waiver certificate in effect;

"(4) part of such taxes have been paid prior to the enactment of the Social Security Amendments of 1956 [August 1, 1956];

"(5) so much of such taxes as have been paid prior to the enactment of the Social Security Amendments of 1956 [August 1, 1956] have been paid by such organization in good faith and without knowledge that a waiver certificate was necessary or upon the assumption that a valid waiver certificate had been filed by it under section 1426 (*l*) (1) of the Internal Revenue Code of 1939 or section 3121 (k) (1) of the Internal Revenue Code of 1954, as the case may be; and

"(6) no refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed in such form and manner, and with such official, as may be prescribed by regulations under chapter 21 of the Internal Revenue Code of 1954), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act [section 410 of Title 42, The Public Health and Welfare] and section 1426 (b) of the Internal Revenue Code of 1939 or section 3121 (b) of the Internal Revenue Code of 1954, as the case may be.

"(b) In any case in which—

"(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of the Social Security Amendments of 1956 [August 1, 1956], by an organization which has filed a valid waiver certificate under section 1426 (*l*) (1) of the Internal Revenue Code of 1939 or section 3121 (k) (1) of the Internal Revenue Code of 1954;

"(2) the service performed by such individual during the time he was so employed would have constituted employment (as defined in section 210 of the Social Security Act [section 410 of Title 42, The Public Health and Welfare] and section 1426 (b) of the Internal Revenue Code of 1939 or section 3121 (b) of the Internal Revenue Code of 1954, as the case may be, at the time such service was performed) if such individual's signature had appeared on the list of signatures of employees who concurred in the filing of such certificate;

"(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 or sections 3101 and 3111 of the Internal Revenue Code of 1954, as the case may be, have been paid prior to the enactment of the Social Security Amendments of 1956 [August 1, 1956] with respect to any part of the remuneration paid to such individual by such organization for such service; and

"(4) no refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed on or before January 1, 1959, and in such form and manner, and with such official, as may be prescribed by regulations made under chapter 21 of the Internal Revenue Code of 1954), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act [section 410 of

Title 42, The Public Health and Welfare] and section 1426 (b) of the Internal Revenue Code of 1939 or section 3121 (b) of the Internal Revenue Code of 1954, as the case may be, and such individual shall be deemed to have concurred in the filing of the waiver certificate filed by such organization under section 1426 (*l*) (1) of the Internal Revenue Code of 1939 or section 3121 (k) (1) of the Internal Revenue Code of 1954."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 176, 401, 406, 1402, 1563, 3101, 3102, 3111, 3122, 3124, 3125, 3201, 3202, 3211, 3221, 3306, 3401, 6051, 6053, 6413, 6652 of this title; title 7 section 2042; title 20 section 125; title 42 sections 401, 410; title 45 sections 228c, 228e; title 49 section 303.

§ 3122. Federal service.

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination whether an individual has performed service which constitutes employment as defined in section 3121(b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121(a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the $7,800 limitation in section 3121 (a) (1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121 (a) (1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121 (m) (1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary shall be deemed to be the head of such instrumentality. (Aug. 16, 1954, ch. 736, 68A Stat. 428; Sept. 1, 1954, ch. 1206, title II, §§ 202(c), 203(a), 68 Stat. 1090; Aug. 1, 1956, ch. 837, title IV, § 411 (b), (c), 70 Stat. 879; Aug. 28, 1958, Pub. L. 85-840, title IV, § 402(c), 72 Stat. 1042; Sept. 2, 1958, Pub. L. 85-866, title I, § 70, 72 Stat. 1660; Sept. 22, 1961, Pub. L. 87-293, title II, § 202(a)(3), 75 Stat. 626; July 30, 1965, Pub. L. 89-97, title III, § 320(b)(3), 79 Stat. 393; Jan. 2, 1968, Pub. L. 90-248, title I, § 108(b)(3), 81 Stat. 835.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in the text, is classified to chapter 34 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1968—Pub. L. 90-248 substituted "$7,800" for "$6,600" in the second sentence.

1965—Pub. L. 89-97 substituted "$6,600" for "$4,800".

1961—Pub. L. 87-293 inserted "and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable," following "section 3121(m)(1) are applicable,".

1958—Pub. L. 85-866 substituted "section" for "subsection" wherever appearing.

Pub. L. 85-840 substituted "$4,800" for $4,200".

1956—Act Aug. 1, 1956, included taxes with respect to service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) of this title are applicable, and authorized payment of the tax imposed under section 3111 of this title from appropriations available for pay of members of the uniformed service.

1954—Act Sept. 1, 1954, § 202(c) substituted "$4,200" for "$3,600".

Act Sept. 1, 1954, § 203(a), added provisions making the section applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-97 applicable with respect to remuneration paid after December, 1965, see section 320(c) of Pub. L. 89-97, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of this section by Pub. L. 87-293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87-293, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment of section by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

Amendment of section by Pub. L. 85-840 applicable only with respect to remuneration paid after 1958, see section 402 (e) of Pub. L. 85-840, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 202 (d) of act Sept. 1, 1954, provided in part that the amendment to this section by section 202 (c) of said act should be applicable only with respect to remuneration paid after 1954.

Section 203 (b) of act Sept. 1, 1954, provided that the amendment to this section by section 203 (a) of said act should become effective Jan. 1, 1955.

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(3) of Pub. L. 87-293 repealed by Pub. L. 89-572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions. see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Collection of tax on services made necessary by hurricane, see note set out under section 3111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6205, 6413 of this title.

§ 3123. Deductions as constructive payments.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. (Aug. 16, 1954, ch. 736, 68A Stat. 429.)

§ 3124. Estimate of revenue reduction.

The Secretary or his delegate at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121 (b) (9) and shall include such estimate in his annual report. (Aug. 16, 1954, ch. 736, 68A Stat. 429; Sept. 1, 1954, ch. 1206, title II, § 205(b), 68 Stat. 1091.)

AMENDMENTS

1954—Act Sept. 1, 1954, changed reference from "section 3121(b)(10)" to "section 3121(b)(9)".

§ 3125. Returns in the case of governmental employees in Guam, American Samoa, and the District of Columbia.

(a) Guam.

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the $7,800 limitation in section 3121(a)(1).

(b) American Samoa.

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the $7,800 limitation in section 3121(a)(1).

(c) District of Columbia.

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Commissioners of the District of Columbia or by such agents as they may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the $7,800 limitation in section 3121(a)(1). (Added Pub. L. 86-778, title I, § 103(q)(1), Sept. 13, 1960, 74 Stat. 939, and amended Pub. L. 89-97, title III, §§ 317 (c) (1), (2), 320(b)(4), July 30, 1965, 79 Stat. 389, 393; Pub. L. 90-248, title I, § 108(b)(4), Jan. 2, 1968, 81 Stat. 835.)

AMENDMENTS

1968—Pub. L. 90-248 substituted "$7,800" for "$6,600" wherever appearing.

1965—Subsecs. (a), (b). Pub. L. 89-97, § 320(b)(4), substituted "$6,600" for "$4,800".

Subsec. (c). Pub. L. 89-97, § 317(c)(1), added subsec. (c) and inserted reference to District of Columbia in the section catchline.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 317 of Pub. L. 89-97 applicable with respect to services performed after the quarter ending September 30, 1965, and after the quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by section 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under the provisions of such amendments, see section 317(g) of Pub. L. 89-97, set out as a note under section 410 of Title 42.

Amendment of section by section 320 of Pub. L. 89-97 applicable with respect to remuneration paid after December, 1965, see section 320(c) of Pub. L. 89-97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE

Section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision

thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6205, 6413 of this title.

§ 3126. Short title.

This chapter may be cited as the "Federal Insurance Contributions Act." (Aug. 16, 1954, ch. 736, 68A Stat. 429, § 3126, formerly § 3125, renumbered Sept. 13, 1960, Pub. L. 86-778, title I, § 103(q)(1), 74 Stat. 939.)

Chapter 22.—RAILROAD RETIREMENT TAX ACT

Subchapter
A. Tax on employees.
B. Tax on employee representatives.
C. Tax on employers.
D. General provisions.

Subchapter A.—Tax on Employees

Sec.
3201. Rate of tax.
3202. Deduction of tax from compensation.

§ 3201. Rate of tax.

In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to—

(1) 6¼ percent of so much of the compensation paid to such employee for services rendered by him after September 30, 1965,

(2) 6½ percent of so much of the compensation paid to such employee for services rendered by him after December 31, 1965,

(3) 7 percent of so much of the compensation paid to such employee for services rendered by him after December 31, 1966,

(4) 7¼ percent of so much of the compensation paid to such employee for services rendered by him after December 31, 1967, and

(5) 7½ percent of so much of the compensation paid to such employee for services rendered by him after December 31, 1968,

as is not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided,* That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956). (Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; May 19, 1959, Pub. L. 86-28, pt. II, § 201(a), 73 Stat. 28; Oct. 5, 1963, Pub. L. 88-133, title II, § 201, 77 Stat. 221; July 30, 1965, Pub. L. 89-97, title I, §§ 105(b)(1), 111(c)(1), 79 Stat. 335, 342; Sept. 29, 1965, Pub. L. 89-212, §§ 4, 5(a), 79 Stat. 861; Oct. 30, 1966, Pub. L. 89-699, title III, § 301(a), 80 Stat. 1078; Oct. 30, 1966, Pub. L. 89-700, title III, § 301 (v), (vi), 80 Stat. 1088, 1089.)

REFERENCES IN TEXT

"As amended by the Social Security Amendments of 1956", referred to in the text, means the amendments made by act Aug. 1, 1956, ch. 836, title II, § 202(b), 70 Stat. 845.

AMENDMENTS

1966—Pub. L. 89-700 substituted "rendered after September 30, 1965" for "rendered after December 31, 1964", and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended."

Pub. L. 89-699 substituted "7 percent" for "6¾ percent" in subd. (3), "7¼ percent" for "7 percent" in subd. (4), and "7½ percent" for "7¼ percent" in subd. (5).

1965—Pub. L. 89-212 substituted pars. (1)—(5) for former pars. (1) and (2) which imposed a tax equal to 6¾ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid to such employee for services rendered by him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended."

Pub. L. 89-97 substituted "the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3101(b)" following "section 3101(a)", respectively.

1963—Pub. L. 88-133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Pub. L. 86-28 increased the tax from 6¼ percent of the compensation not in excess of $350 for any calendar month to 6¾ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after Dec. 31, 1964, by a number of percentage points equal at any given time to the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted "$350" for "$300."

EFFECTIVE DATE OF 1965 AMENDMENTS

Section 6 of Pub. L. 89–212 provided that: "The amendments made by sections 1 and 3 of this Act shall take effect with respect to annuities accruing and deaths occurring in months after the month in which this Act is enacted [Sept. 1965], and shall apply also to annuities paid in lump sums equal to their commuted value because of a reduction in such annuities under section 2(e) of the Railroad Retirement Act of 1937 [section 228b(e) of title 45] as in effect before the amendments made by this Act, as if such annuities had not been paid in such lump sums: *Provided, however,* That the amounts of such annuities which were paid in lump sums equal to their commuted value shall not be included in the amount of annuities which become payable by reason of section 1 of this Act [amending section 228b of title 45]. The amendments made by section 2 of this Act [amending sections 3203, 3231, 3402, 6053, and 6652 of this title, and section 228a of title 45] shall apply only with respect to tips received after 1965. The amendments made by section 4 of this Act [amending sections 3201, 3202, 3211, and 3221 of this title] shall apply only with respect to calendar months after the month in which this Act is enacted. The amendments made by section 5 of this Act [amending sections 3201, 3211, and 3221 of this title] shall apply only with respect to compensation paid for services rendered after September 30, 1965."

Section 105(b)(4) of Pub. L. 89–97 provided that: "The amendments made by this subsection [amending this section and sections 3211 and 3221(b) of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1965."

Amendment of this section by Pub. L. 89–97, § 111(c)(1) applicable to calendar year 1966, or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as a note under section 228s–2 of Title 45, Railroads.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 202 of Pub. L. 86–28 provided that: "The amendments made by section 201 [to this section and sections 3202(a), 3211 and 3221 of this title] shall, except as otherwise provided in such amendments, be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid after the month of such enactment, for services rendered after such month of enactment."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 407 of act Aug. 31, 1954, provided that: "The amendments to the Internal Revenue Code of 1954 [this section and sections 3202 (a), 3211, 3221, and 3231 (e) (1) of this title] made by section 206 [of this Act] shall become effective as if enacted as a part of the Internal Revenue Code of 1954 [this title]."

See, also, notes under section 228a of Title 45, Railroads.

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 (a) (1) of this title.

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 (e) of this title.

Assessment for underpayment of tax imposed by this section, see section 6502 (b) of this title.

Effective date of this chapter, see section 7851 (a) (3) of this title.

Nondeductibility of taxes imposed by this section as deduction from gross income, see section 3502(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275, 1402, 3202, 3221, 3231, 3502, 6051, 6053, 6205, 6413, 6652 of this title; title 45 section 228e.

§ 3202. Deduction of tax from compensation.

(a) Requirement.

The tax imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after September 30, 1965, by more than one employer for services rendered during any calendar month after September 30, 1965, and the aggregate of such compensation is in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after September 30, 1965, to the employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after September 30, 1965, to such employee for services rendered during such month bears to the total compensation paid by all such employers after September 30, 1965, to such employee for services rendered during such month. An employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (3) of section 3231(e) is applicable may deduct an amount equivalent to such tax with respect to such tips from any compensation of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer.

Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) Special rule for tips.

(1) In the case of tips which constitute compensation, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of

the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such compensation of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3201, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the compensation of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

(3) The Secretary or his delegate may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of compensation (exclusive of tips) during such quarter as if the tips so estimated constituted actual tips so reported, and

(C) to deduct upon any payment of compensation (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such compensation of the employee during the quarter to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the quarter.

(4) If the tax imposed by section 3201 with respect to tips which constitute compensation exceeds the portion of such tax which can be collected by the employer from the compensation of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; May 19, 1959, Pub. L. 86–28, pt. II, § 201(b), 73 Stat. 29; Oct. 5, 1963, Pub. L. 88–133, title II, § 202, 77 Stat. 221; Sept. 29, 1965, Pub. L. 89–212, §§ 2(a), 4, 79 Stat. 858, 861; Oct. 30, 1966, Pub. L. 89–700, title III, § 301 (iii), (v), 80 Stat. 1088.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–700 substituted "after September 30, 1965" for "after the month in which this provision was amended in 1959" in six instances, and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended" in two instances.

1965—Subsec. (a). Pub. L. 89–212, §§ 2(a)(1), 4, added the sentence permitting an employer who is furnished by an employee a written statement of tips pursuant to section 6053(a) to which par. (3) of section 3231(e) is applicable to deduct an amount equivalent to such tax with respect to such tips from any compensation of the employee under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended" in two instances.

Subsec. (c). Pub. L. 89–212, § 2(a)(2), added subsec. (c).

1963—Subsec. (a). Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86–28 substituted "after the month in which this provision was amended in 1959" for "after 1954" and for "after December 31, 1954" in five places, and "$400" for "$350" in two places.

1954—Subsec. (a). Act Aug. 31, 1954, substituted "$350" for "$300" wherever appearing.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–212 § 2, effective only with respect to tips received after 1965, and by Pub. L. 89–212, § 4, effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted, see note under section 3201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–28 effective, except as otherwise provided, the first day of the calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section effective as if enacted as a part of the Internal Revenue Code of 1954 (this title), see note under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3221, 3402, 3505, 6053 of this title.

Subchapter B.—Tax on Employee Representatives

Sec.
3211. Rate of tax.
3212. Determination of compensation.

§ 3211. Rate of tax.

(a) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to—

(1) 12½ percent of so much of the compensation paid to such employee representative for services rendered by him after September 30, 1965,

(2) 13 percent of so much of the compensation paid to such employee representative for services rendered by him after December 31, 1965,

(3) 14 percent of so much of the compensation paid to such employee representative for services rendered by him after December 31, 1966,

(4) 14½ percent of so much of the compensation paid to such employee representative for

services rendered by him after December 31, 1967, and

(5) 15 percent of so much of the compensation paid to such employee representative for services rendered by him after December 31, 1968,

as is not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided,* That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative. (Aug. 16, 1954, ch. 736, 68A Stat. 432; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; May 19, 1959. Pub. L. 86–28, pt. II, § 201(c), 73 Stat. 29; Oct. 5, 1963, Pub. L. 88–133, title II, § 201, 77 Stat. 221; July 30, 1965, Pub. L. 89–97, title I, §§ 105(b)(2), 111(c)(2), 79 Stat. 335, 342; Sept. 29, 1965, Pub. L. 89–212, §§ 4, 5(b), 79 Stat. 861; Oct. 30, 1966, Pub. L. 89–699, title III, § 301 (b), (d), 80 Stat. 1078; Oct. 30, 1966, Pub. L. 89–700, title III, § 301(v), (vi), 80 Stat. 1088, 1089; Mar. 17, 1970, Pub. L. 91–215, § 4, 84 Stat. 70.)

REFERENCES IN TEXT

"As amended by the Social Security Amendments of 1956", referred to in the text, means the amendments made by act Aug. 1, 1956, ch. 836, title II, § 202(b) 70 Stat. 845.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–215 substituted the rate of excise tax imposed on every employer under section 3221(c) of this title for a flat 2-cents per man hour tax as the rate for additional taxes imposed on the income of employee representatives for each man hour of compensation paid.

1966—Pub. L. 89–700 substituted "rendered after September 30, 1965" for "rendered after December 31, 1964", and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended."

Pub. L. 89–699, § 301(b), (d), designated existing provisions as subsec. (a), and substituted therein "14 percent" for "13½ percent" in subd. (3), "14½ percent" for "14 percent" in subd. (4), and "15 percent" for "14½ percent" in subd. (5).

Subsec. (b). Pub. L. 89–699, § 301(d), added subsec. (b).

1965—Pub. L. 89–212 substituted pars. (1)—(5) for former pars. (1) and (2) which imposed a tax equal to 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended."

Pub. L. 89–97 substituted "the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3101(b)" following "section 3101(a)", respectively.

1963—Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Pub. L. 86–28 increased the tax from 12½ percent of the compensation not in excess of $350 for any calendar month to 13½ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 14½ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points equal at any given time to twice the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted "$350" for "$300".

EFFECTIVE AND TERMINATION DATE OF 1966 AMENDMENT

Section 301(f) of Pub. L. 89–699, as amended by section 8 of Pub. L. 91–215, provided that: "The amendments made by subsections (d) and (e) of this section [enacting subsec. (b) of this section and subsec. (c) of section 3221 of this title] shall be effective with respect to man-hours, beginning with the first month following enactment of this Act [Oct. 30, 1966], for which compensation is paid."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–212, § 4, effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted, and by Pub. L. 89–212, § 5, effective only with respect to compensation paid for services rendered after September 30, 1965, see note under section 3201 of this title.

Amendment of this section by section 105(b)(2) of Pub. L. 89–97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89–97, set out as a note under section 3201 of this title.

Amendment of this section by Pub. L. 89–97, § 111(c)(2), applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as a note under section 228s–2 of Title 45, Railroads.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–28 effective, except as otherwise provided, the first day of the calendar month next following May 1959, see section 202

of Pub. L. 86-28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section effective as if enacted as a part of the Internal Revenue Code of 1954 (this title), see note under section 3201 of this title.

CROSS REFERENCES

Nondeductibility of taxes imposed by this section as deduction from gross income, see section 3502(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275, 1402, 3502, 6413 of this title; title 45 sections 228e and 228o.

§ 3212. Determination of compensation.

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231 (a). (Aug. 16, 1954, ch. 736, 68A Stat. 432.)

Subchapter C.—Tax on Employers

Sec.
3221. Rate of tax.

§ 3221. Rate of tax.

(a) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to—

(1) 6¼ percent of so much of the compensation paid by such employer for services rendered to him after September 30, 1965,

(2) 6½ percent of so much of the compensation paid by such employer for services rendered to him after December 31, 1965,

(3) 7 percent of so much of the compensation paid by such employer for services rendered to him after December 31, 1966,

(4) 7¼ percent of so much of the compensation paid by such employer for services rendered to him after December 31, 1967, and

(5) 7½ percent of so much of the compensation paid by such employer for services rendered to him after December 31, 1968,

as is, with respect to any employee for any calendar month, not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965; except that if an employee is paid compensation after September 30, 1965, by more than one employer for services rendered during any calendar month after September 30, 1965, the tax imposed by this section shall apply to not more than (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965 of the aggregate compensation paid to such employee by all such employers after September 30, 1965, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after September 30, 1965, to the employee for services rendered during such month bears to the total compensation paid by all such employers after September 30, 1965, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after September 30, 1965, to such employee for services rendered during such month bears to the total compensation paid by all such employers after September 30, 1965, to such employee for services rendered during such month. Where compensation for services rendered in a month is paid an employee by two or more employers, one of the employers who has knowledge of such joint employment may, by proper notice to the Secretary of the Treasury, and by agreement with such other employer or employers as to settlement of their respective liabilities under this section and section 3202, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation in respect to which taxes are imposed by such section 3201 and this section; and in such a case the liability of such other employer or employers under this section and section 3202 shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

(b) The rate of tax imposed by subsection (a) shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956).

(c) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, for each man-hour for which compensation is paid by such employer for services rendered to him during any calendar quarter, (1) at the rate of 2 cents for the period beginning November 1, 1966, and ending March 31, 1970, and (2) commencing April 1, 1970, at such rate as will make available for appropriation to the Railroad Retirement Supplemental Account provided for in section 15(b) of the Railroad Retirement Act of 1937 sufficient funds to meet the obligation to pay supplemental annuities under section 3(j) of such Act and administrative expenses in connection therewith. For the purpose of this subsection, the Railroad Retirement Board is directed

to determine what rate is required for each calendar quarter commencing with the quarter beginning April 1, 1970. The Railroad Retirement Board shall make the determinations provided for not later than fifteen days before each calendar quarter. As soon as practicable after each determination of the rate, as provided in this subsection, the Railroad Retirement Board shall publish a notice in the Federal Register, and shall advise all employers, employee representatives, and the Secretary of the Treasury, of the rate so determined. With respect to daily, weekly, or monthly rates of compensation such tax shall apply to the number of hours comprehended in the rate together with the number of overtime hours for which compensation in addition to the daily, weekly, or monthly rate is paid. With respect to compensation paid on a mileage or piecework basis such tax shall apply to the number of hours constituting the hourly equivalent of the compensation paid.

Each employer of employees whose supplemental annuities are reduced pursuant to section 3(j)(2) of the Railroad Retirement Act of 1937 shall be allowed as a credit against the tax imposed by this subsection an amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer. If the credit so allowed to such an employer for any month exceeds the tax liability of such employer accruing under this subsection in such month, the excess may be carried forward for credit against such taxes accruing in subsequent months but the total credit allowed by this paragraph to an employer shall not exceed the total of the taxes on such employer imposed by this subsection. At the end of each calendar quarter the Railroad Retirement Board shall certify to the Secretary of the Treasury with respect to each such employer the amount of credit accruing to such employer under this paragraph during such quarter and shall notify such employer as to the amount so certified.

(d) Notwithstanding the provisions of subsection (c) of this section, the tax imposed by such subsection (c) shall not apply to an employer with respect to employees who are covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees. There is hereby imposed on every such employer an excise tax equal to the amount of the supplemental annuity paid to each such employee under section 3(j) of the Railroad Retirement Act of 1937, plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under section 3(j) of such Act. (Aug. 16, 1954, ch. 736, 68A Stat. 433; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; May 19, 1959, Pub. L. 86-28, pt. II, § 201(d), 73 Stat. 29; Oct. 5, 1963, Pub. L. 88-133, title II, § 202, 77 Stat. 221; July 30, 1965, Pub. L. 89-97, title I, §§ 105(b)(3), 111(c)(3), 79 Stat. 335, 342; Sept. 29, 1965, Pub. L. 89-212, §§ 4, 5(c), 79 Stat. 861, 62; Oct. 30, 1966, Pub. L. 89-699, title III, § 301(c), (e), 80 Stat. 1078; Oct. 30, 1966, Pub. L. 89-700, title III, §§ 301, (iii), (v), (vi), 302, 80 Stat. 1088, 1089; Mar. 17, 1970, Pub. L. 91-215, § 5(a), (b)(1), 84 Stat. 71.)

REFERENCES IN TEXT

"As amended by the Social Security Amendments of 1956", referred to in subsec. (b), means the amendments made by act Aug. 1, 1956, ch. 836, title II, § 202(c), 70 Stat. 845.

Section 15(b) of the Railroad Retirement Act of 1937, referred to in subsec. (c), is classified to section 228o(b) of Title 45, Railroads.

Section 3(j) of the Railroad Retirement Act of 1937, referred to in subsecs. (c) and (d), is classified to section 228c(j) of Title 45, Railroads.

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-215, § 5(a), provided a variable standard of taxation on employers for services rendered them during any calendar quarter at the existing 2 cent rate for each man-hour of services for the period from Nov. 1, 1966 to Mar. 31, 1970, and thereafter at such rates as will permit supplemental annuity payments under section 228c(j) of this title, and authorized the Railroad Retirement Board to make the necessary determination of rates, and made it its duty to publish notice of such determinations in the Federal Register.

Subsec. (d). Pub. L. 91-215, § 5(b)(1), added subsec. (d).

1966—Subsec. (a). Pub. L. 89-700, §§ 301(iii), (v), 302, substituted "after September 30, 1965" for "after the month in which this provision was amended in 1959" in six instances, and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended" in four instances, and inserted sentence providing that where compensation for services rendered in a month is paid by two or more employers, one of the employers may, by notice to the Secretary, and by agreement with the other employer, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation in respect to which taxes are imposed by section 3201 and this section; and in such a case the liability of the other employer shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

Pub. L. 89-699, § 301(c), substituted "7 percent" for "6¾ percent" in subd. (3), "7¼ percent" for "7 percent" in subd. (4), and "7½ percent" for "7¼ percent" in subd. (5).

Subsec. (b). Pub. L. 89-700, § 301(vi), substituted "after September 30, 1965" for "after December 31, 1964."

Subsec. (c). Pub. L. 89-699 added subsec. (c).

1965—Subsec. (a). Pub. L. 89-212 substituted pars (1)—(5) for former pars. (1) and (2) which imposed an excise tax equal to 6¾ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid by such employer for services rendered to him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended" wherever appearing.

Subsec. (b). Pub. L. 89–97 substituted "the rate of the tax imposed with respect to wages by section 3111(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3111(b)" following "section 3111(a)", respectively.

1963—Subsec. (a). Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86–28, § 201(d)(1), (2)(A), (B), designated former provisions of section as subsec. (a), increased the tax from 6¼ percent of the compensation not in excess of $350 for any calendar month to 6¾ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and substituted "after the month in which this provision was amended in 1959" for "after 1954" and for "after December 31, 1954" in six instances, "not more than $400" for "not more than $350", and "less than $400" for "less than $350".

Subsec. (b). Pub. L. 86–28, § 201(d)(2)(C), added subsec. (b).

1954—Act Aug. 31, 1954, substituted "$350" for "$300" wherever appearing.

EFFECTIVE AND TERMINATION DATE OF 1966 AMENDMENT

Subsec. (c) of this section effective with respect to man-hours, for sixty months beginning with the first month following Oct. 30, 1966, for which compensation is paid, see section 301(f) of Pub. L. 89–699, set out as a note under section 3211 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment of section by Pub. L. 89–212, § 4, effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted, and by Pub. L. 89–212, § 5, effective only with respect to compensation paid for services rendered after September 30, 1965, see note under section 3201 of this title.

Amendment of subsec. (b) of this section by section 105(b)(3) of Pub. L. 89–97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89–97, set out as a note under section 3201 of this title.

Amendment of subsec. (b) of this section by Pub. L. 89–97, § 111(c)(3), applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as a note under section 228s–2 of Title 45, Railroads.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–28 effective, except as otherwise provided, the first day of the calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section effective as if enacted as a part of the Internal Revenue Code of 1954 (this title), see note under section 3201 of this title.

EXCISE TAXES ON EMPLOYERS; EMPLOYEES COVERED BY CERTAIN SUPPLEMENTAL PENSION PLANS

Section 5(b)(2) of Pub. L. 91–215 provided that: "The amendment made by paragraph (1) [adding subsec. (d) of this section] shall apply to (A) supplemental annuities paid on or after April 1, 1970, and (B) man-hours with respect to which compensation is paid for services rendered to such employer on or after such day."

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 (a)(1) of this title.

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 (e) of this title.

Assessment for underpayment of tax imposed by this section, see section 6205 (b) of this title.

Erroneous payments under this chapter as credit on other taxes or refunds, see section 3503 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3211, 3231, 6205, 6413 of this title; title 45 section 228o.

Subchapter D.—General Provisions

Sec.
3231. Definitions.
3232. Court jurisdiction.
3233. Short title.

§ 3231. Definitions.

(a) Employer.

For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary or his delegate, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (44 Stat. 577; 45 U. S. C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery

is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) Employee.

For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (50 Stat. 312; 45 U. S. C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) Employee representative.

For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (44 Stat. 577; 45 U. S. C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) Service.

For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals

represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 (50 Stat. 308; 45 U. S. C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation; *Provided however,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) Compensation.

For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips (except as is provided under paragraph (3)), or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of the tax imposed by section 3201 and other provisions of this chapter insofar as they relate to such tax, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(f) Company.

For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

(g) Carrier.

For purposes of this chapter, the term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1).

(h) Tips constituting compensation, time deemed paid.

For purposes of this chapter, tips which constitute compensation for purposes of the tax imposed under section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month. (Aug. 16, 1954, ch. 736, 68A Stat. 434; Aug. 31, 1954, ch. 1164, pt. II, § 206(b), 68 Stat. 1040; Sept. 29, 1965, Pub. L. 89–212, § 2(b), 79 Stat. 859; Oct. 22, 1968, Pub. L. 90–624, § 1, 82 Stat. 1316.)

REFERENCES IN TEXT

The Railway Labor Act, as amended, referred to in subsecs. (a), (c), is classified to section 151 et seq. of Title 45, Railroads.

Section 6 of the Railroad Retirement Act of 1937, referred to in subsec. (b), is classified to section 228f of Title 45.

Section 1(c) of the Railroad Retirement Act of 1937, referred to in subsec. (d) (7), is classified to section 228a (c) of Title 45.

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (e), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Railroad Retirement Act, referred to in subsec. (e), is classified to sections 228a to 228c-1, 228e-228h, 228i-228p, and 228r to 228s—2 of Title 45.

Part I of the Interstate Commerce Act, referred to in subsec. (g), is classified to sections 1-5, 5b-15a, 16, 17-23, 26, and 27 of Title 49, Transportation.

AMENDMENTS

1968—Subsec. (e)(1), Pub. L. 90-624 inserted provision excluding remuneration for service performed by nonresident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

1965—Subsec. (e)(1). Pub. L. 89-212, § 2(b)(1), inserted "(except as is provided under paragraph (3))."

Subsec. (e)(3). Pub. L. 89-212, § 2(b)(2), added par. (3).

Subsec. (h). Pub. L. 89-212, § 2(b)(3), added subsec. (h).

1954—Subsec. (e)(1). Act Aug. 31, 1954, excluded from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(a) of Pub. L. 90-624 provided that:

"(1) The amendments made by the first two sections of this Act [amending this section and section 228a of Title 45] shall apply with respect to service performed after December 31, 1961.

"(2) Notwithstanding the expiration before the date of the enactment of this Act [Oct. 22, 1968] or within 6 months after such date of the period for filing claim for credit or refund, claim for credit or refund of any overpayment of any tax imposed by chapter 22 of the Internal Revenue Code of 1954 attributable to the amendment made by the first section of this Act [amending this section] may be filed at any time within one year after such date of enactment.

"(3) Any credit or refund of an overpayment of the tax imposed by section 3201 or 3211 of the Internal Revenue Code of 1954 which is attributable to the amendment made by the first section of this Act shall be appropriately adjusted for any lump-sum payment which has been made under section 5(f)(2) of the Railroad Retirement Act of 1937 [section 228e(f)(2) of Title 45] before the date of the allowance of such credit or the making of such refund."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-212 effective only with respect to tips received after 1965, see note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section effective as if enacted as a part of the Internal Revenue Code of 1954 (this title), see note under section 3201 of this title.

CROSS REFERENCES

Service performed as an employee or employee representative not included in definition of employment under title II of the Social Security Act, see section 410 (a)(9) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1402, 3121, 3202, 3212, 6053, 6652 of this title.

§ 3232. Court jurisdiction.

The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary or his delegate to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 437.)

§ 3233. Short title.

This chapter may be cited as the "Railroad Retirement Tax Act." (Aug. 16, 1954, ch. 736, 68A Stat. 438.)

Chapter 23.—FEDERAL UNEMPLOYMENT TAX ACT

Sec.
3301. Rate of tax.
3302. Credits against tax.
3303. Conditions of additional credit allowance.
3304. Approval of State laws.
3305. Applicability of State law.
3306. Definitions.
3307. Deductions as constructive payments.
3308. Instrumentalities of the United States.
3309. State law coverage of certain services performed for nonprofit organizations and for State hospitals and institutions of higher education.
3310. Judicial review.
3311. Short title.

AMENDMENTS

1970—Pub. L. 91-373, title I, §§ 104(b)(2), 131(b)(3), Aug. 10, 1970, 84 Stat. 699, 705, added items 3309 and 3310 and redesignated former item 3309 as item 3311.

1960—Pub. L. 86-778, title V, § 531(d)(2), Sept. 13, 1960, 74 Stat. 984, added item 3308 and redesignated former item 3308 as 3309.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 1101, 1104, 2705.

§ 3301. Rate of tax.

There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1970 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)). (Aug. 16, 1954, ch. 736, 68A Stat. 439; Sept. 13, 1960, Pub. L. 86-778, title V, § 523(a), 74 Stat. 980; Mar. 24, 1961, Pub. L. 87-6, § 14(a), 75 Stat. 16; May 29, 1963, Pub. L. 88-31, § 2(a), 77 Stat. 51; Aug. 10, 1970, Pub. L. 91-373, title III, § 301(a), 84 Stat. 713.)

AMENDMENTS

1970—Pub. L. 91-373 increased the rate from 3.1 percent to 3.2 percent and struck out provisions setting special rates for wages paid during 1962 and 1963.

1963—Pub. L. 88-31 reduced the tax rate for the year 1963 from 3.5 percent to 3.35 percent.

1961—Pub. L. 87-6 provided for a tax rate of 3.5 percent for calendar years 1962 and 1963.

1960—Pub. L. 86-778 substituted "1961" for "1955" and "3.1 percent" for "3 percent."

EFFECTIVE DATE OF 1970 AMENDMENT

Section 301(a) of Pub. L. 91-373 provided in part that the amendment of this section by Pub. L. 91-373 is effective with respect to remuneration paid after Dec. 31, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(c) of Pub. L. 86-778 provided that: "The amendments made by subsection (a) [to this section] shall apply only with respect to the calendar year 1961 and calendar years thereafter."

CROSS REFERENCES

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 (e) of this title.

Effective date of this subtitle, see section 7851 (a) (3) of this title.

Election of installment payments of tax, see section 6152 (a) (3) of this title.

Penalty for fraud against Social Security Act, see section 1307 of Title 42, The Public Health and Welfare.

Priority of debts due to United States, see section 191 of Title 31, Money and Finance.

Publicity of unemployment tax returns, see section 6106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 3305, 3306, 3308, 6157, 6601 of this title; title 12 section 1452.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 46-301, 46-303 of the District of Columbia Code.

§ 3302. Credits against tax.

(a) Contributions to state unemployment funds.

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972).

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(b) Additional credit.

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972), or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12 or 10-month period, as the case may be, to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

(c) Limit on total credits.

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act before the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) in the case of a taxable year beginning on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968), as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) in the case of any succeeding taxable year beginning on or after January 1, 1968, as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

At the request (made before November 1 of the taxable year) of the Governor of any State, the Secretary of Labor shall, as soon as practicable after June 30 or (if later) the date of the receipt of such request, certify to such Governor and to the Secretary of the Treasury the amount he estimates equals .15 percent (plus an additional .15 percent for each additional 5-percent reduction, provided by subparagraph (B)) of the total of the remuneration which would have been subject to contributions under the State unemployment compensation law with respect to the calendar year preceding such certification if the dollar limit on remuneration subject to contributions under such law were equal to the dollar limit

under section 3306(b)(1) for such calendar year. If, after receiving such certification and before November 10 of the taxable year, the State pays into the Federal unemployment account the amount so certified (and designates such payment as being made for purposes of this sentence), the reduction provided by the first sentence of this paragraph shall not apply for such taxable year.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) (i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

(d) Definitions and special rules relating to subsection (c).

(1) Rate of tax deemed to be 3 percent.

In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of the rate provided by such section.

(2) Wages attributable to a particular State.

For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before November 10 of taxable year.

Paragraph (2) or (3) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate.

For purposes of subparagraphs (B) and (C) of subsection (c)(3), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(3), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-year benefit cost rate.

For purposes of subparagraph (C) of subsection (c)(3), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) Rounding.

If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(3) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) Determination and certification of percentages.

The percentage referred to in subsection (c)(3)(B) or (C) for any taxable year for any State hav-

ing a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(8) Cross reference.

For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

(e) Successor employer.

Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1). (Aug. 16, 1954, ch. 736, 68A Stat. 439; Sept. 13, 1960, Pub. L. 86–778, title V, § 523(b), 74 Stat. 980; Mar. 24, 1961, Pub. L. 87–6, § 14(b), 75 Stat. 16; Sept. 26, 1961, Pub. L. 87–321, § 1(a), 75 Stat. 683; May 29, 1963, Pub. L. 88–31, § 2(b), 77 Stat. 51; Nov. 7, 1963, Pub. L. 88–173, § 1(a)—(c), 77 Stat. 305; Aug. 10, 1970, Pub. L. 91–373, title I, § 142 (a), (b), 84 Stat. 707.)

REFERENCES IN TEXT

Title XII of the Social Security Act, referred to in subsec. (c), is classified to sections 1321—1324 of Title 42, The Public Health and Welfare.

The date of the enactment of the Employment Security Act of 1960, referred to in subsec. (c), means the date of the enactment of title V of Pub. L. 86–778, which was approved on Sept. 13, 1960.

Section 104 of the Temporary Unemployment Compensation Act of 1958, referred to in subsec. (d)(8), was classified to former section 1400c of Title 42, The Public Health and Welfare.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–373, § 142(a), substituted "certified as provided in section 3304 for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972)" for "certified for the taxable year as provided in section 3304".

Subsec. (b). Pub. L. 91–373, § 142(b), changed the certification date from December 31 to October 31, with a provision for a 10-month period in the case of October 31, 1972, and provided for certification based on a 12-month period ending each October 31.

1963—Subsec. (c). Pub. L. 88–173, in cl. (2), substituted "on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968)," for "with the fourth consecutive January 1", in subpar. (A), and "on or after January 1, 1968," for "with a consecutive January 1", in subpar. (B), and added paragraph following subpar. (B).

Subsec. (d)(1). Pub. L. 88–31 substituted "the rate provided by such section" for "3.1 percent (or, in the case of the tax imposed with respect to the calendar years 1962 and 1963, in lieu of 3.5 percent)."

1961—Subsec. (d)(1). Pub. L. 87–6 provided for computation of the tax at the rate of 3 percent in lieu of 3.5 percent for calendar years 1962 and 1968.

Subsec. (e). Pub. L. 87–321 added subsec. (e).

1960—Subsec. (c). Pub. L. 86–778 restricted cl. (2) to advances made before the date of the enactment of the Employment Security Act of 1960, added cl. (3), and eliminated provisions which related to the attributing of wages to a particular State, which provisions are now covered by subsec. (d)(2).

Subsec. (d). Pub. L. 86–778 added subsec. (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 142(i) of Pub. L. 91–373 provided that: "The amendments made by this section [amending subsecs. (a)(1) and (b) of this section and sections 3303(b) and 3304(c)–(e) of this title] shall apply with respect to the taxable year 1972 and taxable years thereafter."

EFFECTIVE DATE OF 1963 AMENDMENT

Section 1(d) of Pub. L. 88–173 provided that: "The amendments made by subsections (a), (b), and (c) of this section [to subsec. (c)(2) of this section] shall apply only with respect to taxable years beginning on or after January 1, 1963."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 1(b) of Pub. L. 87–321 provided that: "The amendment made by subsection (a) [adding subsec. (e) to this section] shall apply with respect to the calendar year 1961 and each calendar year thereafter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3303, 3304, 3305 of this title; title 42 section 1101.

§ 3303. Conditions of additional credit allowance.

(a) State standards.

A taxpayer shall be allowed an additional credit under section 3302 (b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the

computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).

(b) Certification by the Secretary of Labor with respect to additional credit allowance.

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31 (10-month period in the case of October 31, 1972)), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12- or 10-month period, as the case may be, only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any 12-month period ending on October 31 (10-month period in the case of October 31, 1972), and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on such October 31, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such 12- or 10-month period, as the case may be, under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 (10-month period in the case of October 31, 1972) pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12- or 10-month period, as the case may be, failed to comply substantially with any such provision.

(c) Definitions.

As used in this section—

(1) Reserve account.

The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) Pooled fund.

The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) Partially pooled account.

The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve

account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) Guaranteed employment account.

The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) Year.

The term "year" means any 12 consecutive calendar months.

(6) Balance.

The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) Computation date.

The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) Reduced rate.

The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) Voluntary contributions.

A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

(e) Payments by certain nonprofit organizations.

A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

(f) Transition.

To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309 (a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensaton for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate.

(Aug. 16, 1954, ch. 736, 68A Stat. 440; Sept. 1, 1954, ch. 1212, § 2, 68 Stat. 1130; Aug. 10, 1970, Pub. L. 91-373, title I, §§ 104(c), 122(c), 142(c)-(e), 84 Stat. 699, 702, 707.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-373, § 122(a), added to the provision following par. (3) the authorization for the allowance of a reduced rate by state law (but not less than 1 percent) on a reasonable basis other than as permitted by par. (1), (2), or (3).

Subsec. (b). Pub. L. 91-373, § 142(c)-(e), changed the certification date referred to in pars. (1)-(3) from Dec. 31 to Oct 31, with provision for a 10-month period in the case of Oct. 31, 1972, and, except for Oct. 31, 1972, provided for a 12-month period ending on Oct. 31 each year.

Subsecs (e), (f). Pub. L. 91–373, § 104(c), added subsecs. (e) and (f).

1954—Subsec. (a). Act Sept. 1, 1954, added par. relating to reduced rates for new employers.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 104(c) of Pub. L. 91–373 [adding subsecs. (e) and (f) of this section] to take effect Jan. 1, 1970, see section 104(d)(1) of Pub. L. 91–373, set out as a note under secton 3304 of this title.

Section 122(b) of Pub. L. 91–373 provided that: "The amendments made by subsection (a) [amending subsec. (a) of this section] shall apply with respect to taxable years beginning after December 31, 1971."

Amendment of subsec. (b) of this section by section 142(c)–(e) of Pub. L. 91–373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91–373, set out as a note under section 3302 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 2 of act Sept. 1, 1954, provided in part that the amendment of subsec. (a) shall take effect after Dec. 31, 1954.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 3304, 3310 of this title; title 19 section 1942.

§ 3304. Approval of State laws.

(a) Requirements.

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305 (b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) the amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309 (a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that, with respect to service in an instructional, research, or principal administrative capacity for an institution of higher education to which section 3309(a)(1) applies, compensation shall not be payable based on such service for any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such period) to any individual who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1)(A) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangements shall include provisions for (i) applying the base period of a

single state law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) each political subdivision of the State shall have the right to elect to have compensation payable to employees thereof (whose services are not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision does elect to have compensation payable to such employees thereof (A) the political subdivision shall pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees will be entitled to receive, on the basis of such service, compensation payable on the same basis, in the same amount, on the same terms, and subject to the same conditions as compensation which is payable on the basis of similar service for the State which is subject to such law;

(13) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) Notification.

The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) Certification.

On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the taxable year failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending.

(d) Notice of noncertification.

If, at any time, the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) Change of law during 12-month period.

Whenever—

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period.

then such provision shall be applied by taking into account for each such portion the law applicable to such portion. (Aug. 16, 1954, ch. 736, 68A Stat. 443; Aug. 10, 1970, Pub. L. 91–373, title I, §§ 104(a), 108(a), 121(a), 131(b)(2), 142(f)–(h), title II, § 206, 84 Stat. 697, 701, 704, 707, 708, 712.)

AMENDMENT FOR TAXABLE YEAR 1972 AND AFTER

Pub. L. 91–373 title I, § 142(f), (i), Aug. 10, 1970, 84 Stat. 707, 708, provided that, with respect to taxable year 1972 and taxable years thereafter, subsec. (c) of this section will read as follows:

(c) Certification.

On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year after 1971, the Secretary shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Employment Security Amendments of 1970 to be included therein, or has with respect to the 12-month period (10-month period in the case of October 31, 1972) ending on such October 31, failed to comply substantially with any such provision.

REFERENCES IN TEXT

Section 903(c)(2) of the Social Security Act, referred to in subsec. (a)(4)(B), is classified to section 1103(c)(2) of Title 42, The Public Health and Welfare.

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (a)(11), is set out as a note under this section.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-373, §§ 104(a), 108(a), 121(a), 206, added pars. (6)-(12) and redesignated former par. (6) as par. (13).

Subsec. (c). Pub. L. 91-373, § 131(b)(2), clarified the provisions governing the procedure to be followed with respect to a finding of the Secretary of Labor that a state has failed to comply substantially with any of the provisions of subsec. (a)(5).

Subsec. (d). Pub. L. 91-373, § 142(g), substituted "If at any time" for "If, at any time during the taxable year,".

Subsec. (e). Pub. L. 91-373, § 142(h), added subsec. (e).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 104(d) of Pub. L. 91-373 provided that:

"(1) Subject to the provisions of paragraph (2), the amendments made by subsections (a) and (b) [adding subsec. (a)(6) of this section and section 3309 of this title] shall apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971. The amendment made by subsection (c) [adding subsecs. (e) and (f) of section 3303 of this title] shall take effect January 1, 1970.

"(2) Section 3304(a)(6) of the Internal Revenue Code of 1954 [subsec. (a)(6) of this section] (as added by subsection (a) of this section) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971."

Section 108(b) of Pub. L. 91-373 provided that: "The amendment made by subsection (a) [adding subsec. (a)(12) of this section] shall apply with respect to certification of State laws for 1972 and subsequent years; except that section 3304(a)(12) of the Internal Revenue Code of 1954 [subsec. (a)(12) of this section] (as added by subsection (a)) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971, or prior to January 1, 1975, if compliance with such requirement would necessitate a change in the constitution of such State."

Section 121(b) of Pub. L. 91-373 provided that:

"(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) [adding subsecs. (a)(7)-(10) of this section] shall take effect January 1, 1972, and shall apply to the taxable year 1972 and taxable years thereafter.

"(2) Paragraphs (7) through (10) of section 3304(a) of the Internal Revenue Code of 1954 [adding subsecs. (a)(7)-(10) of this section] (as added by subsection (a) of this section) shall not be requirements for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971."

Amendment by section 142(f)-(h) of Pub. L. 91-373, amending subsecs. (c) and (d) of this section and adding subsec. (e) of this section, applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91-373, set out as a note under section 3302 of this title.

FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Pub. L. 91-373, title II, Aug. 10, 1970, 84 Stat. 708, provided:

"Sec. 201. [Short Title]

"This title may be cited as the 'Federal-State Extended Unemployment Compensation Act of 1970.'

"Sec. 202. [Payment of Extended Compensation]

"(a) [State Law Requirements] (1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954 [subsec. (a)(11) of this section], a State law shall provide the payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of the Virgin Islands or Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensations available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

"(b) [Individuals Compensation Accounts] (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

"(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

"(B) thirteen times his average weekly benefit amount, or

"(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

"(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

"Sec. 203. [Extended Benefit Period]

"(a) [Beginning and Ending] For purposes of this title, in the case of any State, an extended benefit period—

"(1) shall begin with the third week after whichever of the following weeks first occurs:

"(A) a week for which there is a national 'on' indicator, or

"(B) a week for which there is a State 'on' indicator; and

"(2) shall end with the third week after the first week for which there is both a national 'off' indicator and a State 'off' indicator.

"(b) [Special Rules] (1) In the case of any State—

"(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

"(B) no extended benefit period may begin by reason of a State 'on' indicator before the fourteenth week after the close of a prior extended benefit period with respect to such State.

"(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State (or all the States), the Secretary shall cause notice of such determination to be published in the Federal Register.

"(c) [Eligibility Period] For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

"(d) [National 'On' and 'Off' Indicators] For purposes of this section—

"(1) There is a national 'on' indicator for a week if for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonably adjusted) for all States equaled or exceeded 4.5 per centum (determined by reference to the average monthly covered employment for the first

four of the most recent six calendar quarters ending before the month in question).

"(2) There is a national 'off' indicator for a week if for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the month in question).

"(e) [State 'On' and 'Off' Indicators] For purposes of this section—

"(1) There is a State 'on' indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

"(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

"(B) equaled or exceeded 4 per centum.

"(2) There is a State 'off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) was not satisfied.

For purposes of this subsection, the rate of insured unemployment for any 13-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

"(f) [Rate of Insured Unemployment; Covered Employment] (1) For purposes of subsections (d) and (e), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

"(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsection (e), by the State agency) to the Secretary, by

"(B) the average monthly covered employment for the specified period.

"(2) Determinations under subsection (d) shall be made by the Secretary in accordance with regulations prescribed by him.

"(3) Determinations under subsection (e) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

"Sec. 204. [Payments to States]

"(a) [Amount Payable] (1) There shall be paid to each State an amount equal to one-half of the sum of—

"(A) the sharable extended compensation, and

"(B) the sharable regular compensation,

paid to individuals under the State law.

"(2) No payment shall be made to any State under this subsection in respect of compensation for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act.

"(b) [Sharable Extended Compensation] For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

"(c) [Sharable Regular Compensation] For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

"(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

"(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

"(d) [Payment On Calendar Month Basis] There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

"(e) [Certification] The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

"Sec. 205. [Definitions]

For purposes of this title—

"(1) The term 'compensation' means cash benefits payable to individuals with respect to their unemployment.

"(2) The term 'regular compensation' means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85) [section 8501 et seq. of Title 5], other than extended compensation and additional compensation.

"(3) The term 'extended compensation' means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85 [section 801 et seq. of Title 5]) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

"(4) The term 'additional compensation' means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

"(5) The term 'benefit year' means the benefit year as defined in the applicable State law.

"(6) The term 'base period' means the base period as determined under applicable State law for the benefit year.

"(7) The term 'Secretary' means the Secretary of Labor of the United States.

"(8) The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(9) The term 'State agency' means the agency of the State which administers its State law.

"(10) The term 'State law' means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1954 [this section].

"(11) The term 'week' means a week as defined in the applicable State law.

"Sec. 206. [Approval of State Laws] [This section amended section 3304(a) of the Internal Revenue Code of 1954 by adding par. (11) thereof. Such amendment has been executed to the text of section 3304(a) of the Internal Revenue Code of 1954 and is therefore not set out here.]

"Sec. 207. [Effective Dates] (a) Except as provided in subsection (b)—

"(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

"(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

"(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1954 [subsec. (a)(11) of this section], such State law may also provide that an extended benefit period may begin with a week established pursuant to such law

which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act [Aug. 10, 1970].

"(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State 'on' indicator and the State 'off' indicator.

"(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

"(c) Section 304(a)(11) of the Internal Revenue Code of 1954 [subsec. (a)(11) of this section] (as added by section 206) shall not be a requirement for the State law of any State—

"(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

"(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972."

UNEMPLOYMENT COMPENSATION LAW OF COMMONWEALTH OF PUERTO RICO

Section 543(b) of Pub. L. 86-778, title V, Sept. 13, 1960, 74 Stat. 986, provided that:

"The unemployment compensation law of the Commonwealth of Puerto Rico shall be considered as meeting the requirements of—

"(1) Section 3304(a)(2) of the Federal Unemployment Tax Act [subsec. (a)(2) of this section], if such law provides that no compensation is payable with respect to any day of unemployment occurring before January 1, 1959.

"(2) Section 3304(a)(3) of the Federal Unemployment Tax Act [subsec. (a)(3) of this section] and section 303(a)(4) of the Social Security Act [section 503(a)(4) of Title 42], if such law contains the provisions required by those sections and if it requires that, on or before February 1, 1961, there be paid over to the Secretary of the Treasury, for credit to the Puerto Rico account in the Unemployment Trust Fund, an amount equal to the excess of—

"(A) the aggregate of the moneys received in the Puerto Rico unemployment fund before January 1, 1961, over

"(B) the aggregate of the moneys paid from such fund before January 1, 1961, as unemployment compensation or as refunds of contributions erroneously paid."

CROSS REFERENCES

Withdrawal as breach of conditions, see note set out under section 363 of Title 45, Railroads.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 3303, 3305, 3309, 3310 of this title; title 19 section 1978; title 42 section 1103.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46-301 of the District of Columbia Code.

§ 3305. Applicability of State law.

(a) Interstate and foreign commerce.

No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) Federal instrumentalities in general.

The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) National banks.

Nothing contained in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) Federal property.

No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

(e) Repealed. Sept. 1, 1954, ch. 1212, § 4 (c), 68 Stat. 1135.

(f) American vessels.

The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) Vessels operated by general agents of United States.

The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) Requirement by State of contributions.

Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) General agent as legal entity.

Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) Denial of credits in certain cases.

Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year after December 31, 1971, if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c). (Aug. 16, 1954, ch. 736, 68A Stat. 445; Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135; Sept. 13, 1960, Pub. L. 86–778, title V, § 531(a), (b), 74 Stat. 983; Aug. 10, 1970, Pub. L. 91–373, title I, § 123, 84 Stat. 702.)

AMENDMENTS

1970—Subsec. (j). Pub. L. 91–373 added subsec. (j).

1960—Subsec. (b). Pub. L. 86–778, § 531(a), substituted "(other than an instrumentality to which section 3306(c)(6) applies)" for "except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law," and added cl. (C).

Subsec. (g). Pub. L. 86–778, § 531(b), substituted "neither wholly nor partially" for "not wholly."

1954—Subsec. (e). Act Sept. 1, 1954, repealed subsec. (e), which related to the Bonneville Power Administrator.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 535 of Pub. L. 86–778 provided that: "The amendments made by this part [adding section 3308 of this title, amending subsecs. (b) and (g) of this section and sections 3306(c), 3306(c)(4), (8), (10) and 3306(m) of this title] (other than the amendments made by subsections (e) and (f) of section 531 [to sections 1361(a) and 1367 of title 42]) shall apply with respect to remuneration paid after 1961 for services

performed after 1961. The amendments made by subsections (e) and (f) of section 531 shall apply with respect to any week of unemployment which begins after December 31, 1960."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 4(c) of act Sept. 1, 1954, provided in part that the repeal of subsec. (e) shall be effective with respect to services performed after Dec. 31, 1954.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Section 531(g) of Pub. L. 86–778 provided that: "Notwithstanding section 203(b) of the Farm Credit Act of 1959 [set out as a note under section 640*l* of title 12], sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1954 [subsec. (b) of this section and sections 3306(c)(6) and 3308 of this title], and sections 1501(a) and 1507(a) of the Social Security Act [sections 1361(a) and 1367 of title 42] shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 3306 of this title; title 5 section 8501.

§ 3306. Definitions.

(a) Employer.

For purposes of this chapter, the term "employer" means, with respect to any calendar year, any person who—

(1) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(2) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

(b) Wages.

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $4,200 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $4,200 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death;

(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a), or

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) of any payment required from an employee under a State unemployment compensation law;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made;

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time

of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217; or

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated.

(c) Employment.

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation or in the Virgin Islands) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3), except—

(1) agricultural labor (as defined in subsection (k));

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U. S. C. 351);

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and

normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of any employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15) (A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(18) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

(d) Included and excluded service.

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c) (9).

(e) State agency.

For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment fund.

For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency.

An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) the amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

(g) Contributions.

For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) Compensation.

For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) Employee.

For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121(d), except that subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) State, United States, and citizen.

For purposes of this chapter—

(1) State.

The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(2) United States.

The term "United States" when used in a geographical sense includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) American employer.

The term "American employer" means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered for purposes of this section, as a citizen of the United States.

(k) Agricultural labor.

For purposes of this chapter, the term "agricultural labor" has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such if such operators produced more than one-half of the commodity with respect to which such service is performed;".

(*l*) Repealed. Sept. 1, 1954, ch. 1212, § 4 (c), 68 Stat. 1135.

(m) American vessel and aircraft.

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) Vessels operated by general agents of United States.

Notwithstanding the provisions of subsection (c) (6), service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection. (Aug. 16, 1954, ch. 736, 68A Stat. 447; Sept. 1, 1954, ch. 1212, §§ 1, 4(c), 68 Stat. 1130, 1135; June 25, 1959, Pub. L. 86–70, § 22(a), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, § 18(d), 74 Stat. 417; Sept. 13, 1960, Pub. L. 86–778, title V, §§ 531(c), 532–534, 543(a), 74 Stat. 983, 984, 986; Sept. 21, 1961, Pub. L. 87–256, § 110(f), 75 Stat. 537; Oct. 10, 1962, Pub. L. 87–792, § 7(k), 76 Stat. 830; Oct. 13, 1964, Pub. L. 88–650, § 4(c), 78 Stat. 1077; Jan. 2, 1968, Pub. L. 90–248, title V, § 504(b), 81 Stat. 935; Aug. 7, 1969, Pub. L. 91–53, § 1, 83 Stat. 91;

Aug. 10, 1970, Pub. L. 91–373, title I, §§ 101(a), 102 (a), 103(a), 105(a), (b), 106(a), title III, § 302, 84 Stat. 696, 697, 699, 700, 713.)

REFERENCES IN TEXT

Subchapter C of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c), consisted of sections 1600 to 1611 thereof which is now covered by this chapter.

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (c)(18), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 903(c)(2) of the Social Security Act, referred to in subsec. (f)(2), is classified to section 1103(c)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–373, § 101(a), expanded the definition of "employer" by reducing from 4 to 1 the number of individuals which a person had to employ on each of some 20 days during the calendar year or the preceding calendar year in order to qualify as an employer and added provisions making a person an employer who paid wages of $1,500 or more during any calendar quarter in the calendar year or the preceding calendar year.

Subsec. (b)(1). Pub. L. 91–373, § 302, substituted "$4,200" for "$3,000".

Subsec. (c). Pub. L. 91–373, § 105(a), inserted in the material preceding par. (1) a reference to service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer.

Subsec. (c)(10). Pub. L. 91–373, § 106(a), designated existing provisions of subpar. (B) as cl. (i) thereof and added cl. (ii) of subpar. (B) and subpars. (C) and (D).

Subsec. (i). Pub. L. 91–373, § 102(a), substituted the meaning assigned the term "employee" by section 3121(d) of this title, except that subpars. (B) and (C) of par. (3) were not applicable, as the meaning of "employee" for purposes of this chapter for a definition of "employee" as persons including officers of corporations but not including independent contractors under common law rules or persons not employees under such rules.

Subsec. (j)(3). Pub. L. 91–373, § 105(b), added definition of "American employer".

Subsec. (k). Pub. L. 91–373, § 103(a), substituted as the definition of the term "agricultural labor" a simple reference to that term as defined, with a minor exception, in section 3121 of this title for a full definition of the term, the result of which, in view of the substance of section 3121, excluded from the definition of agricultural labor services performed in connection with the production or harvesting of maple sirup, maple sugar, or mushrooms, or the hatching of poultry unless performed on a farm, and provided a new series of tests to determine whether the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering agricultural or horticultural commodities constitute agricultural labor.

1969—Subsec. (a). Pub. L. 90–53 made status of employer depend also on employment during preceding taxable year.

1968—Subsec. (b)(10). Pub. L. 90–248 added par. (10).

1964—Subsec. (b). Pub. L. 88–650 added par. (9).

1962—Subsec. (b)(5). Pub. L. 87–792 substituted "is a plan described in section 403(a)" for "meets the requirements of section 401(a) (3), (4), (5), and (6)" in subpar. (B), and added subpar. (C).

1961—Subsec. (c)(18). Pub. L. 87–256 added subsec. (c)(18).

1960—Subsec. (c). Pub. L. 86–778, § 532(a), included employment on or in connection with an American aircraft within cl. (B) of the opening provisions.

Subsec. (c)(4). Pub. L. 86–778, § 532(b), excluded service performed on or in connection with an aircraft that is not an American aircraft.

Subsec. (c)(6). Pub. L. 86–778, § 531(c), substituted "wholly or partially owned" for "wholly owned" in cl. (A), and inserted words "which specifically refers to such section (or the corresponding section of prior law) in granting such exemption" in cl. (B).

Subsec. (c)(8). Pub. L. 86–778, § 533, substituted "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)" for "service perforced in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

Subsec. (c)(10). Pub. L. 86–778, § 534, eliminated provisions which excepted from the definition of the term "employment" service in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association which is performed away from the home office or is ritualistic service in connection with any such society, order, or association, service performed in the employ of an agricultural or horticultural organization described in section 501(c)(5) of this title, service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries, and service performed in the employ of a school, college, or university, not exempt from income tax under section 501(a) of this title if such service is performed by a student who is enrolled and regularly attending classes.

Subsec. (j). Pub. L. 86–778, § 543(a), included the Commonwealth of Puerto Rico and eliminated the word "Hawaii" from the definition of "State", defined the term "United States", and inserted provisions requiring an individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) to be considered for purposes of this section, as a citizen of the United States.

Pub. L. 86–624 eliminated "Hawaii, and" preceding "the District of Columbia."

Subsec. (m). Pub. L. 86–778, § 532(c), included aircraft in the catchline and defined the term "American aircraft."

1959—Subsec. (j). Pub. L. 86–70 eliminated "Alaska," preceding "Hawaii."

1954—Subsec. (a). Act Sept. 1, 1954, changed "definition of employer from "eight or more" to "4 or more".

Subsec. (*l*). Act Sept. 1, 1954, repealed subsec. (*l*) which related to certain employees of Bonneville Power Administrator.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(c)(1) of Pub. L. 91–373 provided that: "The amendments made by subsections (a) and (b)(1) [amending subsec. (a) of this section and section 6157 (a)(1) of this title] shall apply with respect to calendar years beginning after December 31, 1971."

Section 102(c) of Pub. L. 91–373 provided that: "The amendment made by subsection (a) [amending subsec. (i) of this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date."

Section 103(b) of Pub. L. 91–373 provided that: "The amendment made by subsection (a) [amending subsec. (k) of this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date."

Section 105(c) of Pub. L. 91–373 provided that: "The amendments made by this section [amending the provisions of subsec. (c) of this section preceding par. (1) thereof and adding subsec. (j)(3) of this section] shall apply with respect to service performed after December 31, 1971."

Section 106(b) of Pub. L. 91–373 provided that: "Subsection (a) [adding subsec. (c)(10)(B)(ii), (C), (D) of this section] shall apply with respect to remuneration paid after December 31, 1969."

Section 302 of Pub. L. 91–373 provided in part that the amendment of subsec. (b)(1) of this section by section

302 of Pub. L. 91–373 is effective with respect to remuneration paid after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as a note under section 6157 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Subsec. (b)(10) applicable with respect to renumeration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Subsec. (b)(9) of this section applicable with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h)(3) of Pub. L. 87–256, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment of subsecs. (c), (c)(4), (6), (8), (10), and (m) of this section by Pub. L. 86–778 applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86–778, set out as a note under section 3305 of this title.

Section 543(a) of Pub. L. 86–778 provided in part that the amendment of subsec. (j) of this section by Pub. L. 86–778 shall be effective with respect to remuneration paid after Dec. 31, 1960, for services performed after such date.

Amendment of subsec. (j) by Pub. L. 86–624 effective on August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1954 AMENDMENTS

Section 1 of act Sept. 1, 1954, provided in part that the amendment of subsec. (a) shall take effect with respect to services performed after Dec. 31, 1955.

Section 4 (c) of act Sept. 1, 1954, provided in part that the repeal of subsec. (*l*) shall be effective with respect to services performed after Dec. 31, 1954.

SHORT TITLE OF 1970 AMENDMENT

Section 1 of Pub. L. 91–373 provided: "That this Act [enacting sections 3309 and 3310 of this title and sections 504, 1106, 1107, and 1108 of Title 42, repealing section 8524 of Title 5, and amending this section, sections 1563, 3301, 3302, 3303, 3304, 3305, and 6157 of this title, sections 77c and 78c of Title 15, and sections 1101, 1102, 1103, 1105, and 1323 of Title 42, and enacting provisions set out as notes under this section and sections 3301, 3302, 3303, 3304, and 6157 of this title, section 77c of Title 15, and section 1101 of Title 42] may be cited as the 'Employment Security Amendments of 1970'."

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of subsec. (c)(6) of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86–778, set out as a note under section 3305 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3301, 3302, 3305, 3309, 6157 of this title; title 5 section 8501.

§ 3307. Deductions as constructive payments.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. (Aug. 16, 1954, ch. 736, 68A Stat. 454.)

§ 3308. Instrumentalities of the United States.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section. (Added Pub. L. 86–778, title V, § 531(d)(1), Sept. 13, 1960, 74 Stat. 983.)

REFERENCES IN TEXT

Enacted before or after the enactment of this section, referred to in the text, means enacted before or after Sept. 13, 1960, the date of approval of Pub. L. 86–778.

EFFECTIVE DATE

Section applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86–778, set out as a note under section 3305 of this title.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86–778, set out as a note under section 3305 of this title.

§ 3309. State law coverage of certain services performed for nonprofit organizations and for State hospitals and institutions of higher education.

(a) State law requirements.

For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306(c), and

(B) service performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education located in the State if such service is excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that an organization (or group of organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1)(A) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund

amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that organizations so electing will make the payments required under such elections.

(b) Section not to apply to certain service.

This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a school which is not an institution of higher education;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; and

(6) for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution.

(c) Nonprofit organizations must employ 4 or more.

This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

(d) Definition of institution of higher education.

For purposes of this section, the term "institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(Added Pub. L. 91–373, title I, § 104(b)(1), Aug. 10, 1970, 84 Stat. 697.)

EFFECTIVE DATE

Section applicable with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after Dec. 31, 1971, see section 104(d)(1) of Pub. L. 91–373, set out as a note under section 3304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3303, 3304 of this title.

§ 3310. Judicial review.

(a) In general.

Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

(b) Findings of fact.

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Jurisdiction of court; review.

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d) Stay of Secretary of Labor's action.

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action

for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

(e) Preference.

Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible. (Added Pub. L. 91–373, title I, § 131(b)(1), Aug. 10, 1970, 84 Stat. 703.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3305 of this title.

§ 3311. Short title.

This chapter may be cited as the "Federal Unemployment Tax Act." (Aug. 16, 1954, ch. 736, 68A Stat. 454, § 3311, formerly § 3308, renumbered § 3309, Sept. 13, 1960, Pub. L. 86–778, title V, § 531(d)(1), 74 Stat. 983, renumbered § 3311, Aug. 10, 1970, Pub. L. 91–373, title I, § 104(b)(1), 84 Stat. 697.)

Chapter 24.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec.
3401. Definitions.
3402. Income tax collected at source.
3403. Liability for tax.
3404. Return and payment by governmental employer.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 274, 6011, 6015, 6501, 6513, 6682 of this title; title 5 section 5901; title 42 section 2705; title 48 section 1421i.

§ 3401. Definitions.

(a) Wages.

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service as a member of the Armed Forces of the United States performed in a month for which such member is entitled to the benefits of section 112; or

(2) for agricultural labor (as defined in section 3121 (g)); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization; or

(6) for such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary or his delegate; or

(7) Repealed. Pub. L. 89–809, title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554.

(8) (A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(10) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(12) to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a); or

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217; or

(16) (A) as tips in any medium other than cash;

(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more.

(b) Payroll period.

For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(c) Employee.

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) Employer.

For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

(e) Number of withholding exemptions claimed.

For purposes of this chapter, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402 (f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

(f) Tips.

For purposes of subsection (a), the term "wages" includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received. (Aug. 16, 1954, ch. 736, 68A Stat. 455; Aug. 9, 1955, ch. 681, 69 Stat. 616; Sept. 21, 1961, Pub. L. 87–256, § 110(g)(1), 75 Stat. 537; Sept. 22, 1961, Pub. L. 87–293, title II, § 201(c), 75 Stat. 625; Oct. 10, 1962, Pub. L. 87–792, § 7(*l*), 76 Stat. 830; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 204(b), 213(c), 78 Stat. 36, 52; July 30, 1965, Pub. L. 89–97, title III, § 313(d) (1), (2), 79 Stat. 383, 384; Nov. 13, 1966, Pub. L. 89–809, title I, § 103 (k), 80 Stat. 1554.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (a)(6)(C), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (a)(13), are sections 5(c) and 6(1) of Pub. L. 87–293, which are classified to sections 2504(c) and 2505(1) of Title 22, Foreign Relations and Intercourse, respectively.

Such Act, referred to in subsec. (a)(13), refers to the Peace Corps Act, which is classified to chapter 34 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–809, § 103(k), struck out former par. (6) dealing with services performed by nonresident alien individuals other than residents of contiguous countries who enter and leave the United States at frequent intervals, residents of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or individuals temporarily present in the United States as nonimmigrants under certain conditions, redesignated former par. (7) as par. (6), and in former par. (7) as redesignated par. (6), struck out "who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals" following "nonresident alien individual".

1965—Subsec. (a)(16). Pub. L. 89–97, § 313(d)(2), added par. (16).

Subsec. (f). Pub. L. 89–97, § 313(d)(1), added subsec. (f).

1964—Subsec. (a) (14), (15). Pub. L. 88–272 added pars. (14) and (15).

1962—Subsec. (a)(12). Pub. L. 87–792 substituted "is a plan described in section 403(a)" for "meets the requirements of section 401(a) (3), (4), (5), and (6)", in subpar. (B), and added subpar. (C).

1961—Subsec. (a)(6). Pub. L. 87–256 added subpar. (C).

Subsec. (a)(13). Pub. L. 87–293 added subsec. (a)(13).

1955—Subsec. (a). Act Aug. 9, 1955, excluded from definition of wages, remuneration paid for services performed in a possession of the United States by a United

States citizen if the employer is required by the law of the possession to withhold income tax on the remuneration.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-809 applicable with respect to remuneration paid after Dec. 31, 1966, see section 103(n)(4) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 313 of Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Par. (14) of subsec. (a) applicable to remuneration paid after Dec. 31, 1963, in the form of group-term life insurance provided after such date, see section 204(d) of Pub. L. 88-272, set out as a note under section 79 of this title.

Par. (15) of subsec. (a) applicable to remuneration paid after the seventh day following Feb. 26, 1964, see section 213(d) of Pub. L. 88-272, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment of this section by Pub. L. 87-293 applicable with respect to remuneration paid after Sept. 22, 1961, see section 201(d) of Pub. L. 87-293, set out as a note under section 912 of this title.

Section 110(h)(4) of Pub. L. 87-256 provided that: "The amendments made by subsection (g) of this section [to this section and section 3402 of this title] shall apply with respect to wages paid after December 31, 1961."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(c) of Pub. L. 89-293 repealed by Pub. L. 89-572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Effective date of this subtitle, see section 7851 (a) (3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 275, 3402, 6014, 6015, 6051, 6053, 6331 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 47-1551c of the District of Columbia Code.

§ 3402. Income tax collected at source.

(a) Requirement of withholding.

Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. For purposes of applying such tables, the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table in subsection (b)(1):

(1) In the case of wages paid after December 31, 1969, and before July 1, 1970:

Table 1—If the payroll period with respect to an employee is WEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $21.00	0.
Over $21.00 but not over $33.00.	21% of excess over $21.00.
Over $33.00 but not over $52.00.	$2.52 plus 27% of excess over $33.00.
Over $52.00 but not over $88.00.	$7.65 plus 18% of excess over $52.00.
Over $88.00 but not over $177.00	$14.13 plus 21% of excess over $88.00.
Over $177.00 but not over $212.00.	$32.82 plus 26% of excess over $177.00.
Over $212.00	$41.92 plus 31% of excess over $212.00.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $21.00	0.
Over $21.00 but not over $48.00.	21% of excess over $21.00.
Over $48.00 but not over $88.00.	$5.67 plus 16% of excess over $48.00.
Over $88.00 but not over $177.00.	$12.07 plus 18% of excess over $88.00.
Over $177.00 but not over $346.00.	$28.09 plus 21% of excess over $177.00.
Over $346.00 but not over $423.00.	$63.58 plus 26% of excess over $346.00.
Over $423.00	$83.60 plus 31% of excess over $423.00.

Table 2—If the payroll period with respect to an employee is BIWEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42.00	0.
Over $42.00 but not over $65.00.	21% of excess over $42.00.
Over $65.00 but not over $104.00.	$4.83 plus 27% of excess over $65.00.
Over $104.00 but not over $177.00.	$15.36 plus 18% of excess over $104.00.
Over $177.00 but not over $354.00.	$28.50 plus 21% of excess over $177.00.
Over $354.00 but not over $423.00.	$65.67 plus 26% of excess over $354.00.
Over $423.00	$83.61 plus 31% of excess over $423.00.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42.00	0.
Over $42.00 but not over $96.00.	21% of excess over $42.00.
Over $96.00 but not over $177.00.	$11.34 plus 16% of excess over $96.00.
Over $177.00 but not over $354.00.	$24.30 plus 18% of excess over $177.00.
Over $354.00 but not over $692.00.	$56.16 plus 21% of excess over $354.00.
Over $692.00 but not over $846.00.	$127.14 plus 26% of excess over $692.00.
Over $846.00	$167.18 plus 31% of excess over $846.00.

Table 3—If the payroll period with respect to an employee is SEMIMONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $46	0.
Over $46 but not over $71.	21% of excess over $46.
Over $71 but not over $113.	$5.25 plus 27% of excess over $71.
Over $113 but not over $192.	$16.59 plus 18% of excess over $113.
Over $192 but not over $383.	$30.81 plus 21% of excess over $192.
Over $383 but not over $458.	$70.92 plus 26% of excess over $383.
Over $458	$90.42 plus 31% of excess over $458.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $46	0.
Over $46 but not over $104.	21% of excess over $46.
Over $104 but not over $192.	$12.18 plus 16% of excess over $104.
Over $192 but not over $383.	$26.26 plus 18% of excess over $192.
Over $383 but not over $750.	$60.64 plus 21% of excess over $383.
Over $750 but not over $917.	$137.71 plus 26% of excess over $750.
Over $917	$181.13 plus 31% of excess over $917.

Table 4—If the payroll period with respect to an employee is MONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $92	0.
Over $92 but not over $142.	21% of excess over $92.
Over $142 but not over $225.	$10.50 plus 27% of excess over $142.
Over $225 but not over $383.	$32.91 plus 18% of excess over $225.
Over $383 but not over $767.	$61.35 plus 21% of excess over $383.
Over $767 but not over 917.	$141.99 plus 26% of excess over $767.
Over $917	$180.99 plus 31% of excess over $917.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $92	0.
Over $92 but not over $208.	21% of excess over $92.
Over $208 but not over $383.	$24.36 plus 16% of excess over $208.
Over $383 but not over $767.	$52.36 plus 18% of excess over $383.
Over $767 but not over $1,500.	$121.48 plus 21% of excess over $767.
Over $1,500 but not over $1,833.	$275.41 plus 26% of excess over $1,500.
Over $1,833	$361.99 plus 31% of excess over $1,833.

Table 5—If the payroll period with respect to an employee is QUARTERLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $275	0.
Over $275 but not over $425.	21% of excess over $275.
Over $425 but not over $675.	$31.50 plus 27% of excess over $425.
Over $675 but not over $1,150.	$99.00 plus 18% of excess over $675.
Over $1,150 but not over $2,300.	$184.50 plus 21% of excess over $1,150.
Over $2,300 but not over $2,750.	$426.00 plus 26% of excess over $2,300.
Over $2,750	$543.00 plus 31% of excess over $2,750.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $275	0.
Over $275 but not over $625.	21% of excess over $275.
Over $625 but not over $1,150.	$73.50 plus 16% of excess over $625.
Over $1,150 but not over $2,300.	$157.50 plus 18% of excess over $1,150.
Over $2,300 but not over $4,500.	$364.50 plus 21% of excess over $2,300.
Over $4,500 but not over $5,500.	$826.50 plus 26% of excess over $4,500.
Over $5,500	$1,086.50 plus 31% of excess over $5,500.

Table 6—If the payroll period with respect to an employee is SEMIANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $550	0.
Over $550 but not over $850.	21% of excess over $550.
Over $850 but not over $1,350.	$63 plus 27% of excess over $850.
Over $1,350 but not over $2,300.	$198 plus 18% of excess over $1,350.
Over $2,300 but not over $4,600.	$369 plus 21% of excess over $2,300.
Over $4,600 but not over $5,500.	$852 plus 26% of excess over $4,600.
Over $5,500	$1,086 plus 31% of excess over $5,500.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $550	0.
Over $550 but not over $1,250.	21% of excess over $550.
Over $1,250 but not over $2,300.	$147 plus 16% of excess over $1,250.
Over $2,300 but not over $4,600.	$315 plus 18% of excess over $2,300.
Over $4,600 but not over $9,000.	$729 plus 21% of excess over $4,600.
Over $9,000 but not over $11,000.	$1,653 plus 26% of excess over $9,000.
Over $11,000	$2,173 plus 31% of excess over $11,000.

Table 7—If the payroll period with respect to an employee is ANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,100	0.
Over $1,100 but not over $1,700.	21% of excess over $1,100.
Over $1,700 but not over $2,700.	$126 plus 27% of excess over $1,700.
Over $2,700 but not over $4,600.	$396 plus 18% of excess over $2,700.
Over $4,600 but not over $9,200.	$738 plus 21% of excess over $4,600.
Over $9,200 but not over $11,000.	$1,704 plus 26% of excess over $9,200.
Over $11,000	$2,172 plus 31% of excess over $11,000.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,100	0.
Over $1,100 but not over $2,500.	21% of excess over $1,100.
Over $2,500 but not over $4,600.	$294 plus 16% of excess over $2,500.
Over $4,600 but not over $9,200.	$630 plus 18% of excess over $4,600.
Over $9,200 but not over $18,000.	$1,458 plus 21% of excess over $9,200.
Over $18,000 but not over $22,000.	$3,306 plus 26% of excess over $18,000.
Over $22,000	$4,346 plus 31% of excess over $22,000.

Table 8—If the payroll period with respect to an employee is a DAILY payroll period or a miscellaneous payroll period

(a) Single Person—Including Head of Household:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $3.00	0.
Over $3.00 but not over $4.70.	21% of excess over $3.00.
Over $4.70 but not over $7.40.	$0.36 plus 27% of excess over $4.70.
Over $7.40 but not over $12.60.	$1.09 plus 18% of excess over $7.40.
Over $12.60 but not over $25.20.	$2.02 plus 21% of excess over $12.60.
Over $25.20 but not over $30.10.	$4.67 plus 26% of excess over $25.20.
Over $30.10	$5.94 plus 31% of excess over $30.10.

(b) Married Person:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $3.00	0.
Over $3.00 but not over $6.80.	21% of excess over $3.00.
Over $6.80 but not over $12.60.	$0.80 plus 16% of excess over $6.80.
Over $12.60 but not over $25.20.	$1.73 plus 18% of excess over $12.60.
Over $25.20 but not over $49.30.	$3.99 plus 21% of excess over $25.20.
Over $49.30 but not over $60.30.	$9.06 plus 26% of excess over $49.30.
Over $60.30	$11.92 plus 31% of excess over $60.30.

(2) In the case of wages paid after June 30, 1970, and before January 1, 1971:

Table 1—If the payroll period with respect to an employee is WEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $21	0.
Over $21 but not over $33.	21% of excess over $21.
Over $33 but not over $52.	$2.52 plus 25% of excess over $33.
Over $52 but not over $88.	$7.27 plus 17% of excess over $52.
Over $88 but not over $177.	$13.39 plus 21% of excess over $88.
Over $177 but not over $212.	$32.08 plus 25% of excess over $177.
Over $212	$40.83 plus 30% of excess over $212.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $21	0.
Over $21 but not over $48.	21% of excess over $21.
Over $48 but not over $88.	$5.67 plus 15% of excess over $48.
Over $88 but not over $177.	$11.67 plus 17% of excess over $88.
Over $177 but not over $346.	$26.80 plus 20% of excess over $177.
Over $346 but not over $423.	$60.60 plus 25% of excess over $346.
Over $423	$79.85 plus 30% of excess over $423.

Table 2—If the payroll period with respect to an employee is BIWEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42	0.
Over $42 but not over $65.	21% of excess over $42.
Over $65 but not over $104.	$4.83 plus 25% of excess over $65.
Over $104 but not over $177.	$14.58 plus 17% of excess over $104.
Over $177 but not over $354.	$26.99 plus 21% of excess over $177.
Over $354 but not over $423.	$64.16 plus 25% of excess over $354.
Over $423	$81.41 plus 30% of excess over $423.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42	0.
Over $42 but not over $96.	21% of excess over $42.
Over $96 but not over $177.	$11.34 plus 15% of excess over $96.
Over $177 but not over $354.	$23.49 plus 17% of excess over $177.
Over $354 but not over $692.	$53.58 plus 20% of excess over $354.

(b) Married Person—Continued

If the amount of wages is:	The amount of income tax to be withheld shall be:
Over $692 but not over $846.	$121.18 plus 25% of excess over $692.
Over $846	$159.68 plus 30% of excess over $846.

Table 3—If the payroll period with respect to an employee is SEMIMONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $46	0.
Over $46 but not over $71.	21% of excess over $46.
Over $71 but not over $113.	$5.25 plus 25% of excess over $71.
Over $113 but not over $192.	$15.75 plus 17% of excess over $113.
Over $192 but not over $383.	$29.18 plus 21% of excess over $192.
Over $383 but not over $458.	$69.29 plus 25% of excess over $383.
Over $458	$88.04 plus 30% of excess over $458.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $46	0.
Over $46 but not over 104.	21% of excess over $46.
Over $104 but not over $192.	$12.18 plus 15% of excess over $104.
Over $192 but not over $383.	$25.38 plus 17% of excess over $192.
Over $383 but not over $750.	$57.85 plus 20% of excess over $383.
Over $750 but not over $917.	$131.25 plus 25% of excess over $750.
Over $917	$173.00 plus 30% of excess over $917.

Table 4.—If the payroll period with respect to an employee is MONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $92	0.
Over $92 but not over $142.	21% of excess over $92.
Over $142 but not over $225.	$10.50 plus 25% of excess over $142.
Over $225 but not over $383.	$31.25 plus 17% of excess over $225.
Over $383 but not over $767.	$58.11 plus 21% of excess over $383.
Over $767 but not over $917.	$138.75 plus 25% of excess over $767.
Over $917	$176.25 plus 30% of excess over $917.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $92	0.
Over $92 but not over $208.	21% of excess over $92.

(b) Married Person:—Continued

If the amount of wages is:	The amount of income tax to be withheld shall be:
Over $208 but not over $383.	$24.36 plus 15% of excess over $208.
Over $383 but not over $767.	$50.61 plus 17% of excess over $383.
Over $767 but not over $1,500.	$115.89 plus 20% of excess over $767.
Over $1,500 but not over $1,833.	$262.49 plus 25% of excess over $1,500.
Over $1,833	$345.74 plus 30% of excess over $1,833.

Table 5—If the payroll period with respect to an employee is QUARTERLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $275	0.
Over $275 but not over $425.	21% of excess over $275.
Over $425 but not over $675.	$31.50 plus 25% of excess over $425.
Over $675 but not over $1,150.	$94.00 plus 17% of excess over $675.
Over $1,150 but not over $2,300.	$174.75 plus 21% of excess over $1,150.
Over $2,300 but not over $2,750.	$416.25 plus 25% of excess over $2,300.
Over $2,750	$528.75 plus 30% of excess over $2,750.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $275	0.
Over $275 but not over $625.	21% of excess over $275.
Over $625 but not over $1,150.	$73.50 plus 15% of excess over $625.
Over $1,150 but not over $2,300.	$152.25 plus 17% of excess over $1,150.
Over $2,300 but not over $4,500.	$347.75 plus 20% of excess over $2,300.
Over $4,500 but not over $5,500.	$787.75 plus 25% of excess over $4,500.
Over $5,500	$1,037.75 plus 30% of excess over $5,500.

Table 6—If the payroll period with respect to an employee is SEMIANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $550	0.
Over $550 but not over $850.	21% of excess over $550.
Over $850 but not over $1,350.	$63.00 plus 25% of excess over $850.
Over $1,350 but not over $2,300.	$188.00 plus 17% of excess over $1,350.
Over $2,300 but not over $4,600.	$349.50 plus 21% of excess over $2,300.
Over $4,600 but not over $5,500.	$832.50 plus 25% of excess over $4,600.
Over $5,500	$1,057.50 plus 30% of excess over $5,500.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $550	0.
Over $550 but not over $1,250.	21% of excess over $550.
Over $1,250 but not over $2,300.	$147.00 plus 15% of excess over $1,250.
Over $2,300 but not over $4,600.	$304.50 plus 17% of excess over $2,300.
Over $4,600 but not over $9,000.	$695.50 plus 20% of excess over $4,600.
Over $9,000 but not over $11,000.	$1,575.50 plus 25% of excess over $9,000.
Over $11,000	$2,075.50 plus 30% of excess over $11,000.

Table 7—If the payroll period with respect to an employee is ANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,100	0.
Over $1,100 but not over $1,700.	21% of excess over $1,100.
Over $1,700 but not over $2,700.	$126 plus 25% of excess over $1,700.
Over $2,700 but not over $4,600.	$376 plus 17% of excess over $2,700.
Over $4,600 but not over $9,200.	$699 plus 21% of excess over $4,600.
Over $9,200 but not over $11,000.	$1,665 plus 25% of excess over $9,200.
Over $11,000	$2,115 plus 30% of excess over $11,000.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,100	0.
Over $1,100 but not over $2,500.	21% of excess over $1,100.
Over $2,500 but not over $4,600.	$294 plus 15% of excess over $2,500.
Over $4,600 but not over $9,200.	$609 plus 17% of excess over $4,600.
Over $9,200 but not over $18,000.	$1,391 plus 20% of excess over $9,200.
Over $18,000 but not over $22,000.	$3,151 plus 25% of excess over $18,000.
Over $22,000	$4,151 plus 30% of excess over $22,000.

Table 8—If the payroll period with respect to an employee is a DAILY payroll period or a miscellaneous payroll period

(a) Single Person—Including Head of Household:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $3.00	0.
Over $3.00 but not over $4.70.	21% of excess over $3.00.
Over $4.70 but not over $7.40.	$0.36 plus 25% of excess over $4.70.
Over $7.40 but not over $12.60.	$1.03 plus 17% of excess over $7.40.

(a) Single Person—Continued

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Over $12.60 but not over $25.20.	$1.92 plus 21% of excess over $12.60.
Over $25.20 but not over $30.10.	$4.56 plus 25% of excess over $25.20.
Over $30.10	$5.79 plus 30% of excess over $30.10.

(b) Married Person:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $3.00	0.
Over $3.00 but not over $6.80.	21% of excess over $3.00.
Over $6.80 but not over $12.60.	$0.80 plus 15% of excess over $6.80.
Over $12.60 but not over $25.20.	$1.67 plus 17% of excess over $12.60.
Over $25.20 but not over $49.30.	$3.81 plus 20% of excess over $25.20.
Over $49.30 but not over $60.30.	$8.63 plus 25% of excess over $49.30.
Over $60.30	$11.38 plus 30% of excess over $60.30.

(3) In the case of wages paid after December 31, 1970, and before January 1, 1972:

Table 1—If the payroll period with respect to an employee is WEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $20	0.
Over $20 but not over $31.	14% of excess over $20.
Over $31 but not over $50.	$1.54 plus 17% of excess over $31.
Over $50 but not over $100.	$4.77 plus 20% of excess over $50.
Over $100 but not over $135.	$14.77 plus 18% of excess over $100.
Over $135 but not over $212.	$21.07 plus 21% of excess over $135.
Over $212	$37.24 plus 24% of excess over $212.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $20	0.
Over $20 but not over $42.	14% of excess over $20.
Over $42 but not over $77.	$3.08 plus 17% of excess over $42.
Over $77 but not over $163.	$9.03 plus 16% of excess over $77.
Over $163 but not over $269.	$22.79 plus 19% of excess over $163.
Over $269 but not over $385.	$42.93 plus 21% of excess over $269.
Over $385	$67.29 plus 25% of excess over $385.

Table 2—If the payroll period with respect to an employee is BIWEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $40	0.
Over $40 but not over $62.	14% of excess over $40.
Over $62 but not over $100.	$3.08 plus 17% of excess over $62.
Over $100 but not over $200.	$9.54 plus 20% of excess over $100.
Over $200 but not over $269.	$29.54 plus 18% of excess over $200.
Over $269 but not over $423.	$41.96 plus 21% of excess over $269.
Over $423	$74.30 plus 24% of excess over $423.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $40	0.
Over $40 but not over $85.	14% of excess over $40.
Over $85 but not over $154.	$6.30 plus 17% of excess over $85.
Over $154 but not over $327.	$18.03 plus 16% of excess over $154.
Over $327 but not over $538.	$45.71 plus 19% of excess over $327.
Over $538 but not over $769.	$85.80 plus 21% of excess over $538.
Over $769	$134.31 plus 25% of excess over $769.

Table 3—If the payroll period with respect to an employee is SEMIMONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $44	0.
Over $44 but not over $67.	14% of excess over $44.
Over $67 but not over $108.	$3.22 plus 17% of excess over $67.
Over $108 but not over $217.	$10.19 plus 20% of excess over $108.
Over $217 but not over $292.	$31.99 plus 18% of excess over $217.
Over $292 but not over $458.	$45.49 plus 21% of excess over $292.
Over $458	$80.35 plus 24% of excess over $458.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $44	0.
Over $44 but not over $92.	14% of excess over $88.
Over $92 but not over $167.	$6.72 plus 17% of excess over $92.
Over $167 but not over $354.	$19.47 plus 16% of excess over $167.
Over $354 but not over $583.	$49.39 plus 19% of excess over $354.
Over $583 but not over $833.	$92.90 plus 21% of excess over $583.
Over $833	$145.40 plus 25% of excess over $833.

Table 4—If the payroll period with respect to an employee is MONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $88	0.
Over $88 but not over $133.	14% of excess over $88.
Over $133 but not over $217.	$6.30 plus 17% of excess over $133.
Over $217 but not over $433.	$20.58 plus 20% of excess over $217.
Over $433 but not over $583.	$63.78 plus 18% of excess over $433.
Over $583 but not over $917.	$90.78 plus 21% of excess over $583.
Over $917	$160.92 plus 24% of excess over $917.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $88	0.
Over $88 but not over $183.	14% of excess over $88.
Over $183 but not over $333.	$13.30 plus 17% of excess over $183.
Over $333 but not over $708.	$38.80 plus 16% of excess over $333.
Over $708 but not over $1,167.	$98.80 plus 19% of excess over $708.
Over $1,167 but not over $1,667.	$186.01 plus 21% of excess over $1,167.
Over $1,667	$291.01 plus 25% of excess over $1,667.

Table 5—If the payroll period with respect to an employee is QUARTERLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $263	0.
Over $263 but not over $400.	14% of excess over $263.
Over $400 but not over $650.	$19.18 plus 17% of excess over $400.
Over $650 but not over $1,300.	$61.68 plus 20% of excess over $650.
Over $1,300 but not over $1,750.	$191.68 plus 18% of excess over $1,300.
Over $1,750 but not over $2,750.	$272.68 plus 21% of excess over $1,750.
Over $2,750	$482.68 plus 24% of excess over $2,750.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $263	0.
Over $263 but not over $550.	14% of excess over $263.
Over $550 but not over $1,000.	$40.18 plus 17% of excess over $550.
Over $1,000 but not over $2,125.	$116.68 plus 16% of excess over $1,000.
Over $2,125 but not over $3,500.	$296.68 plus 19% of excess over $2,125.
Over $3,500 but not over $5,000.	$557.93 plus 21% of excess over $3,500.
Over $5,000	$872.93 plus 25% of excess over $5,000.

Table 6—If the payroll period with respect to an employee is SEMIANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $525	0.
Over $525 but not over $800.	14% of excess over $525.
Over $800 but not over $1,300.	$38.50 plus 17% of excess over $800.
Over $1,300 but not over $2,600.	$123.50 plus 20% of excess over $1,300.
Over $2,600 but not over $3,500.	$383.50 plus 18% of excess over $2,600.
Over $3,500 but not over $5,500.	$545.50 plus 21% of excess over $3,500.
Over $5,500	$965.50 plus 24% of excess over $5,500.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $525	0.
Over $525 but not over $1,100.	14% of excess over $525.
Over $1,100 but not over $2,000.	$80.50 plus 17% of excess over $1,100.
Over $2,000 but not over $4,250.	$233.50 plus 16% of excess over $2,000.
Over $4,250 but not over $7,000.	$593.50 plus 19% of excess over $4,250.
Over $7,000 but not over $10,000.	$1,116.00 plus 21% of excess over $7,000.
Over $10,000	$1,746.00 plus 25% of excess over $10,000.

Table 7—If the payroll period with respect to an employee is ANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,050	0.
Over $1,050 but not over $1,600.	14% of excess over $1,050.
Over $1,600 but not over $2,600.	$77 plus 17% of excess over $1,600.
Over $2,600 but not over $5,200.	$247 plus 20% of excess over $2,600.
Over $5,200 but not over $7,000.	$767 plus 18% of excess over $5,200.
Over $7,000 but not over $11,000.	$1,091 plus 21% of excess over $7,000.
Over $11,000	$1,931 plus 24% of excess over $11,000.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,050	0.
Over $1,050 but not over $2,200.	14% of excess over $1,050.
Over $2,200 but not over $4,000.	$161 plus 17% of excess over $2,200.
Over $4,000 but not over $8,500.	$467 plus 16% of excess over $4,000.
Over $8,500 but not over $14,000.	$1,187 plus 19% of excess over $8,500.
Over $14,000 but not over $20,000.	$2,232 plus 21% of excess over $14,000.
Over $20,000	$3,492 plus 25% of excess over $20,000.

Table 8—If the payroll period with respect to an employee is a DAILY payroll period or a miscellaneous payroll period

(a) Single Person—Including Head of Household:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $2.90	0.
Over $2.90 but not over $4.40.	14% of excess over $2.90.
Over $4.40 but not over $7.10.	$0.21 plus 17% of excess over $4.40.
Over $7.10 but not over $14.20.	$0.67 plus 20% of excess over $7.10.
Over $14.20 but not over $19.20.	$2.09 plus 18% of excess over $14.20.
Over $19.20 but not over $30.10.	$2.99 plus 21% of excess over $19.20.
Over $30.10	$5.28 plus 24% of excess over $30.10.

(b) Married Person:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $2.90	0.
Over $2.90 but not over $6.00.	14% of excess over $2.90.
Over $6.00 but not over $11.00.	$0.43 plus 17% of excess over $6.00.
Over $11.00 but not over $23.30.	$1.28 plus 16% of excess over $11.00.
Over $23.30 but not over $38.40.	$3.25 plus 19% of excess over $23.30.
Over $38.40 but not over $54.80.	$6.12 plus 21% of excess over $38.40.
Over $54.80	$9.57 plus 25% of excess over $54.80.

(4) In case of wages paid after December 31, 1971, and before January 1, 1973:

Table 1—If the payroll period with respect to an employee is WEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $19	0.
Over $19 but not over $38.	14% of excess over $19.
Over $38 but not over $58.	$2.66 plus 17% of excess over $38.
Over $58 but not over $87.	$6.06 plus 19% of excess over $58.
Over $87 but not over $135.	$11.57 plus 20% of excess over $87.
Over $135 but not over $221.	$21.17 plus 21% of excess over $135.
Over $221	$39.23 plus 24% of excess over $221.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $19	0.
Over $19 but not over $48.	14% of excess over $19.
Over $48 but not over $183.	$4.06 plus 16% of excess over $48.
Over $183 but not over $269.	$25.66 plus 19% of excess over $183.

(b) Married Person:—Continued

If the amount of wages is:	The amount of income tax to be withheld shall be:
Over $269 but not over $365.	$42.00 plus 21% of excess over $269.
Over $365 but not over $442.	$62.16 plus 24% of excess over $365.
Over $442	$80.64 plus 28% of excess over $442.

Table 2—If the payroll period with respect to an employee is BIWEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $38	0.
Over $38 but not over $77.	14% of excess over $38.
Over $77 but not over $115.	$5.46 plus 17% of excess over $77.
Over $115 but not over $173.	$11.92 plus 19% of excess over $115.
Over $173 but not over $269.	$22.94 plus 20% of excess over $173.
Over $269 but not over $442.	$42.14 plus 21% of excess over $269.
Over $442	$78.47 plus 24% of excess over $442.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $38	0.
Over $38 but not over $96.	14% of excess over $38.
Over $96 but not over $365.	$8.12 plus 16% of excess over $96.
Over $365 but not over $538.	$51.16 plus 19% of excess over $365.
Over $538 but not over $731.	$84.03 plus 21% of excess over $538.
Over $731 but not over $885.	$124.56 plus 24% of excess over $731.
Over $885	$161.52 plus 28% of excess over $885.

Table 3—If the payroll period with respect to an employee is SEMIMONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42	0.
Over $42 but not over $83.	14% of excess over $42.
Over $83 but not over $125.	$5.74 plus 17% of excess over $83.
Over $125 but not over $188.	$12.88 plus 19% of excess over $125.
Over $188 but not over $292.	$24.85 plus 20% of excess over $188.
Over $292 but not over $479.	$45.65 plus 21% of excess over $292.
Over $479	$84.92 plus 24% of excess over $479.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42	0.
Over $42 but not over $104.	14% of excess over $42.

(b) Married Person—Continued

If the amount of wages is:	The amount of income tax to be withheld shall be:
Over $104 but not over $396.	$8.68 plus 16% of excess over $104.
Over $396 but not over $583.	$55.40 plus 19% of excess over $396.
Over $583 but not over $792.	$90.93 plus 21% of excess over $583.
Over $792 but not over $958.	$134.82 plus 24% of excess over $792.
Over $958	$174.66 plus 28% of excess over $958.

Table 4—If the payroll period with respect to an employee is MONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $83	0.
Over $83 but not over $167.	14% of excess over $83.
Over $167 but not over $250.	$11.76 plus 17% of excess over $167.
Over $250 but not over $375.	$25.87 plus 19% of excess over $250.
Over $375 but not over $583.	$49.62 plus 20% of excess over $375.
Over $583 but not over $958.	$91.22 plus 21% of excess over $583.
Over $958	$169.97 plus 24% of excess over $958.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $83	0.
Over $83 but not over $208.	14% of excess over $83.
Over $208 but not over $792.	$17.50 plus 16% of excess over $208.
Over $792 but not over $1,167.	$110.94 plus 19% of excess over $792.
Over $1,167 but not over $1,583.	$182.19 plus 21% of excess over $1,167.
Over $1,583 but not over $1,917.	$269.55 plus 24% of excess over $1,583.
Over $1,917	$349.71 plus 28% of excess over $1,917.

Table 5—If the payroll period with respect to an employee is QUARTERLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $250	0.
Over $250 but not over $500.	14% of excess over $250.
Over $500 but not over $750.	$35.00 plus 17% of excess over $500.
Over $750 but not over $1,125.	$77.50 plus 19% of excess over $750.
Over $1,125 but not over $1,750.	$148.75 plus 20% of excess over $1,125.
Over $1,750 but not over $2,875.	$273.75 plus 21% of excess over $1,750.
Over $2,875	$510.00 plus 24% of excess over $2,875.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $250	0.
Over $250 but not over $625.	14% of excess over $250.
Over $625 but not over $2,375.	$52.50 plus 16% of excess over $625.
Over $2,375 but not over $3,500.	$332.50 plus 19% of excess over $2,375.
Over $3,500 but not over $4,750.	$546.25 plus 21% of excess over $3,500.
Over $4,750 but not over $5,750.	$808.75 plus 24% of excess over $4,750.
Over $5,750	$1,048.75 plus 28% of excess over $5,750.

Table 6—If the payroll period with respect to an employee is SEMIANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $500	0.
Over $500 but not over $1,000.	14% of excess over $500.
Over $1,000 but not over $1,500.	$70.00 plus 17% of excess over $1,000.
Over $1,500 but not over $2,250.	$155.00 plus 19% of excess over $1,500.
Over $2,250 but not over $3,500.	$297.50 plus 20% of excess over $2,250.
Over $3,500 but not over $5,750.	$547.50 plus 21% of excess over $3,500.
Over $5,750	$1,020.00 plus 24% of excess over $5,750.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $500	0.
Over $500 but not over $1,250.	14% of excess over $500.
Over $1,250 but not over $4,750.	$105.00 plus 16% of excess over $1,250.
Over $4,750 but not over $7,000.	$665.00 plus 19% of excess over $4,750.
Over $7,000 but not over $9,500.	$1,092.50 plus 21% of excess over $7,000.
Over $9,500 but not over $11,500.	$1,617.50 plus 24% of excess over $9,500.
Over $11,500	$2,097.50 plus 28% of excess over $11,500.

Table 7—If the payroll period with respect to an employee is ANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,000	0.
Over $1,000 but not over $2,000.	14% of excess over $1,000.
Over $2,000 but not over $3,000.	$140 plus 17% of excess over $2,000.
Over $3,000 but not over $4,500.	$310 plus 19% of excess over $3,000.
Over $4,500 but not over $7,000.	$595 plus 20% of excess over $4,500.
Over $7,000 but not over $11,500.	$1,095 plus 21% of excess over $7,000.
Over $11,500	$2,040 plus 24% of excess over $11,500.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,000	0.
Over $1,000 but not over $2,500.	14% of excess over $1,000.
Over $2,500 but not over $9,500.	$210 plus 16% of excess over $2,500.
Over $9,500 but not over $14,000.	$1,330 plus 19% of excess over $9,500.
Over $14,000 but not over $19,000.	$2,185 plus 21% of excess over $14,000.
Over $19,000 but not over $23,000.	$3,235 plus 24% of excess over $19,000.
Over $23,000	$4,195 plus 28% of excess over $23,000.

Table 8—If the payroll period with respect to an employee is a DAILY payroll period or a miscellaneous payroll period

(a) Single Person—Including Head of Household:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $2.70	0.
Over $2.70 but not over $5.50.	14% of excess over $2.70.
Over $5.50 but not over $8.20.	$0.39 plus 17% of excess over $5.50.
Over $8.20 but not over $12.30.	$0.85 plus 19% of excess over $8.20.
Over $12.30 but not over $19.20.	$1.63 plus 20% of excess over $12.30.
Over $19.20 but not over $31.50.	$3.01 plus 21% of excess over $19.20.
Over $31.50	$5.59 plus 24% of excess over $31.50.

(b) Married Person:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $2.70	0.
Over $2.70 but not over $6.80.	14% of excess over $2.70.
Over $6.80 but not over $26.00.	$0.57 plus 16% of excess over $6.80.
Over $26.00 but not over $38.40.	$3.65 plus 19% of excess over $26.00.
Over $38.40 but not over $52.10.	$6.00 plus 21% of excess over $38.40.
Over $52.10 but not over $63.00.	$8.88 plus 24% of excess over $52.10.
Over $63.00	$11.50 plus 28% of excess over $63.00.

(5) In the case of wages paid after December 31, 1972:

Table 1—If the payroll period with respect to an employee is WEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $19	0.
Over $19 but not over $38.	14% of excess over $19.
Over $38 but not over $58.	$2.66 plus 17% of excess over $38.
Over $58 but not over $96.	$6.06 plus 19% of excess over $58.

(a) Single Person—Continued

If the amount of wages is:	The amount of income tax to be withheld shall be:
Over $96 but not over $183.	$13.28 plus 20% of excess over $96.
Over $183 but not over $221.	$30.68 plus 21% of excess over $183.
Over $221	$38.66 plus 23% of excess over $221.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $19	0.
Over $19 but not over $38.	14% of excess over $19.
Over $38 but not over $96.	$2.66 plus 15% of excess over $38.
Over $96 but not over $183.	$11.36 plus 16% of excess over $96.
Over $183 but not over $288.	$25.28 plus 19% of excess over $183.
Over $288 but not over $442.	$45.23 plus 22% of excess over $288.
Over $442	$79.11 plus 27% of excess over $442.

Table 2—If the payroll period with respect to an employee is BIWEEKLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $38	0.
Over $38 but not over $77.	14% of excess over $38.
Over $77 but not over $115.	$5.46 plus 17% of excess over $77.
Over $115 but not over $192.	$11.92 plus 19% of excess over $115.
Over $192 but not over $365.	$26.55 plus 20% of excess over $192.
Over $365 but not over $442.	$61.15 plus 21% of excess over $365.
Over $442	$77.32 plus 23% of excess over $442.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $38	0.
Over $38 but not over $77.	14% of excess over $38.
Over $77 but not over $192.	$5.46 plus 15% of excess over $77.
Over $192 but not over $365.	$22.71 plus 16% of excess over $192.
Over $365 but not over $577.	$50.39 plus 19% of excess over $365.
Over $577 but not over $885.	$90.67 plus 22% of excess over $577.
Over $885	$158.43 plus 27% of excess over $885.

Table 3—If the payroll period with respect to an employee is SEMIMONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42	0.
Over $42 but not over $83.	14% of excess over $42.

(a) Single Person—Continued

If the amount of wages is:	The amount of income tax to be withheld shall be:
Over $83 but not over $125.	$5.74 plus 17% of excess over $83.
Over $125 but not over $208.	$12.88 plus 19% of excess over $125.
Over $208 but not over $396.	$28.65 plus 20% of excess over $208.
Over $396 but not over $479.	$66.25 plus 21% of excess over $396.
Over $479	$83.68 plus 23% of excess over $479.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $42	0.
Over $42 but not over $83.	14% of excess over $42.
Over $83 but not over $208.	$5.74 plus 15% of excess over $83.
Over $208 but not over $396.	$24.49 plus 16% of excess over $208.
Over $396 but not over $625.	$54.57 plus 19% of excess over $396.
Over $625 but not over $958.	$98.08 plus 22% of excess over $625.
Over $958	$171.34 plus 27% of excess over $958.

Table 4—If the payroll period with respect to an employee is MONTHLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $83	0.
Over $83 but not over $167.	14% of excess over $83.
Over $167 but not over $250.	$11.76 plus 17% of excess over $167.
Over $250 but not over $417.	$25.87 plus 19% of excess over $250.
Over $417 but not over $792.	$57.60 plus 20% of excess over $417.
Over $792 but not over $958.	$132.60 plus 21% of excess over $792.
Over $958	$167.46 plus 23% of excess over $958.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $83	0.
Over $83 but not over $167.	14% of excess over $83.
Over $167 but not over $417.	$11.76 plus 15% of excess over $167.
Over $417 but not over $792.	$49.26 plus 16% of excess over $417.
Over $792 but not over $1,250.	$109.26 plus 19% of excess over $792.
Over $1,250 but not over $1,917.	$196.28 plus 22% of excess over $1,250.
Over $1,917	$343.02 plus 27% of excess over $1,917.

Table 5—If the payroll period with respect to an employee is QUARTERLY

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $250	0.
Over $250 but not over $500.	14% of excess over $250.
Over $500 but not over $750.	$35.00 plus 17% of excess over $500.
Over $750 but not over $1,250.	$77.50 plus 19% of excess over $750.
Over $1,250 but not over $2,375.	$172.50 plus 20% of excess over $1,250.
Over $2,375 but not over $2,875.	$397.50 plus 21% of excess over $2,375.
Over $2,875	$502.50 plus 23% of excess over $2,875.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $250	0.
Over $250 but not over $500.	14% of excess over $250.
Over $500 but not over $1,250.	$35.00 plus 15% of excess over $500.
Over $1,250 but not over $2,375.	$147.50 plus 16% of excess over $1,250.
Over $2,375 but not over $3,750.	$327.50 plus 19% of excess over $2,375.
Over $3,750 but not over $5,750.	$588.75 plus 22% of excess over $3,750.
Over $5,750	$1,028.75 plus 27% of excess over $5,750.

Table 6—If the payroll period with respect to an employee is SEMIANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $500	0.
Over $500 but not over $1,000.	14% of excess over $500.
Over $1,000 but not over $1,500.	$70.00 plus 17% of excess over $1,000.
Over $1,500 but not over $2,500.	$155.00 plus 19% of excess over $1,500.
Over $2,500 but not over $4,750.	$345.00 plus 20% of excess over $2,500.
Over $4,750 but not over $5,750.	$795.00 plus 21% of excess over $4,750.
Over $5,750	$1,005.00 plus 23% of excess over $5,750.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $500	0.
Over $500 but not over $1,000.	14% of excess over $500.
Over $1,000 but not over $2,500.	$70.00 plus 15% of excess over $1,000.
Over $2,500 but not over $4,750.	$295.00 plus 16% of excess over $2,500.
Over $4,750 but not over $7,500.	$655.00 plus 19% of excess over $4,750.
Over $7,500 but not over $11,500.	$1,177.50 plus 22% of excess over $7,500.
Over $11,500	$2,057.50 plus 27% of excess over $11,500.

Table 7—If the payroll period with respect to an employee is ANNUAL

(a) Single Person—Including Head of Household:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,000	0.
Over $1,000 but not over $2,000.	14% of excess over $1,000.
Over $2,000 but not over $3,000.	$140 plus 17% of excess over $2,000.
Over $3,000 but not over $5,000.	$310 plus 19% of excess over $3,000.
Over $5,000 but not over $9,500.	$690 plus 20% of excess over $5,000.
Over $9,500 but not over $11,500.	$1,590 plus 21% of excess over $9,500.
Over $11,500	$2,010 plus 23% of excess over $11,500.

(b) Married Person:

If the amount of wages is:	The amount of income tax to be withheld shall be:
Not over $1,000	0.
Over $1,000 but not over $2,000.	14% of excess over $1,000.
Over $2,000 but not over $5,000.	$140 plus 15% of excess over $2,000.
Over $5,000 but not over $9,500.	$590 plus 16% of excess over $5,000.
Over $9,500 but not over $15,000.	$1,310 plus 19% of excess over $9,500.
Over $15,000 but not over $23,000.	$2,355 plus 22% of excess over $15,000.
Over $23,000	$4,115 plus 27% of excess over $23,000.

Table 8—If the payroll period with respect to an employee is a DAILY payroll period or a miscellaneous payroll period

(a) Single Person—Including Head of Household:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $2.70	0.
Over $2.70 but not over $5.50.	14% of excess over $2.70.
Over $5.50 but not over $8.20.	$0.39 plus 17% of excess over $5.50.
Over $8.20 but not over $13.70.	$0.85 plus 19% of excess over $8.20.
Over $13.70 but not over $26.00.	$1.90 plus 20% of excess over $13.70.
Over $26.00 but not over $31.50.	$4.36 plus 21% of excess over $26.00.
Over $31.50	$5.51 plus 23% of excess over $31.50.

(b) Married Person:

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Not over $2.70	0.
Over $2.70 but not over $5.50.	14% of excess over $2.70.
Over $5.50 but not over $13.70.	$0.39 plus 15% of excess over $5.50.
Over $13.70 but not over $26.00.	$1.62 plus 16% of excess over $13.70.
Over $26.00 but not over $41.10.	$3.59 plus 19% of excess over $26.00.

(b) Married Person—Continued

If the amount of wages divided by the number of days in the payroll period is:	The amount of income tax to be withheld shall be:
Over $41.10 but not over $63.00.	$6.46 plus 22% of excess over $41.10.
Over $63.00	$11.28 plus 27% of excess over $63.00.

(b) Percentage method of withholding.

(1) The table referred to in subsection (a) is as follows:

Percentage Method Withholding Table

Payroll period	Amount of one withholding exemption
Weekly	$12.50
Biweekly	25.00
Semimonthly	27.10
Monthly	54.20
Quarterly	162.50
Semiannual	325.00
Annual	650.00
Daily or miscellaneous (per day of such period)	1.80

(2) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary or his delegate, under regulations prescribed by him, may authorize an employer, in computing the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period.

(5) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(c) Wage bracket withholding.

(1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary or his delegate in accordance with paragraph (6).

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary or his delegate, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(6) In the case of wages paid after December 31, 1969, the amount deducted and withheld under paragraph (1) shall be determined in accordance with tables prescribed by the Secretary or his delegate. In the tables so prescribed, the amounts set forth as amounts of wages and amounts of income tax to be deducted and withheld shall be computed on the basis of table 7 contained in paragraph (1), (2), (3), (4), or (5) (whichever is applicable) of subsection (a).

(d) Tax paid by recipient.

If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Included and excluded wages.

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee

for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(f) Withholding exemptions.

(1) In general.

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself;

(B) one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (c) (1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(C) one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (d) (1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(E) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (e) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit; and

(F) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance.

(2) Exemption certificates.

(A) On commencement of employment.

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) Change of status.

If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) Change of status which affects next calendar year.

If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary or his delegate may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

(3) When certificate takes effect.

(A) First certificate furnished.

A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(B) Furnished to take place of existing certificate.

A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2) (C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(4) Period during which certificate remains in effect.

A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding

subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

(5) Form and contents of certificate.

Withholding exemption certificates shall be in such form and contain such information as the Secretary or his delegate may by regulations prescribe.

(6) Exemption of certain nonresident aliens.

Notwithstanding the provisions of paragraph (1), a nonresident alien individual (other than an individual described in section 3401(a)(6) (A) or (B)) shall be entitled to only one withholding exemption.

(g) Overlapping pay periods, and payment by agent or fiduciary.

If a payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee,

the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary or his delegate under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(h) Alternative methods of computing amount to be withheld.

The Secretary or his delegate may, under regulations prescribed by him, authorize—

(1) Withholding on basis of average wages.

An employer—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year,

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter (and, in the case of tips referred to in subsection (k), within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

(2) Withholding on basis of annualized wages.

An employer to determine the amount of tax to be deducted and withheld upon a payment of wages to an employee for a payroll period by—

(A) multiplying the amount of an employee's wages for a payroll period by the number of such payroll periods in the calendar year,

(B) determining the amount of tax which would be required to be deducted and withheld upon the amount determined under subparagraph (A) if such amount constituted the actual wages for the calendar year and the payroll period of the employee were an annual payroll period, and

(C) dividing the amount of tax determined under subparagraph (B) by the number of payroll periods (described in subparagraph (A)) in the calendar year.

(3) Withholding on basis of cumulative wages.

An employer, in the case of any employee who requests to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, to—

(A) add the amount of the wages to be paid to the employee for the payroll period to the total amount of wages paid by the employer to the employee during the calendar year,

(B) divide the aggregate amount of wages computed under subparagraph (A) by the number of payroll periods to which such aggregate amount of wages relates,

(C) compute the total amount of tax that would have been required to be deducted and withheld under subsection (a) if the average amount of wages (as computed under subparagraph (B)) had been paid to the employee for the number of payroll periods to which the aggregate amount of wages (computed under subparagraph (A)) relates,

(D) determine the excess, if any, of the amount of tax computed under subparagraph (C) over the total amount of tax deducted and withheld by the employer from wages paid to the employee during the calendar year, and

(E) deduct and withhold upon the payment of wages (referred to in subparagraph (A)) to the employee an amount equal to the excess (if any) computed under subparagraph (D).

(4) Other methods.

An employer to determine the amount of tax to be deducted and withheld upon the wages paid to an employee by any other method which will require the employer to deduct and withhold upon such wages substantially the same amount as would be required to be deducted and withheld by applying subsection (a) or (c), either with respect to a payroll period or with respect to the entire taxable year.

(i) Additional withholding.

The Secretary or his delegate is authorized by regulations to provide, under such conditions and to such extent as he deems proper, for withholding in

addition to that otherwise required under this section in cases in which the employer and the employee agree (in such form as the Secretary or his delegate may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(j) Noncash remuneration to retail commission salesman.

In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary or his delegate such information with respect to such remuneration as the Secretary or his delegate may by regulation prescribe.

(k) Tips.

In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that the tax can be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (16)(B) of section 3401(a) is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds (including funds turned over under section 3102(c)(2) or section 3202(c)(2)) minus any tax required by section 3102(a) or section 3202(a) to be collected from such wages and funds.

(*l*) Determination and disclosure of marital status.

(1) Determination of status by employer.

For purposes of applying the tables in subsections (a) and (c) to a payment of wages, the employer shall treat the employee as a single person unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after the date of the enactment of this subsection indicating that the employee is married.

(2) Disclosure of status by employee.

An employee shall be entitled to furnish the employer with a withholding exemption certificate indicating he is married only if, on the day of such furnishing, he is married (determined with the application of the rules in paragraph (3)). An employee whose marital status changes from married to single shall, at such time as the Secretary or his delegate may by regulations prescribe, furnish the employer with a new withholding exemption certifiate.

(3) Determination of marital status.

For purposes of paragraph (2), an employee shall on any day be considered—

(A) as not married, if (i) he is legally separated from his spouse under a decree of divorce or separate maintenance, or (ii) either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien; or

(B) as married, if (i) his spouse (other than a spouse referred to in subparagraph (A)) died within the portion of his taxable year which precedes such day, or (ii) his spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, the employee reasonably expects, at the close of his taxable year, to be a surviving spouse (as defined in section 2(b)).

(m) Withholding allowances based on itemized deductions.

(1) General rule.

An employee shall be entitled to withholding allowances under this subsection with respect to a payment of wages in a number equal to the number determined by dividing by $750 the excess of—

(A) his estimated itemized deductions, over

(B) an amount equal to 15 percent of his estimated wages.

For purposes of this subsection, a fractional number shall not be taken into account unless it amounts to one-half or more, in which case it shall be increased to 1.

(2) Definitions.

For the purposes of this subsection—

(A) Estimated itemized deductions.

The term "estimated itemized deductions" means the aggregate amount which he reasonably expects will be allowable as deductions under chapter 1 (other than the deductions referred to in sections 141 and 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62) for the estimation year. In no case shall such aggregate amount be greater than the sum of (i) the amount of such deductions (or the amount of the standard deduction) reflected in his return of tax under subtitle A for the taxable year preceding the estimation year, and (ii) the amount of his determinable additional deductions for the estimation year.

(B) Estimated wages.

The term "estimated wages" means the aggregate amount which he reasonably expects will constitute wages for the estimation year.

(C) Determinable additional deductions.

The term "determinable additional deductions" means those estimated itemized deductions which (i) are in excess of the deductions referred to in subparagraph (A) (or the standard deduction) reflected on his return of tax under subtitle A for the taxable year preceding the estimation year, and (ii) are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of such deductions on the return of tax under subtitle A for the estimation year.

(D) Estimation year.

In the case of an employee who files his return on the basis of a calendar year, the term "estimation year" means—

(i) with respect to payments of wages after April 30 and on or before December 31 of any calendar year, such calendar year, and

(ii) with respect to payments of wages on or after January 1 and before May 1 of any calendar year, the preceding calendar year (except that with respect to an exemption certificate furnished by an employee after he has filed his return for the preceding calendar year, such term means the current calendar year).

In the case of an employee who files his return on a basis other than the calendar year, his estimation year, and the amounts deducted and withheld to be governed by such estimation year, shall be determined under regulations prescribed by the Secretary or his delegate.

(3) Special rules.

(A) Married individuals.

The number of withholding allowances to which a husband and wife are entitled under this subsection shall be determined on the basis of their combined wages and deductions. This subparagraph shall not apply to a husband and wife who filed separate returns for the taxable year preceding the estimation year and who reasonably expect to file separate returns for the estimation year.

(B) Only one certificate to be in effect.

In the case of any employee, withholding allowances under this subsection may not be claimed with more than one employer at any one time.

(C) Termination of effectiveness.

In the case of an employee who files his return on the basis of a calendar year, that portion of a withholding exemption certificate which relates to allowances under this subsection shall not be effective with respect to payments of wages after the first April 30 following the close of the estimation year on which it is based.

(D) Limitation.

In the case of employees whose estimated wages are at levels at which the amounts deducted and withheld under this chapter generally are insufficient (taking into account a reasonable allowance for deductions and exemptions) to offset the liability for tax under chapter 1 with respect to the wages from which such amounts are deducted and withheld, the Secretary or his delegate may by regulation reduce the withholding allowances to which such employees would, but for this subparagraph, be entitled under this subsection.

(E) Treatment of allowances.

For purposes of this title, any withholding allowance under this subsection shall be treated as if it were denominated a withholding exemption.

(4) Authority to prescribe tables.

The Secretary or his delegate may prescribe tables pursuant to which employees shall determine the number of withholding allowances to which they are entitled under this subsection (in lieu of making such determination under paragraphs (1) and (3)). Such tables shall be consistent with the provisions of paragraphs (1) and (3), except that such tables—

(A) shall provide for entitlement to withholding allowances based on reasonable wage and itemized deduction brackets, and

(B) may increase or decrease the number of withholding allowances to which employees in the various wage and itemized deduction brackets would, but for this subparagraph, be entitled to the end that, to the extent practicable, amounts deducted and withheld under this chapter (i) generally do not exceed the liability for tax under chapter 1 with respect to the wages from which such amounts are deducted and withheld, and (ii) generally are sufficient to offset such liability for tax.

(n) Employees incurring no income tax liability.

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary or his delegate may prescribe) furnished to the employer by the employee certifying that the employee—

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary or his delegate shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

(o) Extension of withholding to certain payments other than wages.

(1) General rule.

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) any supplemental unemployment compensation benefit paid to an individual, and

(B) any payment of an annuity to an individual, if at the time the payment is made a

request that such annuity be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions.

(A) Supplemental unemployment compensation benefits.

For purposes of paragraph (1), the term "supplemental unemployment compensation benefits" means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income.

(B) Annuity.

For purposes of this subsection, the term "annuity" means any amount paid to an individual as a pension or annuity, but only to the extent that the amount is includible in the gross income of such individual.

(3) Request for withholding.

A request that an annuity be subject to withholding under this chapter shall be made by the payee in writing to the person making the annuity payments, shall be accompanied by a withholding exemption certificate, executed in accordance with the provisions of subsection (f)(2), and shall take effect as provided in subsection (f)(3). Such a request may, notwithstanding the provisions of subsection (f)(4), be terminated by furnishing to the person making the payments a written statement of termination which shall be treated as a withholding exemption certificate for purposes of subsection (f)(3)(B).

(p) Voluntary withholding agreements.

The Secretary or his delegate is authorized by regulations to provide for withholding—

(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

(2) from any other type of payment with respect to which the Secretary or his delegate finds that withholding would be appropriate under the provisions of this chapter,

if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary or his delegate may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect. (Aug. 16, 1954, ch. 736, 68A Stat. 457; Aug. 9, 1955, ch. 666, § 2, 69 Stat. 605; Sept. 21, 1961, Pub. L. 87-256, § 110 (g)(2), 75 Stat. 537; Feb. 26, 1964, Pub. L. 88-272, title III, § 302(a), (b), 78 Stat. 140; July 30, 1965, Pub. L. 89-97, title III, § 313(d)(3)—(5), 79 Stat. 384; Sept. 29, 1965, Pub. L. 89-212, § 2(c), 79 Stat. 859; Mar. 15, 1966, Pub. L. 89-368, title I, § 101 (a)—(e)(3), 80 Stat. 38, 41, 59, 61; June 28, 1968, Pub. L. 90-364, title I, § 102(c), 82 Stat. 256; June 30, 1969, Pub. L. 91-36, § 2(a), 83 Stat. 42; Aug. 7, 1969, Pub. L. 91-53, § 6(a), 83 Stat. 96; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 805(a)—(e), (f)(1), (g), 83 Stat. 686, 704-708.)

WAGES PAID DURING 1972

Pub. L. 91-172, title VIII, § 805(b)(3), Dec. 30, 1969, 83 Stat. 704, provided that:

"Effective with respect to wages paid during 1972, the table contained in section 3402(b)(1) is amended to read as follows:

"PERCENTAGE METHOD WITHHOLDING TABLE

"Payroll period	Amount of one withholding exemption:
Weekly	$13.50
Biweekly	26.90
Semimonthly	29.20
Monthly	58.30
Quarterly	175.00
Semiannual	350.00
Annual	700.00
Daily or miscellaneous (per day of such period)	1.90."

WAGES PAID AFTER 1972

Pub. L. 91-172, title VIII, § 805(b)(4), Dec. 30, 1969, 83 Stat. 705, provided that:

"Effective with respect to wages paid after 1972, the table contained in section 3402(b)(1) is amended to read as follows:

"PERCENTAGE METHOD WITHHOLDING TABLE

"Payroll period	Amount of one withholding exemption:
Weekly	$14.40
Biweekly	28.80
Semimonthly	31.30
Monthly	62.50
Quarterly	187.50
Semiannual	375.00
Annual	750.00
Daily or miscellaneous (per day of such period)	2.10."

REFERENCES IN TEXT

The "date of the enactment of this subsection", referred to in subsec. (*l*)(1), is March 15, 1966.

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91-172, § 805(a), (b)(2), substituted new sets of tables 1 to 8 for application to wages paid after Dec. 31, 1969, and before July 1, 1970, and after June 30, 1970, and before January 1, 1972, for the tables applicable to wages paid before July 13, 1968, and after Dec. 31, 1969.

Pub. L. 91-53, § 6(a)(1), substituted "December 31, 1969" for "July 31, 1969".

Pub. L. 91-36, § 2(a)(1), substituted "July 31, 1969" for "June 30, 1969".

Subsec. (a)(2). Pub. L. 91-172, § 805(a), substituted a set of tables 1 to 8 for application to wages paid after June 30, 1970, and before Jan. 1, 1971, for the tables applicable to wages paid after June 30, 1970, and before Jan. 1, 1970.

Pub. L. 91-53, § 6(a)(2), substituted "January 1, 1970" for "August 1, 1969".

Pub. L. 91-36, § 2(a)(2), substituted "August 1, 1969" for "July 1, 1969".

Subsec. (a)(3) to (5). Pub. L. 91–172, § 805(a), added sets of tables applicable, respectively, to wages paid after Dec. 31, 1970, and before Jan. 1, 1972, after Dec. 31, 1971, and before Jan. 1, 1973, and after Dec. 31, 1972.

Subsec. (b)(1). Pub. L. 91–172, § 805(b)(1), revised the withholding rates downwards to be effective with respect to wages paid after Dec 31, 1969, and before July 1, 1970.

Subsec. (c)(1). Pub. L. 91–172, § 805(c)(1), substituted provisions authorizing employer to deduct and withhold tax determinable according to tables prescribed by the Secretary or his delegate for provisions under which the employer was authorized to deduct and withhold tax only according to the tables set out.

Subsec. (c)(6). Pub. L. 91–172, § 805(c)(2), substituted provisions for the determination of the amount deductible according to tables prescribed by the Secretary or his delegate and for the computation of wages and amounts of income tax after Dec. 31, 1969, for provisions for the determination of such wages and amounts of income tax after July 13, 1968, and before Jan. 1, 1970.

Pub. L. 91–53, § 6(a)(3), substituted "January 1, 1970" for "August 1, 1969".

Pub. L. 91–36, § 2(a)(3), substituted "August 1, 1969" for "July 1, 1969".

Subsec. (h). Pub. L. 91–172, § 805(d), redesignated existing pars. 1 to 3 as subpars. (A) to (C) of par. (1), and added pars (2) to (4).

Subsec. (m)(1). Pub. L. 91–172, § 805(e)(2), substituted $750 for $700 in the material preceding subpar. (A) and in subpar. (B) substituted 15 per cent for 10 per cent of the first $7,500 and 17 per cent of remainder of the estimated wages.

Subsec. (m)(2)(A). Pub. L. 91–172, § 805(e)(2), added the amount of standard deduction as an alternative limit in cl. (i), and substituted the determinable additional deductions for provisions referring to an employee who did not show such deductions on his return.

Subsec. (m)(2)(B). Pub. L. 91–172, § 805(e)(2), struck out the limit on the aggregate amount.

Subsec. (m)(2)(C). Pub. L. 91–172, § 805(e)(2), added subpar. (C). Former subpar. (C) redesignated as subpar. (D)

Subsec. (m)(2)(D). Pub. L. 91–172, § 805(e)(1), redesignated subpar. (C) as subpar. (D).

Subsec. (n). Pub. L. 91–172, § 805(f)(1), added subsec. (n).

Subsecs. (o), (p). Pub. L. 91–172, § 805(g), added subsecs. (o) and (p).

1968—Subsec. (a). Pub. L. 90–364, § 102(c)(1), designated existing Tables 1—8 as constituting par. (1), inserted provisions preceding existing Table 1—8 so as to limit their application to the case of wages paid on or before the 15th day after the date of the enactment of the Revenue and Expenditure Control Act of 1968 or after June 30, 1969, and added par. (2).

Subsec. (c). Pub. L. 90–364, § 102(c)(2), added par. (6).

1966—Subsec. (a). Pub. L. 89–368, § 101(a), removed reference to subsections (j) and (k) and substituted provisions establishing separate tables for single persons and for married persons in each of eight payroll period categories each containing six graduated withholding rates ranging from 14 to 30 percent for provisions placing the rate at a fixed 14 percent.

Subsec. (b)(1). Pub. L. 89–368, § 101(b), increased the amounts set out for one withholding exemption for each of the payroll period categories from "$13.00", $26.00", "$28.00", $56.00", "$167.00", "$333.00", "$667.00", and "$1.80" to "$13.50", "$26.90", "$29.20", "$58.30", "$175.00", "$350.00", "$700.00", and "$1.90" respectively.

Subsec. (c)(1). Pub. L. 89–368, § 101(c), replaced existing tables with separate tables for employees who are married and for employees who are not married covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay periods and reflecting increased and graduated withholding rates.

Subsec. (f). Pub. L. 89–368, §§ 101(e)(1), (3), added par. (1)(F) and, in par. (3)(B), changed the definition of "status determination date" from January 1 and July 1 of each year to January 1, May 1, July 1, and October 1 of each year.

Subsec. (*l*). Pub. L. 89–368, § 101(d), added subsec. (*l*).

Subsec. (m). Pub. L. 89–368, § 101(e)(2), added subsec. (m).

1965—Subsec. (a). Pub. L. 89–97, § 313(d)(3), substituted "subsections (i) and (k)" for "subsection (j)".

Subsec. (h)(3). Pub. L. 89–97, § 313(d)(4), inserted "(and, in the case of tips referred to in subsection (k), within 30 days thereafter)" following "quarter" the first place it appears.

Subsec. (k). Pub. L. 89–212 inserted "or section 3202 (c)(2)" and "or section 3202(a)."

Pub. L. 89–97, § 313(d)(5), added subsec. (k).

1964—Subsec. (a). Pub. L. 88–272, § 302(a), reduced the tax from 18% to 14%.

Subsec. (c)(1). Pub. L. 88–272, § 302(b), substituted new tables reflecting lowered withholding rates.

1961—Subsec. (f)(6). Pub. L. 87–256 added subsec. (f)(6).

1955—Subsec. (a). Act Aug. 9, 1955, § 2(a), inserted "(except as provided in subsection (j))" after "upon such wages".

Subsec. (j). Act Aug. 9, 1955, § 2(b), added subsec. (j).

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 805(h) of Pub. L. 91–172 provided that:

"(1) The amendments made by subsections (a), (b), (c), (d), and (e) [amending subsecs. (a), (b), (c), (h), and (m) of this section] shall apply with respect to remuneration paid after December 31, 1969.

"(2) The amendment made by subsection (f) [adding subsec. (n) of this section and section 6051 of this title] applies to wages paid after April 30, 1970.

"(3) Subsection (o) of section 3402 of the Internal Revenue Code of 1954 [subsec. (o) of this section], added by subsection (g) of this subsection, shall apply to payments made after December 31, 1970. Subsection (p) of such section 3402 [subsec. (p) of this section], added by subsection (g) of this section, shall apply to payments made after June 30, 1970."

Section 6(b) of Pub. L. 91–53 provided that:

"The amendments made by this section [to subsecs. (a)(1), (2) and (c)(6) of this section] shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970."

Section 2(b) of Pub. L. 91–36 provided that:

"The amendments made by subsection (a) [to subsecs. (a)(1), (2) and (c)(6) of this section] shall apply with respect to wages paid after June 30, 1969."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 101(e)(6) of Pub. L. 89–368 provided that: "The amendments made by paragraphs (1) and (2) of this subsection [adding subsecs. (f)(1)(F) and (m) of this section] shall apply only with respect to remuneration paid after December 31, 1966, but only with respect to withholding exemptions based on estimation years beginning after such date."

Section 101(g) of Pub. L. 89–368 provided that: "The amendments made by this section (other than subsection (e) [amending subsecs. (a), (b)(1), and (c)(1) and adding subsec. (e) of this section]) shall apply only with respect to remuneration paid after April 30, 1966."

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment of section by Pub. L. 89–212 effective only with respect to tips received after 1965, see note under section 3201 of this title.

Amendment of section by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 302(d) of Pub. L. 88–272 provided that: "The amendments made by subsections (a) and (b) [to this section] of this section shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (c) [to section 1441 of this title] of this section shall apply with respect to payments made after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-256 applicable with respect to wages paid after Dec. 31, 1961, see section 110(h)(4) of Pub. L. 87-256, set out as a note under section 3401 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 9, 1955, provided that: "The amendment made by section 2 [to subsecs. (a) and (j) of this section] shall be applicable only with respect to remuneration paid after the date of enactment of this Act [Aug. 9, 1955]."

SHORT TITLE

Section 1(a) of Pub. L. 89-368 provided that: "This Act [adding sections 276 and 6682 of this title and section 428 of Title 42, amending this section and sections 1402, 1403, 4061, 4251, 4253, 6015, 6154, 6211, 6412, 6654, 7205, and 7701 of this title and section 1202 of Title 19, and enacting provisions set out as notes under this section and sections 276, 4061, 4251, 6154, and 6654 of this title and section 428 of Title 42] may be cited as the 'Tax Adjustment Act of 1966'."

TRANSITIONAL DETERMINATION STATUS DATE

Section 101(f) of Pub. L. 89-368 provided that: "Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1954 [subsec. (f)(3)(B) of this section], a withholding exemption certificate furnished the employer after the date of the enactment of this Act [Mar. 15, 1966] and before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished."

MEANING OF TERMS

Section 1 of act Aug. 9, 1955, provided that: "The terms used in this Act [amending subsecs. (a) and (j) of this section] shall have the same meaning as when used in the Internal Revenue Code."

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 (a) (1) of this title.

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 (e) of this title.

Amount withheld as special trust fund for United States, see section 7501 (a) of this title.

Assessment for underpayment of tax imposed by this section, see section 6205 (b) of this title.

Excessive withholding under this chapter as overpayment, see section 6401 (b) of this title.

Nondeductibility of tax deducted and withheld under this chapter as deduction from gross income, see section 3502 (b) of this title.

Penalty for fraudulently withholding exemption certificate or failure to supply information, see section 7204 of this title.

Personal exemptions allowable as deductions from gross income, see section 151 et seq. of this title.

Receipts for employees for taxes withheld by employers, see section 6051 of this title.

Tax withheld on wages as credit against income tax, see section 31 of this title.

Time tax withheld deemed paid, see section 6513 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3505, 6051, 6205, 6413, 6682, 7205 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 47-1586g of the District of Columbia Code.

§ 3403. Liability for tax.

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment. (Aug. 16, 1954, ch. 736, 68A Stat. 469.)

CROSS REFERENCES

Refund or credit to employer for overpayment of tax imposed by this chapter, see section 6414 of this title.

Wilful failure to collect or pay one's tax, punishment for, see section 7202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3505 of this title.

§ 3404. Return and payment by governmental employer.

If the employer is the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, Territory, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose. (Aug. 16, 1954, ch. 736, 68A Stat. 469.)

Chapter 25.—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.
3501. Collection and payment of taxes.
3502. Nondeductibility of taxes in computing taxable income.
3503. Erroneous payments.
3504. Acts to be performed by agents.
3505. Liability of third parties paying or providing for wages.

AMENDMENTS

1966—Pub. L. 89-719, title I, § 105(c), Nov. 2, 1966, 80 Stat. 1139, added item 3505.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 section 1421i.

§ 3501. Collection and payment of taxes.

The taxes imposed by this subtitle shall be collected by the Secretary or his delegate and shall be paid into the Treasury of the United States as internal-revenue collections. (Aug. 16, 1954, ch. 736, 68A Stat. 471.)

§ 3502. Nondeductibility of taxes in computing taxable income.

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A. (Aug. 16, 1954, ch. 736, 68A Stat. 471.)

CROSS REFERENCES

Credit for amount withheld, see section 31 of this title.

Taxes paid deductible from gross income, see section 164 of this title.

§ 3503. Erroneous payments.

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by

such other chapter upon the taxpayer, and the balance, if any, shall be refunded. (Aug. 16, 1954, ch. 736, 68A Stat. 471.)

CROSS REFERENCES

Civil action for refund, see section 7422 of this title.

Jurisdiction of district courts of actions by taxpayers for refund, see sections 1340 and 1346 of Title 28, Judiciary and Judicial Procedure.

Refund to employer of overpayment of withholding tax, see section 6414 of this title.

§ 3504. Acts to be performed by agents.

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary or his delegate, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary or his delegate may specify. Except as may be otherwise prescribed by the Secretary or his delegate, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers. (Aug. 16, 1954, ch. 736, 68A Stat. 471; Sept. 2, 1958, Pub. L. 85-866, title I, § 71, 72 Stat. 1660.)

AMENDMENTS

1958—Pub. L. 85-866 substituted in first sentence "title" for "subtitle".

EFFECTIVE DATE OF 1958 AMENDMENT

Section 71 of Pub. L. 85-866 provided in part that the amendment of this section shall be effective with respect to remuneration paid after Dec. 31, 1954.

§ 3505. Liability of third parties paying or providing for wages.

(a) Direct payment by third parties.

For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) Personal liability where funds are supplied.

If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment.

Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer. (Added Pub. L. 89-719, title I, § 105(a), Nov. 2, 1966, 80 Stat. 1138.)

EFFECTIVE DATE

Section applicable only with respect to wages paid on or after Jan. 1, 1967, see section 114(c)(1) of Pub. L. 89-719, set out as a note under section 6323 of this title.

Subtitle D.—Miscellaneous Excise Taxes

Chap.
31. Retailers excise taxes.
32. Manufacturers excise taxes.
33. Facilities and services.
34. Documentary stamp taxes.
35. Taxes on wagering.
36. Certain other excise taxes.
37. Sugar, coconut and palm oil.
38. Import taxes.
39. Regulatory taxes.
40. General provisions relating to occupational taxes.
41. Interest equalization tax.
42. Private foundations.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(j)(59), Dec. 30, 1969, 83 Stat. 532, added the heading of chapter 42.

1964—Pub. L. 88-563, § 2(b), Sept. 2, 1964, 78 Stat. 841, added the heading of chapter 41.

Chapter 31.—RETAILERS EXCISE TAXES

Subchapter
E. Special fuels.
F. Special provisions applicable to retailers tax.

AMENDMENTS

1965—Pub. L. 89-44, title I, § 101(b)(1), June 21, 1965, 79 Stat. 136, struck out the items relating to subchapters A, B, C, and D.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4293, 6416 of this title.

§§ 4001 to 4003. Repealed. Pub. L. 82-44, title I, § 101(a), June 21, 1965, 79 Stat. 133.

Section 4001, acts Aug. 16, 1954, ch. 736, 68A Stat. 473; Sept. 2, 1958, Pub. L. 85-859, title I, § 101, 72 Stat. 1275; Sept. 21, 1959, Pub. L. 86-344, § 1(a), 73 Stat. 617, imposed an excise tax equivalent to 10 percent of the selling price upon jewelry, stones, watches, clocks, case and movements for watches and clocks, flatware and hollow ware, opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

Section 4002, act Aug. 16, 1954, ch. 736, 68A Stat. 473, defined the term "articles sold at retail" to include articles sold at auction.

Section 4003, acts Aug. 16, 1954, ch. 736, 68A Stat. 474; Sept. 2, 1958, Pub. L. 85-859, title I, § 102, 72 Stat. 1276, specified the exemptions to the tax imposed by section 4001.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§§ 4011 to 4013. Repealed. Pub. L. 89-44, title I, § 101(a), June 21, 1965, 79 Stat. 136.

Section 4011, act Aug. 16, 1954, ch. 736, 68A Stat. 475, imposed an excise tax equivalent to 10 percent of the selling price upon fur articles.

Section 4012, act Aug. 16, 1954, ch. 736, 68A Stat. 475, defined the term "article sold at retail" to include articles manufactured from material supplied by the customer and articles sold at auction.

Section 4013, act Aug. 16, 1954, ch. 736, 68A Stat. 475, specified the exemptions to the tax imposed by section 4011.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§§ 4021, 4022. Repealed. Pub. L. 89-44, title I, § 101(a), June 21, 1965, 79 Stat. 136.

Section 4021, acts Aug. 16, 1954, ch. 736, 68A Stat. 476; Apr. 8, 1960, Pub. L. 86-413, § 1, 74 Stat. 31, imposed an excise tax equivalent to 10 percent of the selling price upon toilet preparations.

Section 4022, act Aug. 16, 1954, ch. 736, 68A Stat. 476, specified certain exemptions from the tax imposed by section 4021, including items for babies, items used in barber shops and beauty parlors, and miniature samples.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§ 4031. Repealed. Pub. L. 89-44, title I, § 101(a), June 21, 1965, 79 Stat. 136.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 477; Sept. 2, 1958, Pub. L. 85-859, title I, § 103, 72 Stat. 1276, imposed an excise tax equivalent to 10 percent of the selling price upon luggage and handbags, including billfolds and wallets, traveler's garment bags, and briefcases.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

Subchapter E.—Special Fuels

Sec.
4041. Imposition of tax.
4042. Cross reference.

§ 4041. Imposition of tax.

(a) Diesel fuel.

There is hereby imposed a tax of 4 cents a gallon upon any liquid (other than any product taxable under section 4081)—

(1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or

(2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under paragraph (1).

In the case of a liquid taxable under this subsection sold for use or used as a fuel in a diesel-powered highway vehicle (A) which (at the time of such sale or use) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel in a diesel-powered highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a diesel-powered highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).

(b) Special motor fuels.

There is hereby imposed a tax of 4 cents a gallon upon benzol, benzene, naphtha, liquefied petroleum gas, casinghead and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or subsection (a) of this section)—

(1) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat; or

(2) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under paragraph (1).

In the case of a liquid taxable under this subsection sold for use or used otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).

(c) Noncommercial aviation.

(1) In general.

There is hereby imposed a tax of 7 cents a gallon upon any liquid (other than any product taxable under section 4081)—

(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such liquid under this section.

(2) Gasoline.

There is hereby imposed a tax (at the rate specified in paragraph (3)) upon any product taxable under section 4081—

(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.

(3) Rate of tax.

The rate of tax imposed by paragraph (2) is as follows:

3 cents a gallon for the period ending September 30, 1977; and

5½ cents a gallon for the period after September 30, 1977.

(4) Definition of noncommercial aviation.

For purposes of this chapter, the term "noncommercial aviation" means any use of an aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

(5) Termination.

On and after July 1, 1980, the taxes imposed by paragraphs (1) and (2) shall not apply.

(d) Additional tax.

If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.

(e) Rate reduction.

On and after October 1, 1977—

(1) the taxes imposed by subsections (a) and (b) shall be 1½ cents a gallon, and(

(2) the second and third sentences of subsections (a) and (b) shall not apply.

(f) Exemption for farm use.

(1) Exemption.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) Use on a farm for farming purposes.

For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(g) Exemption for use as supplies for vessels.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)).

(h) Registration.

If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the liquid) as the Secretary or his delegate shall by regulations provide. (Aug. 16, 1954, ch. 736, 68A Stat. 478; Mar. 30, 1955, ch. 18, § 3(a)(1), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(1), 70 Stat. 66; Apr. 2, 1956, ch. 160, § 2(a)(1), 70 Stat. 89; June 29, 1956, ch. 462, title II, § 202, 70 Stat. 387; Sept. 2, 1958, Pub. L. 85-859, title I, § 119(b)(1), 72 Stat. 1286; Sept. 21, 1959, Pub. L. 86-342, title II, § 201(b), 73 Stat. 613; June 29, 1961, Pub. L. 87-61, title II, § 201 (a), (c), (d), 75 Stat. 123; June 21, 1965, Pub. L. 89-44, title VIII, § 802(a)(2), 79 Stat. 159; May 21, 1970, Pub. L. 91-258, title II, § 202, 84 Stat. 237; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(1), (2), 84 Stat. 1743.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-258, § 202(b)(1) and (2), substituted "motor vehicle or motorboat" for "motor vehicle, motorboat, or airplane", twice in par. (1) and once in par. (2), and "in" for "for the propulsion of" in par. (1) preceding "such motor vehicle", in par. (2) preceding "a motor vehicle" and in text following par. (2) preceding "a highway vehicle (A)" in two instances, respectively.

Subsec. (c). Pub. L. 91-258, § 202(a), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (c)(3). Pub. L. 91-605, § 303(a)(1), substituted "1977" for "1972" in two places.

Subsec. (d). Pub. L. 91-258, § 202(a), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 91-605, § 303(a)(2), substituted "1977" for "1972".

Pub. L. 91-258, § 202(a), redesignated former subsec. (c) as (e), substituting in par. (1) "subsections (a) and (b)" and "," for "this section" and ";". Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91-258, § 202(a), redesignated former subsec. (d) as (f), substituting in par. (1) prohibition against imposition of tax "under this section on any liquid sold for use or used on a farm for farming purposes" for prior provisions that "(A) no tax shall be imposed under subsection (a)(1) or (b)(1) on the sale of any liquid sold for use on a farm for farming purposes, and (B) no tax shall be imposed under subsection (a)(2) or (b)(2) on the use of any liquid used on a farm for farming purposes."

Subsec. (g). Pub. L. 91-258, § 202(a), redesignated former subsec. (e) as (g), substituting "this section on any liquid sold" for "subsection (b) in the case of any fuel sold".

Subsec. (h). Pub. L. 91-258, § 202(a), added subsec. (h).

1965—Subsec. (b). Pub. L. 89-44 inserted "casinghead and natural gasoline," after "liquefied petroleum gas," in the material preceding par. (1).

1961—Subsec. (a). Pub. L. 87-61, § 201(a), increased the tax on diesel fuel from 3 to 4 cents a gallon, and substituted "a tax of 2 cents a gallon shall be imposed under paragraph (2)" for "a tax of 1 cent a gallon shall be imposed under paragraph (2)."

Subsec. (b). Pub. L. 87-61, § 201(a), increased the tax on special motor fuels from 3 to 4 cents a gallon, and substituted "a tax of 2 cents a gallon shall be imposed under paragraph (2)" for "a tax of 1 cent a gallon shall be imposed under paragraph (2)."

Subsec. (c). Pub. L. 87-61, § 201(c), substituted "October 1, 1972" for "July 1, 1972."

Subsec. (f). Pub. L. 87-61, § 201(d), repealed former subsec. (f), which authorized a temporary increase in the taxes under subsecs. (a) and (b).

1959—Subsec. (a). Pub. L. 86-342, § 201(b)(2), eliminated words "in lieu of 3 cents a gallon" following "shall be 2 cents a gallon."

Subsec. (b). Pub. L. 86-342, § 201(b)(2), eliminated words "in lieu of 3 cents a gallon" following "shall be 2 cents a gallon."

Subsec. (f). Pub. L. 86-342, § 201(b)(1), added subsec. (f).

1958—Subsec. (e). Pub. L. 85-859 added subsec. (e).

1956—Subsec. (a). Act June 29, 1956, § 202(a), increased the tax on diesel fuel from 2 cents a gallon to 3 cents a gallon, and added provisions which retained the tax at 2 cents a gallon for diesel fuel used in vehicles not registered, and not required to be registered, for highway use, or vehicles owned by the United States and not used on the highway.

Subsec. (b). Act June 29, 1956, § 202(b), increased the tax on special motor fuels from 2 cents a gallon to 3 cents a gallon, and added provisions which retained the tax at 2 cents a gallon for special motor fuels sold for use or used otherwise than as a fuel for the propulsion of a highway vehicle which is registered, or is required to

be registered, for highway use, or vehicles owned by the United States used on the highway.

Subsec. (c). Act June 29, 1956, § 202(c) substituted "July 1, 1972" for "April 1, 1956" and provided for the nonapplication of the second and third sentences of subsec. (a) and (b).

Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956".

Subsec. (d) added by act Apr. 2, 1956.

1955—Subsec. (c). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955".

EFFECTIVE DATE OF 1970 AMENDMENT

Section 211 of Pub. L. 91-258 provided that:

"(a) *General Rule.*—Except as provided in subsection (b), the amendments made by this title [see Short Title note hereunder] shall take effect on July 1, 1970.

"(b) *Exceptions.*—The amendments made by sections 203 [enacting section 7275 and amending sections 4261 and 4262 of this title] and [enacting sections 4271 and 4272 of this title] 204 shall apply to transportation beginning after June 30, 1970. The amendments made by subsections (a), (b), and (c) of section 207 [enacting section 6427, amending sections 6420 (b)(2)(B), 6421 (c)(3)(A)(ii), 6424(b)(1), and amending section 39 of this title] shall apply with respect to taxable years ending after June 30, 1970."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 802(d)(2) of Pub. L. 89-44 provided that: "The amendment made by subsection (a)(2) [to subsec. (b) of this section] shall apply with respect to casinghead and natural gasoline sold or used on or after July 1, 1965, except that such amendment shall not apply to a sale or use of casinghead or natural gasoline which was sold by a producer or importer before such date if tax under section 4081 of the Code (as in effect prior to the amendment made by subsection (a)(1) [to section 4082 (b) of this title]) was imposed with respect to such sale."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 208 of Pub. L. 87-61 provided that:

"(a) Except as provided in subsection (b), the amendments made by this title [adding section 6156 of this title, amending this section and sections 4061, 4071, 4081, 4218, 4221, 4226, 4481, 4482, 6412, 6416, 6421, and 6601 of this title and amending section 209 of The Highway Revenue Act of 1956, set out as a note under section 120 of Title 23, Highways] shall take effect on the date of the enactment of this Act [June 29, 1961].

"(b)(1) The amendments made by sections 201, 202, and 203 [adding section 6156 of this title and amending this section and sections 4071, 4081, 4481, 4482, 6421, and 6601 of this title] shall take effect on July 1, 1961.

"(2) The amendments made by section 205 (a), (c), and (d) [amending sections 4221 and 6416 of this title] shall apply only in the case of gasoline sold on or after October 1, 1961.

"(3) The amendment made by section 205(b) [amending section 4218 of this title] shall apply only in the case of gasoline used on or after October 1, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 211 of act June 29, 1956, provided that: "This title [which enacted sections 173 and 174 of Title 23, Highways, and sections 4426, 4481—4484 of this title amended sections 4041 (a—c), 4061 (a) (1), 4071, 4072, 4073 (c), 4081, 4084, 6206, 6412 (a—c), 6416 (b) (2) (J—M), 6504 (14), 6511 (f), 6612 (c), 6675 (a), (b), 7210, 7603, 7604 (b), (c), and 7605 (a) of this title, and renumbered sections 4227 and 6422 of this title] shall take effect on the date of its enactment [June 29, 1956], except that the amendments made by sections 202, 203, 204, and 205 [to sections 4041 (a—c), 4061 (a) (1), 4071, 4072, 4073 (c), and 4081 of this title] shall take effect on July 1, 1956."

Section 2 (a) (2) of act Apr. 2, 1956, provided that: "The amendment made by paragraph (1) [adding subsec. (d)] shall take effect on the day after the date of the enactment of this Act [Apr. 2, 1956]."

SHORT TITLES

Section 201(a) of Pub. L. 91-258 provided that "This title [which enacted sections 4271, 4272, 4281, 4282, 4491 to 4494, 6426, 6427, and 7275 of this title and section 1742 of Title 49, amended sections 39, 874, 4041, 4082, 4261, 4262, 4291 to 4294, 6156, 6201, 6206, 6401, 6415, 6416, 6420, 6421, 6424, 6675, 7210, and 7603 to 7605 of this title, repealed former section 4263 of this title, enacted provisions set out as notes under section 104 of Title 4 and section 1742 of Title 49, and amended provision set out as a note under section 120 of Title 23] may be cited as the 'Airport and Airway Revenue Act of 1970'."

Congress, in enacting title II of act June 29, 1956, which enacted sections 173 and 174 of Title 23, Highways, and sections 4426, 4481-4484 of this title, amended sections 4041 (a—c), 4061 (a) (1), 4071, 4072, 4073 (c), 4081, 4084, 6206, 6412 (a—c), 6416 (b) (2) (J—M), 6504 (14), 6511 (f), 6612 (c), 6675 (a), (b), 7210, 7603, 7604 (b), (c), and 7605 (a) of this title, and renumbered sections 4227 and 6422 of this title, provided by section 201 (a) of such act that such enactments and amendments should be popularly known as the "Highway Revenue Act of 1956".

Congress, in enacting act Mar. 29, 1956, which amended sections 11 (b), 821 (a) (1) (A), 821 (b) (1), 4041 (c), 4061, 4081, 5001 (a) (1), 5001 (a) (3), 5022, 5041 (b), 5051 (a), 5063, 5134 (a) (3), 5701 note, 5701 (c) (1), 5707 (a), (b), 6412 (a), (b), provided by section 1 of such act that it should be popularly known as the "Tax Rate Extension Act of 1956".

Congress, in enacting act Mar. 30, 1955, which amended sections 11 (b), 821 (a) (1) (A), (b) (1), 4041 (c), 4061, 4081, 5001 (a) (1), (3), 5022, 5041 (b), 5051 (a), 5063, 5134 (a) (3), 5701 (c) (1), 5701 note, 5707 (a), (b), 6412 (a), (b), provided by section 1 of such act that it should be popularly known as the "Tax Rate Extension Act of 1955".

CROSS REFERENCES

Penalty for representation that tax is excluded from price of article, see section 7261 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4082, 6206, 6416, 6420, 6421, 6427 of this title.

§ 4042. Cross reference.

For exemption from tax where special motor fuels are sold for use for certain vessels see section 4222.

(Aug. 16, 1954, ch. 736, 68A Stat. 478.)

Subchapter F.—Special Provisions Applicable to Retailers Tax

Sec.
4054. Application of taxes to sales by United States, etc.
4055. State and local government exemption.
4056. Exemption for exports.
4057. Exemption for nonprofit educational organizations.
4058. Cross reference.

AMENDMENTS

1965—Pub. L. 89-44, title I, § 101(b)(2), June 21, 1965, 79 Stat. 136, struck out items 4051, 4052, and 4053.

1958—Pub. L. 85-859, title I, § 105(b), Sept. 2, 1958, 72 Stat. 1277 added item 4057 and redesignated former item 4057 as 4058.

§§ 4051 to 4053. Repealed. Pub. L. 89-44, title I, § 101(b)(2), June 21, 1965, 79 Stat. 136.

Section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined the price for which articles were sold for purposes of determining retailers excise taxes.

Section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that the lease of an article would be considered the sale of the article for excise tax purposes.

Section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85-859, title I, § 104, 72 Stat. 1276, made provision for the imposition of the retailers tax on installment sales.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§ 4054. Application of taxes to sales by United States, etc.

The taxes imposed by this chapter shall apply with respect to articles sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes. (Aug. 16, 1954, ch. 736, 68A Stat. 479.)

§ 4055. State and local government exemption.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this chapter with respect to the sale of any article for the exclusive use of any State, Territory of the United States, or any political subdivision of any of the foregoing, or the District of Columbia, or with respect to the use by any of the foregoing of any liquid as a fuel. (Aug. 16, 1954, ch. 736, 68A Stat. 480; June 21, 1965, Pub. L. 89-44, title I, § 101(b)(3), 79 Stat. 136.)

AMENDMENTS

1965—Pub. L. 89-44 struck out the phrase ", in the case of the tax imposed by section 4041," following "District of Columbia, or".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§ 4056. Exemption for exports.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this chapter upon the sale of any article for export, or for shipment to a possession of the United States, and in due course so exported or shipped. (Aug. 16, 1954, ch. 736, 68A Stat. 480.)

§ 4057. Exemption for nonprofit educational organizations.

(a) Exemption.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this chapter with respect to the sale of any article to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit educational organization of any liquid as a fuel.

(b) Definition.

For purposes of subsection (a), the term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. (Added Pub. L. 85-859, title I, § 105(a), Sept. 2, 1958, 72 Stat. 1277, and amended Pub. L. 86-344, § 2(a), Sept. 21, 1959, 73 Stat. 617; Pub. L. 89-44, title I, § 101(b)(4), June 21, 1965, 79 Stat. 136; Pub. L. 91-172, title I, § 101(j)(25), Dec. 30, 1969, 83 Stat. 528.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172 substituted "section 170(b)(1)(A)(ii)", for "section 503(b)(2)".

1965—Subsec. (a). Pub. L. 89-44 struck out the phrase ", in the case of a tax imposed by section 4041," following "exclusive use, or".

1959—Subsec. (a). Pub. L. 86-344, § 2(a)(1), (2), designated existing provisions as subsec. (a), and eliminated the definition of "nonprofit educational organization" which is now incorporated in the first sentence of subsec. (b) of this section.

Subsec. (b). Pub. L. 86-344, § 2(a)(3), added subsec. (b). Prior to such amendment the first sentence of the subsec. constituted the second sentence of the section.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2(e) of Pub. L. 86-344 provided in part that the amendment of this section and sections 4221(d)(5) and 4294(b) of this title by section 2 (a), (b), (d) of Pub. L. 86-344 shall take effect as of Jan. 1, 1959.

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

§ 4058. Cross reference.

(1) For exemption on sales to the United States in certain cases see section 4293.

(2) For administrative provisions of general application to the taxes imposed under this chapter, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 480, § 4058, formerly § 4057, renumbered Sept. 2, 1958, Pub. L. 85-859, title I, § 105(a), 72 Stat. 1277.)

Chapter 32.—MANUFACTURERS EXCISE TAXES

Subchapter
A. Automotive and related items.
D. Recreational equipment.
F. Special provisions applicable to manufacturers tax.
G. Exemptions, registration, etc.

AMENDMENTS

1965—Pub. L. 89-44, title II, §§ 203, 204, 206, June 21, 1965, 79 Stat. 139, 140, struck out items relating to subchapters B, C and E.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4293, 6103, 6416 of this title.

Subchapter A.—Automotive and Related Items

Part
I. Motor vehicles.
II. Tires and tubes.
III. Petroleum products.

PART I.—MOTOR VEHICLES

Sec.
4061. Imposition of tax.
4062. Definitions.
4063. Exemptions.

§ 4061. Imposition of tax.

(a) Automobiles.

There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with

the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to the specified percent of the price for which so sold:

(1) Articles taxable at 10 percent, except that on and after October 1, 1977, the rate shall be 5 percent—

Automobile truck chassis.

Automobile truck bodies.

Automobile bus chassis.

Automobile bus bodies.

Truck and bus trailer and semitrailer chassis.

Truck and bus trailer and semitrailer bodies.

Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

A sale of an automobile truck, bus, truck or bus trailer or semitrailer shall, for the purposes of this paragraph, be considered to be a sale of a chassis and of a body enumerated in this paragraph.

(2) (A) Articles enumerated in subparagraph (B) are taxable at whichever of the following rates is applicable:

If the article is sold—	The tax rate is—
Before January 1, 1973	7 percent.
During 1973	6 percent.
During 1974, 1975, 1976, or 1977	5 percent.
During 1978	4 percent.
During 1979	3 percent.
During 1980	2 percent.
During 1981	1 percent.

The tax imposed by this subsection shall not apply with respect to articles enumerated in subparagraph (B) which are sold by the manufacturer, producer, or importer, after December 31, 1981.

(B) The articles to which subparagraph (A) applies are:

Automobile chassis and bodies other than those taxable under paragraph (1).

Chassis and bodies for trailers and semitrailers (other than house trailers) suitable for use in connection with passenger automobiles.

A sale of an automobile, or of a trailer or semitrailer suitable for use in connection with a passenger automobile, shall, for the purposes of this paragraph, be considered to be a sale of a chassis and of a body enumerated in this subparagraph.

(b) Parts and accessories.

(1) Except as provided in paragraph (2), there is hereby imposed upon parts or accessories (other than tires and inner tubes) for any of the articles enumerated in subsection (a)(1) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold, except that on and after October 1, 1977, the rate shall be 5 percent.

(2) No tax shall be imposed under this subsection upon any part or accessory which is suitable for use (and ordinarily is used) on or in connection with, or as a component part of, any article enumerated in subsection (a)(2) or a house trailer.

(Aug. 16, 1954, ch. 736, 68A Stat. 481; Mar. 30, 1955, ch. 18, § 3(a)(2), 69 Stat. 14; Aug. 12, 1955, ch. 865, § 1, 69 Stat. 709; Mar. 29, 1956, ch. 115, § 3(a)(2), 70 Stat. 66; June 29, 1956, ch. 462, title II, § 203, 70 Stat. 388; Mar. 29, 1957, Pub. L. 85-12, § 3(a)(1), 71 Stat. 9; June 30, 1958, Pub. L. 85-475, § 3(a)(1), 72 Stat. 259; June 30, 1959, Pub. L. 86-75, § 3(a)(1), 73 Stat. 157; June 30, 1960, Pub. L. 86-564, title II § 202(a)(1), 74 Stat. 290; June 29, 1961, Pub. L. 87-61, title II, § 204, 75 Stat. 126; June 30, 1961, Pub. L. 87-72, § 3(a)(1), 75 Stat. 193; June 28, 1962, Pub. L. 87-508, § 3(a)(1), 76 Stat. 114; June 29, 1963, Pub. L. 88-52, § 3(a)(1), 77 Stat. 72; June 30, 1964, Pub. L. 88-348, § 2(a)(1), 78 Stat. 237; June 21, 1965, Pub. L. 89-44, title II, § 201, 79 Stat. 136; Mar. 15, 1966, Pub. L. 89-368, title II, § 201(a), 80 Stat. 65; Apr. 12, 1968, Pub. L. 90-285, § 1(a)(1), 82 Stat. 92; June 28, 1968, Pub. L. 90-364, title I, § 105(a)(1), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91-172, title VII, § 702(a)(1), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a) (3), (4), 84 Stat. 1743; Dec. 31, 1970, Pub. L. 91-614, title II, § 201(a)(1), 84 Stat. 1843.)

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91-605, § 303(a)(3), substituted "1977" for "1972".

Subsec. (a)(2)(A). Pub. L. 91-614 substituted provisions providing that if the article in question is sold before Jan. 1, 1973 the tax rate is 7%, if the article is sold during 1973 the tax rate is 6%, during 1974, 1975, 1976, or 1977 the tax rate is 5%, during 1978 the tax rate is 4%, during 1979 the tax rate is 3%, during 1980 the tax rate is 2%, during 1981 the tax rate is 1%, and making all articles sold after Dec. 31, 1981 immune from taxation for provisions providing that if the article in question is sold before Jan. 1, 1971 the tax rate is 7%, if the article is sold during 1971 the tax rate is 5%, during 1972 the tax rate is 3%, during 1973 the tax rate is 1%, and making all articles sold before Dec. 31, 1973 immune from taxation.

Subsec. (b). Pub. L. 91-605, § 303(a)(4), substituted "1977" for "1972".

1969—Subsec. (a)(2)(A). Pub. L. 91-172 raised from 5 to 7 percent the tax on articles sold during 1970, from 3 to 5 percent on articles sold during 1971, from 1 to 3 percent on articles sold during 1972, imposed a 1 percent tax on articles sold during 1973, and made all articles sold after Dec. 31, 1973 immune from taxation.

1968—Subsec. (a)(2)(A). Pub. L. 90-364 extended from April 30, 1968, to the end of 1969 the period for the imposition of the 7 percent rate, thereby increasing from 2 to 7 percent the rate for the period from May 1, 1968, to the end of 1968, and from 1 to 7 percent the rate for 1969, increased from 1 to 5 percent the rate for 1970, increased from 1 to 3 percent the rate for 1971, and provided that the tax expire at the end of 1972.

Subsec. (a)(2)(A). Pub. L. 90-285 substituted "April 30, 1968" and "May 1, 1968" for "March 31, 1968" and "April 1, 1968" respectively.

1966—Subsec. (a)(2)(A). Pub. L. 89-368 postponed the scheduled reduction in excise taxes by increasing the rate to 7 percent to be maintained for the period beginning with the day after the date of enactment of the Tax Adjustment Act of 1966 through March 31, 1968, to be followed by a reduction to 2 percent for the remainder of 1968 and to 1 percent after December 31, 1968.

1965—Subsec. (a)(1). Pub. L. 89-44, § 201(c), struck out "the chassis and of the body" from the last sentence and inserted in lieu thereof "a chassis and of a body enumerated in this paragraph".

Subsec. (a)(2). Pub. L. 89-44, § 201(a), accelerated the date that the 7 percent tax would be applicable from on and after July 1, 1965, to the day after the date of enactment of the Excise Tax Reduction Act of 1965, authorized a reduction to 6 percent for 1966, 4 percent for 1967, 2 percent for 1968, and 1 percent thereafter.

Subsec. (b). Pub. L. 89-44, § 201(b)(1), effective with respect to articles sold on or after June 22, 1965, removed automobile radio and television receiving sets from the list of parts and accessories exempt from the manufacturers excise tax and struck out provision for the reduction to 5 percent of the rate on and after July 1, 1965.

Pub. L. 89-44, § 201(b)(2), authorized a reduction in tax from 8 to 5 percent on and after October 1, 1972, and, effective with respect to articles sold on or after January 1, 1966, prohibited imposition of a tax under subsec. (b) upon part or accessory which is suitable for use (and ordinarily is used) on or in connection with, or as a component part of, any article enumerated in subsec. (a)(2) or a house trailer.

1964—Subsec. (a)(2). Pub. L. 88-348 substituted "July 1, 1965" for "July 1, 1964."

Subsec. (b). Pub. L. 88-348 substituted "July 1, 1965" for "July 1, 1964."

1963—Subsec. (a)(2). Pub. L. 88-52 substituted "July 1, 1964" for "July 1, 1963".

Subsec. (b). Pub. L. 88-52 substituted "July 1, 1964" for "July 1, 1963".

1962—Subsec. (a)(2). Pub. L. 87-508 substituted "July 1, 1963" for "July 1, 1962."

Subsec. (b). Pub. L. 87-508 substituted "July 1, 1963" for "July 1, 1962."

1961—Subsec. (a)(1). Pub. L. 87-61 substituted "October 1, 1972" for "July 1, 1972."

Subsec. (a)(2). Pub. L. 87-72 substituted "July 1, 1962" for "July 1, 1961."

Subsec. (b). Pub. L. 87-72 substituted "July 1, 1962" for "July 1, 1961."

1960—Pub. L. 86-564 substituted "July 1, 1961" for "July 1, 1960" in two instances.

1959—Pub. L. 86-75 substituted "July 1, 1960" for "July 1, 1959".

1958—Pub. L. 85-475 substituted "July 1, 1959" for "July 1, 1958".

1957—Pub. L. 851-12 substituted "July 1, 1958" for "April 1, 1957".

1956—Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956".

Subsec. (a)(1). Act June 29, 1956, substituted "Articles taxable at 10 percent, except that on and after July 1, 1972, the rate shall be 5 percent" for "Articles taxable at 8 percent, except that on and after April 1, 1956, the rate shall be 5 percent."

1955—Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" in three places.

Subsec. (a)(2). Act Aug. 12, 1955, exempted motorcycles from the manufacturers excise tax.

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 105(c) of Pub. L. 90-364 provided that: "The amendments made by this section [amending this section and sections 4251 and 6412 of this title] shall take effect as of April 30, 1968."

Section 1(b) of Pub. L. 90-285 provided that: "The amendments made by subsection (a) [amending subsec. (a)(2)(A) of this section and sections 4251 and 6412 of this title] shall take effect as of March 31, 1968."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 201(c) of Pub. L. 89-368 provided that: "The amendment made by subsection (a) [amending subsec. (a)(2)(A) of this section] shall apply with respect to articles sold after the date of the enactment of this Act [Mar. 15, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(a) of Pub. L. 89-44 provided that:

"(1) **In general.** Except as otherwise provided in this subsection, the amendments made by titles I and II of this Act [adding sections 4094 and 6424 of this title, amending this section and sections 4055, 4057, 4091, 4161, 4216, 4218, 4221, 4222, 4227, 6011, 6206, 6412, 6416, 6675, 7210, 7603, 7604, and 7605 of this title repealing sections 4001—4003, 4011—4013, 4021, 4022, 4031, 4051—4053, 4111, 4121, 4131, 4141—4143, 4151, 4171—4173, 4191, 4192, 4201, 4211, and 4224 of this title, enacting provisions set out as notes under section 6412 of this title, and amending note under section 120 of Title 23] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965].

"(2) **Special rules.** The amendments made by sections 201(b)(2) [to subsec. (b) of this section] (relating to automobile parts and accessories) and 202(a) [to section 4091 of this title] (relating to lubricating oil) shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 202(b) [adding section 6424 of this title] and (c) [adding section 4094 and amending sections 6206, 6675, 7210, 7603, 7604, and 7605 of this title] (relating to payments with respect to lubricating oil) shall take effect January 1, 1966. The amendments made by section 203 [repealing sections 4111, 4121, and 4131 of this title], insofar as they relate to the tax imposed by section 4131 (relating to electric light bulbs) of the Code, and the amendments made by section 208 [to sections 4216, 4218, 4221, 4222, and 4227], insofar as they relate to the tax imposed by section 4061(b) (relating to automotive parts and accessories), section 4091 (relating to lubricating oil), or section 4131 (relating to electric light bulbs) of the Code, shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 207 [to sections 4216 and 6416 of this title] (relating to partial payments; sales of installment accounts) and 209(a) [to section 6412 of this title] (relating to floor stocks refunds on passenger automobiles, etc.) shall take effect on the day after the date of the enactment of this Act [June 21, 1965]. The amendments made by section 210 [to section 120 note of Title 23] (relating to Highway Trust Fund) shall take effect January 1, 1966.

"(3) **Installment sales, etc.** For purposes of paragraphs (1) and (2), an article shall not be considered sold before the day after the date of the enactment of this Act [June 21, 1965] or before January 1, 1966, as the case may be, unless possession or right to possession passes to the purchaser before such day or such date. In the case of—

"(A) a lease,

"(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

"(C) a conditional sale, or

"(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into before such day or such date, payments made on or after such day or such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold on or after such day or such date, if the lessor or vendor establishes that the amount of payments payable on or after such day or such date with respect to such article has been reduced by an amount equal to the tax reduction applicable with respect to the lease or sale of such article.

"(4) **Electric light bulbs used in manufacture of articles upon which tax is repealed.** For purposes of applying section 4218(a) of the Code with respect to the use of an electric light bulb or tube by the manufacturer, producer, or importer thereof, and for purposes of applying section 4221(d)(6)(A) of the Code with respect to the sale of an electric light bulb or tube for use in further manufacture, an article which was taxable under chapter 32 of the Code on the date of the enactment of this Act [June 21, 1965] shall, during the period beginning with the day after the date of the enactment of this Act [June 21, 1965] through December 31, 1965, be treated as an article taxable under such chapter."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 effective on June 29, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 12, 1955, provided that: "The amendment made by the first section of this Act [to subsec. (a)(2)] shall apply only with respect to articles sold on or after the first day of the first month which begins more than ten days after the date of the enactment of this Act [August 12, 1955]."

SHORT TITLE

Section 1 of Pub. L. 88-348 provided that Pub. L. 88-348, which amended sections 165, 4061, 4251, 4261, 5001, 5022,

5041, 5051, 5063, 5701, 5707, and 6412 of this title, and provisions set out as notes under sections 165, 4261, and 5701 of this title may be cited as the "Excise-Tax Rate Extension Act of 1964."

Congress, in enacting Pub. L. 85-12, March 29, 1957, which amended sections 11 (b), 821 (a) (1) (A), 821 (b) (1), 4061, 5001 (a) (1), 5001 (a) (3), 5022, 5041 (b), 5051 (a), 5063, 5134 (a) (3), 5701 (c) (1), 5707 (a), (b), 6412 (a) (1), provided by section 1 of such Act that it should be popularly known as the "Tax Rate Extension Act of 1957".

FLOOR STOCK REFUNDS FOR CERTAIN CEMENT MIXERS

Pub. L. 91-678, Jan. 12, 1971, 84 Stat. 2062, provided:

"That (a) where before January 1, 1970, and after June 30, 1968, any cement mixer subject to the tax imposed by section 4061 of the Internal Revenue Code of 1954 [this section] during such period, had been sold by the manufacturer, producer, or importer, and on January 1, 1970, was held by a dealer and had not been used and was intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by the manufacturer, producer, or importer on his sale of the cement mixer, if—

"(1) claim for such credit or refund is filed with the Secretary of the Treasury or his delegate on or before the last day of the ninth calendar month beginning after the date of enactment of this Act [Jan. 12, 1971], based upon a request submitted to the manufacturer, producer, or importer on or before the last day of the sixth calendar month beginning after the date of enactment of this Act [Jan. 12, 1971], by the dealer who held the cement mixer in respect of which the credit or refund is claimed; and

"(2) on or before the last day of the ninth calendar month beginning after the date of enactment of this Act [Jan. 12, 1971], reimbursement has been made to the dealer by the manufacturer, producer, or importer for the tax on the cement mixer or written consent has been obtained from the dealer to allowance of the credit or refund.

"(b) For the purposes of this section—

"(1) The term 'cement mixer' means—

"(A) any article designed (i) to be placed or mounted on an automobile truck chassis or truck trailer or semi-trailer chassis and (ii) to be used to process or prepare concrete, and

"(B) parts or accessories designed primarily for use on or in connection with an article described in subparagraph (A).

"(2) The term 'dealer' includes a wholesaler, jobber, distributor, or retailer.

"(3) A cement mixer shall be considered as 'held by a dealer' if title thereto has passed to the dealer (whether or not delivery to him has been made), and if for purposes of consumption title to the cement mixer or possession thereof had not at any time prior to January 1, 1970, been transferred to any person other than a dealer. For purposes of subsection (a) and not withstanding the preceding sentence, a cement mixer shall be considered as 'held by a dealer' and not to have been used, although possession of such cement mixer has been transferred to another person, if such cement mixer is returned to the dealer in a transaction under which any amount paid or deposited by the transferee for such cement mixer is refunded to him (other than amounts retained by the dealer to cover damage to the cement mixer). Moreover, such a cement mixer shall be considered as held by a dealer on January 1, 1970, even though it was in the possession of the transferee on such day, if it was returned to the dealer (in a transaction described in the preceding sentence) before January 31, 1970.

"(c) No manufacturer, producer, or importer shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

"(d) All provisions of law, including penalties, applicable in respect of the taxes imposed by section 4061 of such Code [this section] shall, insofar as applicable and not inconsistent with subsections (a), (b), and (c) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if the credits or refunds constituted overpayments of the taxes."

CROSS REFERENCES

Floor stocks refunds, see section 6412 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4062, 4063, 4216, 4218, 4221, 4226, 6412, 6416 of this title; title 23 section 137.

§ 4062. Definitions.

(a) Certain articles considered as parts.

For the purposes of section 4061, spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in section 4061 (a), shall be considered parts or accessories for such articles, whether or not primarily adapted for such use.

(b) Ambulances, hearses, etc.

For purposes of section 4061 (a), a sale of an ambulance, hearse, or combination ambulance-hearse shall be considered to be a sale of an automobile chassis and an automobile body enumerated in subparagraph (B) of section 4061(a)(2). (Aug. 16, 1954, ch. 736, 68A Stat. 482; Oct. 13, 1964, Pub. L. 88-653, § 5(b), 78 Stat. 1086; Nov. 13, 1966, Pub. L. 89-809, title II, § 212(a), 80 Stat. 1585.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-809 added subsec. (b). A former subsec. (b) was repealed by Pub. L. 85-653, § 5(b), Oct. 13, 1964, 78 Stat. 1086.

1964—Subsec. (b). Pub. L. 88-653 repealed subsec. (b) which required, in determining the sale price of a rebuilt automobile part or accessory, that the value of a like part or accessory accepted in exchange be excluded from the price.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 212(b) of Pub. L. 89-809 provided that: "The amendment made by subsection (a) [adding subsec. (b) of this section] shall apply with respect to articles sold after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(c) of Pub. L. 88-653 provided that: "The amendments made by this section [repealing subsec (b) of this section and adding subsec (c) to section 4063 of this title] shall apply with respect to articles sold on or after the first day of the first calendar quarter which begins after the date of the enactment of this Act [Oct. 13, 1964]."

§ 4063. Exemptions.

(a) Specified articles.

(1) Camper coaches; bodies for self-propelled mobile homes.

The tax imposed under section 4061 shall not apply in the case of articles designed (A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and (B) to be used primarily as living quarters or camping accommodations.

(2) Feed, seed, and fertilizer equipment.

The tax imposed under section 4061 shall not apply in the case of any body, part or accessory primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms;

(B) to haul feed, seed, or fertilizer to and on farms;

(C) to spread feed, seed, or fertilizer on farms;

(D) to load or unload feed, seed, or fertilizer on farms; or

(E) for any combination of the foregoing.

(3) House trailers.

The tax imposed under section 4061(a) shall not apply in the case of house trailers.

(4) Small 3-wheeled trucks.

The tax imposed under section 4061(a) shall not apply in the case of—

(A) an automobile truck chassis which—

(i) has only 3 wheels,

(ii) is powered by a motor which does not exceed 18 brake horsepower (rated at 4,000 revolutions per minute), and

(iii) does not exceed 1,000 pounds gross weight; or

(B) a body designed primarily to be mounted on a chassis described in subparagraph (A).

(5) Concrete mixers.

The tax imposed under section 4061 shall not apply in the case of—

(A) any article designed (i) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis and (ii) to be used to process or prepare concrete, and

(B) parts or accessories designed primarily for use on or in connection with an article described in subparagraph (A).

(b) Sales to manufacturers.

Under regulations prescribed by the Secretary or his delegate, the tax under section 4061 shall not apply in the case of sales of bodies by the manufacturer, producer, or importer to a manufacturer or producer of automobile trucks or other automobiles to be sold by such vendee. For the purposes of section 4061, such vendee shall be considered the manufacturer or producer of such bodies.

(c) Rebuilt parts and accessories.

Under regulations prescribed by the Secretary or his delegate, the tax imposed under section 4061(b) shall not apply in the case of rebuilt parts or accessories. (Aug. 16, 1954, ch. 736, 68A Stat. 482; Aug. 11, 1955, ch. 805, § 1(g), 69 Stat. 690; Oct. 13, 1964, Pub. L. 88-653, § 5(a), 78 Stat. 1086; June 21, 1965, Pub. L. 89-44, title VIII, § 801(a), 79 Stat. 157; Dec. 30, 1969, Pub. L. 91-172, title IX, § 931(a), 83 Stat. 724; Dec. 31, 1970, Pub. L. 91-614, title III, § 303(a), 84 Stat. 1845.)

AMENDMENTS

1970—Subsec. (a)(1)(B). Pub. L. 91-614 added reference to camping accommodations.

1969—Subsec. (a). Pub. L. 91-172 added par. (5).

1965—Subsec. (a). Pub. L. 89-44 changed the heading from "Specific articles exempt from tax on automobiles" to "Specified articles" and expanded the list of exempt articles from the single classification of "house trailers or tractors" through the substitution of pars. (1) Camper coaches; bodies for self-propelled mobile homes, (2) Feed, seed, and fertilizer equipment, (3) House trailers, and (4) Small 3-wheeled trucks.

1964—Subsec. (c). Pub. L. 88-653 added subsec. (c).

1955—Subsec. (b). Act Aug. 11, 1955, struck out "or parts or accessories" following "bodies", in the first and second sentences thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 303(b) of Pub. L. 91-614 provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply with respect to sales made on or after the date of the enactment of this Act [Dec. 31, 1970]."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 931(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [adding par. (5) to subsec. (a) of this section] shall apply with respect to articles sold after December 31, 1969."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 801(e) of Pub. L. 89-44 provided that: "The amendments made by subsections (a), (b), and (d) [to this section and sections 4216(g), 4221(e)(5) and 6416(b)(2) of this title] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965]. The amendment made by subsection (c) [to section 4221(d)(6) of this title] shall apply with respect to articles sold on or after January 1, 1965."

EFFECTIVE DATE OF 1964 AMENDMENT

Subsec. (c) of this section applicable with respect to articles sold on or after the first day of the first calendar quarter which begins after Oct. 13, 1964, see section 5(c) of Pub. L. 88-653, set out as a note under section 4062 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of subsec. (b) by act Aug. 11, 1955, effective on the first day of the first month which begins more than ten days after Aug. 11, 1955, see note under section 6416 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4221, 4222 of this title.

PART II.—TIRES AND TUBES

Sec.
4071. Imposition of tax.
4072. Definitions.
4073. Exemptions.

AMENDMENTS

1956—Act June 29, 1956, ch. 462, title II, § 204(d), 70 Stat. 389, substituted "Definitions" for "Definition of rubber" in item "4072".

§ 4071. Imposition of tax.

(a) Imposition and rate of tax.

There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires of the type used on highway vehicles, 10 cents a pound.

(2) Other tires (other than laminated tires to which paragraph (5) applies), 5 cents a pound.

(3) Inner tubes for tires, 10 cents a pound.

(4) Tread rubber, 5 cents a pound.

(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound.

(b) Special rule for manufacturers who sell at retail.

Under regulations prescribed by the Secretary or his delegate, if the manufacturer, producer, or importer of any tire or inner tube delivers such tire or tube to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire or tube in the same manner as if it had been sold at the time it was delivered to such retail store or outlet. This subsection shall not apply to an article

in respect to which tax has been imposed by subsection (a). Subsection (a) shall not apply to an article in respect of which tax has been imposed by this subsection.

(c) Determination of weight.

For purposes of this section, weight shall be based on total weight, except that in the case of tires such total weight shall be exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary or his delegate.

(d) Rate reduction.

On and after October 1, 1977—

(1) the tax imposed by paragraph (1) of subsection (a) shall be 5 cents a pound;

(2) the tax imposed by paragraph (3) of subsection (a) shall be 9 cents a pound; and

(3) paragraph (4) of subsection (a) shall not apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(a), 70 Stat. 388; Apr. 22, 1960, Pub. L. 86-440, § 1(a), 74 Stat. 80; June 29, 1961, Pub. L. 87-61, title II, § 202, 75 Stat. 124; Aug. 1, 1966, Pub. L. 89-523, § 1(a), 80 Stat. 331; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(5), 84 Stat. 1744.)

AMENDMENTS

1970—Subsec. (d). Pub. L. 91-605 substituted "1977" for "1972".

1966—Subsec. (b). Pub. L. 89-523 added subsec. (b). Former subsec. (b) was redesignated (c).

Subsecs. (c), (d). Pub. L. 89-523 redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1961—Subsec. (a)(1). Pub. L. 87-61, § 202(a), increased the tax from 8 to 10 cents a pound.

Subsec. (a)(3). Pub. L. 87-61, § 202(b), increased the tax from 9 to 10 cents a pound.

Subsec. (a)(4). Pub. L. 87-61, § 202(c), increased the tax from 3 to 5 cents a pound.

Subsec. (c). Pub. L. 87-61, § 202(d), substituted "October 1, 1972" for "July 1, 1972", added par. (2), and redesignated former par. (2) as (3).

1960—Subsec. (a)(2). Pub. L. 86-440, § 1(a)(1), inserted "(other than laminated tires to which paragraph (5) applies)" following "other tires."

Subsec. (a)(5). Pub. L. 86-440, § 1(a)(2), added subsec. (a)(5).

1956—Act June 29, 1956, increased the tax on tires of the type used on highway vehicles from 5 cents a pound to 8 cents a pound, provided for a tax of 3 cents a pound on tread rubber, and required on and after July 1, 1972, a reduction in the tax on tires of the type used on highway vehicles from 8 cents a pound to 5 cents a pound, and elimination of the tax on tread rubber.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 1(b) of Pub. L. 89-523 provided that: "The amendments made by subsection (a) [adding subsec. (b) and redesignating former subsecs. (b) and (c) as (c) and (d)] shall take effect on the first day of the first calendar quarter which begins more than 20 days after the date on which this Act is enacted [Aug. 1, 1966]."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 effective on July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86-440 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply with respect to articles sold on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [April 22, 1960]."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

CROSS REFERENCES

Floor stocks refunds, see section 6412 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4073, 4218, 4221, 4226, 6412, 6416 of this title.

§ 4072. Definitions.

(a) Rubber.

For purposes of this chapter, the term "rubber" includes synthetic and substitute rubber.

(b) Tread rubber.

For purposes of this chapter, the term "tread rubber" means any material—

(1) which is commonly or commercially known as tread rubber or camelback; or

(2) which is a substitute for a material described in paragraph (1) and is of a type used in recapping or retreading tires.

(c) Tires of the type used on highway vehicles.

For purposes of this part, the term "tires of the type used on highway vehicles" means tires of the type used on—

(1) motor vehicles which are highway vehicles, or

(2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(b), 70 Stat. 389.)

AMENDMENTS

1956—Act June 29, 1956, substituted "Definitions" for "Definition of rubber" in the catchline.

Subsec. (a). Act June 29, 1956, designated existing provisions as subsec. (a).

Subsecs. (b) and (c). Act June 29, 1956, added subsecs. (b) and (c).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4226, 6416 of this title.

§ 4073. Exemptions.

(a) Tires of certain sizes.

The tax imposed by section 4071 shall not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross-section, if such tires are of all-rubber construction (whether hollow center or solid) without fabric or metal reinforcement.

(b) Tires with internal wire fastening.

The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.

(c) Exemption from tax on tread rubber in certain cases.

Under regulations prescribed by the Secretary or his delegate, the tax imposed by section 4071 (a)(4) shall not apply to tread rubber sold by the manufacturer, producer, or importer, to any person for use by such person otherwise than in the recapping or retreading of tires of the type used on highway

vehicles. (Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(c), 70 Stat. 389.)

AMENDMENTS

1956—Subsec. (c). Act June 29, 1956, added subsec. (c).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

PART III.—PETROLEUM PRODUCTS

Subpart
A. Gasoline.
B. Lubricating oil.
C. Special provisions applicable to petroleum products.

SUBPART A.—GASOLINE

Sec.
4081. Imposition of tax.
4082. Definitions.
4083. Exemption of sales to producer.
4084. Cross references.

AMENDMENTS

1956—Act Apr. 2, 1956 inserted item "4084. Relief of farmers from tax in case of gasoline used on the farm."

Act June 29, 1956 amended item "4084" by substituting "Cross references" for "Relief of farmers from tax in case of gasoline used on the farm."

§ 4081. Imposition of tax.

(a) In general.

There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 4 cents a gallon.

(b) Rate reduction.

On and after October 1, 1977, the tax imposed by this section shall be 1½ cents a gallon. (Aug. 16, 1954, ch. 736, 68A Stat. 483; Mar. 30, 1955, ch. 18, § 3(a)(3), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(3), 70 Stat. 66; June 29, 1956, ch. 462, title II, § 205, 70 Stat. 389; Sept. 21, 1959, Pub. L. 86-342, title II, § 202(a), 73 Stat. 613; June 29, 1961, Pub. L. 87-61, title II, § 201(b)—(d), 75 Stat. 123; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(6), 84 Stat. 1744.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-605 substituted "1977" for "1972".

1961—Subsec. (a). Pub. L. 87-61, § 201(b), increased the tax from 3 to 4 cents a gallon.

Subsec. (b). Pub. L. 87-61, § 201(c), substituted "October 1, 1972" for "July 1, 1972."

Subsec. (c). Pub. L. 87-61, § 201(d), repealed former subsec. (c), which authorized a temporary increase in tax for the period October 1, 1959 to July 1, 1961.

1959—Subsec. (c). Pub. L. 86-342 added subsec. (c).

1956—Act Mar. 29, 1956 substituted "April 1, 1957" for "April 1, 1956".

Subsec. (a). Act June 29, 1956, redesignated first sentence as subsec. (a), and increased the tax from 2 cents a gallon to 3 cents a gallon.

Subsec. (b). Act June 29, 1956, redesignated second sentence as subsec. (b), and substituted "July 1, 1972" for "April 1, 1956".

1955—Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955".

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 effective on July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

CROSS REFERENCES

Floor stocks refunds, see section 6412 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4041, 4082, 4083, 4101, 4221, 4226, 6206, 6412, 6416, 6420, 6421 of this title.

§ 4082. Definitions.

(a) Producer.

As used in this subpart, the term "producer" includes a refiner, compounder, blender, or wholesale distributor, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer. Any person to whom gasoline is sold tax-free under this subpart shall be considered the producer of such gasoline.

(b) Gasoline.

As used in this subpart, the term "gasoline" means all products commonly or commercially known or sold at gasoline which are suitable for use as a motor fuel.

(c) Certain uses defined as sales.

If a producer or importer uses (otherwise than in the production of gasoline or of special fuels referred to in section 4041) gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this chapter be considered a sale.

(d) Wholesale distributor.

As used in subsection (a), the term "wholesale distributor" includes any person who—

(1) sells gasoline to producers, to retailers, or to users who purchase in bulk quantities for delivery into bulk storage tanks, and

(2) elects to register with respect to the tax imposed by section 4081.

Such term does not include any person who (excluding the term "wholesale distributor" from subsection (a)) is a producer or importer. (Aug. 16, 1954, ch. 736, 68A Stat. 483; Sept. 21, 1959, Pub. L. 86-342, title II, § 201(e)(1), (2), 73 Stat. 615; June 21, 1965, Pub. L. 89-44, title VIII, § 802(a)(1), (b)(1), 79 Stat. 159; May 21, 1970, Pub. L. 91-258, title II, § 205(c)(6), 84 Stat. 242.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-258 substituted "special fuels referred to in section 4041" for "special motor fuels referred to in section 4041(b)".

1965—Subsec. (b). Pub. L. 89-44, § 802(a)(1), substituted "gasoline which are suitable for use as a motor fuel" for "gasoline (including casinghead and natural gasoline".

Subsec. (d)(2). Pub. L. 89-44, § 802(b)(1), struck out "and give a bond" following "elects to register".

1959—Subsec. (a). Pub. L. 86-342, § 201(e)(1), included wholesale distributors.

Subsec. (d). Pub. L. 86-342, § 201(e)(2), added subsec. (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 802(d)(1) of Pub. L. 89-44 provided that: "The amendments made by subsections (a)(1), (b), and (c) [to subsecs. (b) and (d)(2) of this section and sections 4101, 4222(b)(5), 7103(d)(3) and 7232 of this title] shall apply with respect to articles sold on or after July 1, 1965."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 201(e)(3) of Pub. L. 86-342 provided that: "The amendments made by paragraphs (1) and (2) [to this section] shall take effect on January 1, 1960."

§ 4083. Exemption of sales to producer.

Under regulations prescribed by the Secretary or his delegate the tax imposed by section 4081 shall not apply in the case of sales of gasoline to a producer of gasoline. (Aug. 16, 1954, ch. 736, 68A Stat. 483.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4221, 4222 of this title.

§ 4084. Cross references.

(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes or by local transit systems, see section 6421.

(Added Apr. 2, 1956, ch. 160, § 4 (a) (1), 70 Stat. 90, and amended June 29, 1956, ch. 462, title II, § 208 (e) (1), 70 Stat. 396.)

AMENDMENTS

1956—Act June 29, 1956, substituted "Cross references" for "Relief of farmers from tax in case of gasoline used on the farm" in the catchline, designated former provisions as par. (1), and added par. (2).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

SUBPART B.—LUBRICATING OIL

Sec.
4091. Imposition of tax.
4092. Definitions.
4093. Exemption of sales to producer.
4094. Cross reference.

AMENDMENTS

1965—Pub. L. 89-44, title II § 202(c)(1)(B), June 21, 1965, 79 Stat. 139, added item 4094.

1955—Act Aug. 11, 1955, ch. 793, § 1(c), 69 Stat. 676, in item 4092 substituted "Definitions" for "Definition of certain vendees as a manufacturer".

§ 4091. Imposition of tax.

There is hereby imposed on lubricating oil (other than cutting oils) which is sold in the United States by the manufacturer or producer a tax of 6 cents a gallon, to be paid by the manufacturer or producer. (Aug. 16, 1954, ch. 736, 68A Stat. 483; Aug. 11, 1955, ch. 793, § 1(a), 69 Stat. 676; June 21, 1965, Pub. L. 89-44, title II, § 202(a), 79 Stat. 137.)

AMENDMENTS

1965—Pub. L. 89-44 removed the tax on cutting oils.

1955—Act Aug. 11, 1955, provided for a tax of 3 cents a gallon on cutting oils instead of 6 cents per gallon and eliminated the provision that the tax should be not more than 10 percent of the manufacturer's price.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 applicable with respect to articles sold on or after January 1, 1966, see section 701(a) (1), (2), of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 11, 1955, provided that: "The amendments made by this Act [to this section and sections 4092, and 6416 (b) (2) (I) of this title] shall take effect on the first day of the first calendar quarter which begins more than ten days after the date of the enactment of this Act [August 11, 1955]".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4101, 6206, 6424 of this title.

§ 4092. Definitions.

(a) Certain vendees considered as manufacturers.

For purposes of this subpart, a vendee who has purchased lubricating oils free of tax under section 4093 shall be considered the manufacturer or producer of such lubricating oils.

(b) Cutting oils.

For purposes of this subpart, the term "cutting oils" means oils sold for use in cutting and machining operation (including forging, drawing, rolling, shearing, punching, and stamping) on metals. (Aug. 16, 1954, ch. 736, 68A Stat. 484; Aug. 11, 1955, ch. 793, § 1(b), 69 Stat. 676.)

AMENDMENTS

1955—Act Aug. 11, 1955, substituted "Definitions" for "Definition of certain vendees as a manufacturer" in the catchline, designated existing provisions thereof as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of this section by act Aug. 11, 1955, effective on the first day of the first calendar quarter which begins more than ten days after Aug. 11, 1955, see section 3 of act Aug. 11, 1955, set out as a note under section 4091 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6424 of this title.

§ 4093. Exemption of sales to producers.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this subpart upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him. (Aug. 16, 1954, ch. 736, 68A Stat. 484.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4092, 4221, 4222 of this title.

§ 4094. Cross reference.

For provisions to relieve purchasers of lubricating oil from excise tax in the case of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424.

(Added Pub. L. 89-44, title II, § 202(c)(1)(A), June 21, 1965, 79 Stat. 139.)

EFFECTIVE DATE

Section effective January 1, 1966, see section 701(a) (1), (2), of Pub. L. 89-44, set out as a note under section 4061 of this title.

SUBPART C.—SPECIAL PROVISIONS APPLICABLE TO PETROLEUM PRODUCTS

Sec.
4101. Registration.
4102. Inspection of records, returns, etc., by local officers.

AMENDMENTS

1965—Pub. L. 89-44, title VIII, § 802(b)(5), June 21, 1965, 79 Stat. 159, struck out "and bond" following "Registration" in item 4101.

§ 4101. Registration.

Every person subject to tax under section 4081 or section 4091 shall, before incurring any liability for tax under such sections, register with the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 484; June 21, 1965, Pub. L. 89-44, title VIII, § 802(b)(2), 79 Stat. 159.)

AMENDMENTS

1965—Pub. L. 89–44 removed all references to a bond to be given and its terms and requirements.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802 (d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7232 of this title.

§ 4102. Inspection of records, returns, etc., by local officers.

Under regulations prescribed by the Secretary or his delegate, records required to be kept with respect to taxes under this part, and returns, reports, and statements with respect to such taxes filed with the Secretary or his delegate, shall be open to inspection by such officers of any State or Territory or political subdivision thereof or the District of Columbia as shall be charged with the enforcement or collection of any tax on gasoline or lubricating oils. The Secretary or his delegate shall furnish to any of such officers, upon written request, certified copies of any such statements, reports, or returns filed in his office, upon the payment of a fee of $1 for each 100 words or fraction thereof in the copy or copies requested. (Aug. 16, 1954, ch. 736, 68A Stat. 484.)

§ 4111. Repealed. Pub. L. 89–44, title II, § 203, June 21, 1965, 79 Stat. 139.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Sept. 2, 1958, Pub. L. 85–859, title I, § 111(a), 72 Stat. 1277. imposed a manufacturers excise tax of 5 percent on household type refrigerators, quick freeze or frozen storage units, or combinations, and a tax of 10 percent on self-contained air-conditioning units.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4061 of this title.

§ 4112. Repealed. Pub. L. 85–859, title I, § 111 (b) (1), Sept. 2, 1958, 72 Stat. 1277.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 458; Aug. 11, 1955, ch. 805, § (e), 69 Stat. 689 defined refrigerator components.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

§ 4113. Repealed. Aug. 11, 1955, ch. 805, § 1 (d), 69 Stat. 689.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 485, related to exemptions for manufacturers of refrigerator components and is now covered by section 4221 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first month which begins more than ten days after Aug. 11, 1955, see note under section 6416 of this title.

§ 4121. Repealed. Pub. L. 89–44, title II, § 203, June 21, 1965, 79 Stat. 139.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 486; Sept. 2, 1958, Pub. L. 85–859, title I, § 112, 72 Stat. 1277, imposed a 5 percent tax on electric, gas, and oil household appliances and their accessories.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44, set out under section 4061 of this title.

§ 4131. Repealed. Pub. L. 89–44, title II, § 203, June 21, 1965, 79 Stat. 139.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 486, imposed a 10 percent tax on electric light bulbs and tubes.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after January 1, 1965, see section 701(a)(1)(2), of Pub. L. 89–44, set out as a note under section 4061 of this title.

§§ 4141 to 4143. Repealed. Pub. L. 89–44, title II, § 204, June 21, 1965, 79 Stat. 140.

Section 4141, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Aug. 11, 1955, ch. 805, § 2(a), 69 Stat. 690; Sept. 2, 1958, Pub. L. 85–859, title I, § 113(a), 72 Stat. 1278, imposed a tax equivalent to 10 percent of the selling price on radio and television receiving sets, phonographs, radio, television, and phonograph combinations, components, and phonograph records.

Section 4142, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Sept. 2, 1958, Pub. L. 85–859, title I, § 113(a), 72 Stat. 1278; Oct. 13, 1964, Pub. L. 88–653, § 6(a), 78 Stat. 1086, defined "radio and television components" and provided the formula to determine the selling price of rebuilt television picture tubes.

Section 4143, Pub. L. 85–859, title I, § 113(a), Sept. 2, 1958, 72 Stat. 1278, granted an exemption for certain types of communication, detection, and navigation equipment and components.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4061 of this title.

§ 4151. Repealed. Pub. L. 89–44, title II, § 204, June 21, 1965, 79 Stat. 140.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 488, imposed a tax equivalent to 10 percent of the selling price upon the sale of musical instruments.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4061 of this title.

§ 4152. Repealed. Pub. L. 85–859, title I, § 119 (b) (2), Sept. 2, 1958, 72 Stat. 1286.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 488, related to exemption of musical instruments sold for religious or educational use, and is now covered by section 4221 (e) (3) of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859.

Subchapter D.—Recreational Equipment

Part
I. Sporting goods.
III. Firearms.

AMENDMENTS

1965—Pub. L. 89–44, title II, § 205(b), June 21, 1965, 79 Stat. 140, struck out the item relating to Part II.

PART I.—SPORTING GOODS

Sec.
4161. Imposition of tax.

§ 4161. Imposition of tax.

There is hereby imposed upon the sale of fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer

a tax equivalent to 10 percent of the price for which so sold. (Aug. 16, 1954, ch. 736, 68A Stat. 489; June 21, 1965, Pub. L. 89-44, title II, § 205(a), 79 Stat. 140.)

AMENDMENTS

1965—Pub. L. 89-44 removed the 10 percent tax on equipment for billiards, pool, bowling, trap shooting, cricket, croquet, badminton, curling, deck tennis, golf, lacrosse, polo, skiing, squash, table tennis, and tennis, and retained the tax only for fishing equipment.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§§ 4171 to 4173. Repealed. Pub. L. 89-44, title II, § 205 (b), June 21, 1965, 79 Stat. 140.

Section 4171, act Aug. 16, 1954, ch. 736, 68A Stat. 489, imposed a 10 percent tax on cameras, camera lenses, and unexposed photographic film on rolls and a 5 percent tax on electric motion or still picture projectors of the household type.

Section 4172, act Aug. 16. 1954, ch. 736, 68A Stat. 490, defined certain vendees of unexposed films as manufacturers for purposes of payment of the tax imposed by section 4171.

Section 4173, act Aug. 16, 1954, ch. 736, 68A Stat. 490, granted exemptions for specified types of cameras, lenses of specified focal lengths, and certain types of film.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 84-44, set out as a note under section 4061 of this title.

PART III.—FIREARMS

Sec.
4181. Imposition of tax.
4182. Exemptions.

§ 4181. Imposition of tax.

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent—

Pistols.

Revolvers.

Articles taxable at 11 percent—

Firearms (other than pistols and revolvers).

Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4182 of this title; title 16 section 669b.

§ 4182. Exemptions.

(a) Machine guns and short barrelled firearms.

The tax imposed by section 4181 shall not apply to any firearm on which the tax provided by section 5811 has been paid.

(b) Sales to defense department.

No firearms, pistols, revolvers, shells, and cartridges purchased with funds appropriated for the military department shall be subject to any tax imposed on the sale or transfer of such articles.

(c) Records.

Notwithstanding the provisions of sections 922(b)(5) and 923(g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for the aforesaid types of ammunition. (Aug. 16, 1954, ch. 736, 68A Stat. 490; Nov. 26, 1969, Pub. L. 91-128, § 5, 83 Stat. 269.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-128 added subsec. (c).

CROSS REFERENCES

Machine guns and certain other firearms, see section 5801 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4222 of this title; title 16 section 669b.

§§ 4191, 4192. Repealed. Pub. L. 89-44, title II, § 206, June 21, 1965, 79 Stat. 140.

Section 4191, act Aug. 16, 1954, ch. 736, 68A Stat. 491, imposed a tax equivalent to 10 percent of the selling price upon over fifty specified office and business machines including adding machines, bookkeeping machines, cash registers, punch card and computing machines, typewriters, and tabulating machines.

Section 4192, acts Aug. 16, 1954, ch. 736, 68A Stat. 491; Sept. 2, 1958, Pub. L. 85-859, title I, § 114(a), 72 Stat. 1278, granted an exemption for cash registers used in registering over-the-counter retail sales and for stencil cutting machines.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§ 4201. Repealed. Pub. L. 89-44, title II, § 206, June 21, 1965, 79 Stat. 140.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 492; Sept. 14, 1960, Pub. L. 86-779, § 9(a), 74 Stat. 1003, imposed a tax equivalent to 10 percent of the selling price on mechanical pencils, fountain pens, and ball point pens and 10 cents on mechanical cigarette lighters.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

§ 4211. Repealed. Pub. L. 89-44, title II, § 206, June 21, 1965, 79 Stat. 140.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 492, imposed a tax of 2 cents per 1,000 for matches, except fancy wooden matches, and a tax of 5½ cents per 1,000 on fancy wooden matches.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

Subchapter F.—Special Provisions Applicable to Manufacturers Tax

Sec.
4216. Definition of price.
4217. Leases.
4218. Use by manufacturer or importer considered sale.
4219. Application of tax in case of sales by other than manufacturer or importer.

AMENDMENTS

1958—Pub. L. 85-859, title I, §§ 117(d), 119(b)(3), Sept. 2, 1958, 72 Stat. 1281, 1286 substituted "Leases" for "Lease considered sale" in item 4217, and struck out items 4220-4227.

1956—Act June 29, 1956, ch. 462, title II, § 207(b), 70 Stat. 392, redesignated item "4226" as item "4227" and added item "4226. Floor stock taxes."

§ 4216. Definition of price.

(a) Containers, packing and transportation charges.

In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary or his delegate in accordance with the regulations.

(b) Constructive sale price.

(1) In general.

If an article is—

(A) sold at retail,

(B) sold on consignment, or

(C) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate. This paragraph shall not apply if paragraph (2) applies.

(2) Special rule.

If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case may be.

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm's length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph.

(C) in the case of articles upon which tax is imposed under section 4061(a) (relating to automobiles, trucks, etc.), the normal method of sales for such articles within the industry is not to sell such articles at retail or to retailers, or combinations thereof, and

(D) the transaction is an arm's length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

(3) Constructive sale price in case of certain articles.

Except as provided in paragraphs (4) and (5), for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors,

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm's-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (f) and under section 6416(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be the lower of the constructive sale price determined under this paragraph or paragraph (4).

(4) Constructive sale price in case of certain other articles.

For purposes of paragraph (1), if—

(A) the manufactuer, producer, or importer of an article regularly sells (except for tax-free sales) only to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer,

(B) the distributor regularly sells (except for tax-free sales) such article only to retailers, and

(C) the normal method of sales for such articles within the industry by manufacturers, producers, or importers is to sell such articles in arm's-length transactions to distributors,

the constructive sale price for such article shall be the price at which such article is sold to retailers by the distributor, reduced by a percentage of such price equal to the percentage which (i) the difference between the price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, and the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of (ii) the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustment under subsections (a) and (f) and under section 6416(b)(1).

(5) Constructive sale price in the case of automobiles, trucks, etc.

In the case of articles the sale of which is taxable under section 4061(a) (relating to auto-

mobiles, trucks, etc.), for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of the article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regularly sells such article to one or more independent retailers,

the constructive sale price of such article shall be 98½ percent of the lowest price for which such distributor regularly sells such article in arm's-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (f) and under section 6416(b)(1).

(6) Definition of lowest price.

For purposes of paragraphs (1), (3), and (5), the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

(c) Partial payments.

In the case of—

(1) a lease (other than a lease to which section 4217 (b) applies),

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sale, or

(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

there shall be paid upon each payment with respect to the article a percentage of such payment equal to the rate of tax in effect on the date such payment is due.

(d) Repealed. Pub. L. 85-859, title I, § 117 (b), Sept. 2, 1958, 72 Stat. 1281.

(e) Sales of installment accounts.

If installment accounts, with respect to payments on which tax is being computed as provided in subsection (c), are sold or otherwise disposed of, then subsection (c) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with respect to which credit or refund is allowable by reason of section 6416 (b) (5)), but instead—

(1) there shall be paid an amount equal to the difference between (A) the tax previously paid on the payments on such installment accounts, and (B) the total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)); except that

(2) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under paragraph (1) shall not exceed the sum of the amounts computed by multiplying (A) the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment by (B) the rate of tax under this chapter in effect on the date such unpaid installment payment is or was due.

The sum of the amounts payable under this subsection and subsection (c) in respect of the sale of any article shall not exceed the total tax.

(f) Exclusion of local advertising charge from sale price.

(1) Exclusion.

In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) Aggregate amount which may be excluded.

In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) No adjustment for other advertising charges.

Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

(4) Local advertising defined.

For purposes of this section and section 6416 (b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(g) Certain trucks incorporating used components.

For purposes of the tax imposed by section 4061(a)(1) (relating to trucks, buses, etc.), in determining the price for which an article is sold, the value of any component of such article shall be excluded from the price, if—

(1) such component is furnished by the first user of such article, and

(2) such component has been used prior to such furnishing.

(Aug. 16, 1954, ch. 736, 68A Stat. 493; Aug. 9, 1955, ch. 677, §§ 1, 2, 69 Stat. 613; Sept. 2, 1958, Pub. L. 85-859, title I, §§ 115, 116, 117(b), 72 Stat. 1279—1281; Sept. 14, 1960, Pub. L. 86-781, § 1, 74 Stat. 1017; Oct. 9, 1962, Pub. L. 87-770, § 2(a), 76 Stat. 768; Oct. 23, 1962, Pub. L. 87-858, § 1(a), 76 Stat. 1134; June 21, 1965, Pub. L. 89-44, title II, §§ 207(a), (b), 208(a), (b), title VIII, § 801(b), 79 Stat. 140, 141, 158; Dec. 30, 1969, Pub. L. 91-172, title IX, § 932(a), 83 Stat. 725; Dec. 31, 1970, Pub. L. 91-614, title III, § 301(a), (b), 84 Stat. 1844.)

AMENDMENTS

1970—Subsec. (b)(3). Pub. L. 91-614, § 301(b), substituted "Constructive sale price" for "Fair market price" in the catchline, "constructive sale price" for "fair market price" three times in the body of this par., substituted "paragraphs (4) and (5)" for "paragraph (4)" and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(4). Pub. L. 91-614, § 301(b)(2), substituted "Constructive sale price" for "Fair market price" in the catchline, "constructive sale price" for "fair market price" in the body of this par., and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(5). Pub. L. 91-614, § 301(a), added subsec. (b)(5).

Subsec. (b)(6). Pub. L. 91-614, § 301(a), added subsec. (b)(6).

1969—Subsec. (b). Pub. L. 91-172 added pars. (3) and (4).

1965—Subsec. (b)(2). Pub. L. 89-44, § 208(a), eliminated references to special dealers and to articles upon which tax is imposed under section 4191 or 4211 of this title.

Subsec. (b)(3). Pub. L. 89-44, § 208(b), struck out subsec. (b)(3) which related to special dealers.

Subsec. (c). Pub. L. 89-44, § 207(a), struck out "that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment" in the material following par. (4) and inserted in lieu thereof "a percentage of such payment equal to the rate of tax in effect on the date such payment is due."

Subsec. (e)(1). Pub. L. 89-44, § 207(b)(1), struck out "total tax" and inserted in lieu thereof "total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c))".

Subsec. (e)(2). Pub. L. 89-44, § 207(b)(2), substituted, as factor (A) in the formula for computing the maximum amount, the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment for the amount for which such accounts are sold, and, as factor (B) in the formula, the rate of tax on the date that such unpaid installment payment is or was due for the rate of tax which applied on the day on which the transaction giving rise to such installment accounts took place.

Subsec. (g). Pub. L. 89-44, § 801(b), added subsec. (g).

1962—Subsec. (b)(2)(C). Pub. L. 87-858 inserted "in the case of articles upon which tax is imposed under section 4061(a) (relating to automobiles, trucks, etc.), 4191 (relating to business machines), or 4211 (relating to matches)." preceding "the normal method."

Subsec. (f)(4). Pub. L. 87-770 substituted ", appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster" for "or appears in a newspaper" in cl. (C).

1960—Subsec. (f). Pub. L. 86-781 added subsec. (f).

1958—Subsec. (b). Pub. L. 85-859, § 115, inserted provisions in par. (1) requiring, in the case of an article sold at retail, the computation to be on either the price for which the article is sold, or the highest price for which the articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, whichever is lower, and added pars. (2) and (3).

Subsec. (c). Pub. L. 85-859, § 117(b), substituted "section 4217(b)" for "subsection (d)".

Subsec. (d). Pub. L. 85-859, § 117(b), repealed subsec. (d), which related to tax on leases of certain trailers.

Subsec. (e). Pub. L. 85-859, § 116, added subsec. (e).

1955—Subsec. (c)(1). Act Aug. 9, 1955, § 1, inserted "(other than a lease to which subsection (d) applies)".

Subsec. (d). Act Aug. 9, 1955, § 2, added subsec. (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Sec. 301(c) of Pub. L. 91-614 provided that: "The amendments made by this section [amending this section] shall apply with respect to articles sold after December 31, 1970; except that section 4216(b)(6) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall also apply to (1) the application of paragraph (1) of such section 4216(b) to articles sold after June 30, 1962, and before January 1, 1971, and (2) the application of paragraph (3) of such section 4216(b) to articles sold after December 31, 1969, and before January 1, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 932(b) of Pub. L. 91-172 provided that: "The amendment made by subsection (a) [adding pars. (3) and (4) to subsec. (b) of this section] shall apply with respect to articles sold after December 31, 1969."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsecs. (c) and (e) by section 207 of Pub. L. 89-44 to take effect on June 22, 1965, and amendment of subsec. (b)(2) and (3) by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, or 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

Subsec. (g) applicable with respect to articles sold on or after June 22, 1965, see section 801(e) of Pub. L. 89-44, set out as a note under section 4063 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 1(b) of Pub. L. 87-858 provided that: "The amendment made by subsection (a) [to subsec. (b)(2)(C) of this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after October 1, 1962."

Section 2(b) of Pub. L. 87-770 provided that: "The amendment made by subsection (a) [to subsec (f)(4)(C) of this section] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of the enactment of this Act [Oct. 9, 1962.]"

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86-781 provided that: "The amendments made by this Act [adding subsec. (f) of

this section and amending section 6416(b)(1) of this title] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than twenty days after the date of the enactment of this Act [Sept. 14, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 9, 1955, provided that:

"The amendments made by subsection (a) [probably should refer to amendments made by sections 1—3 of act Aug. 9, 1955 to this section and section 4217 of this title] shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this act [August 9, 1955]. In the application of section 4216 (d) of the Internal Revenue Code of 1954 (as added by this Act) to any article which has been leased before the effective date specified in the preceding sentence, under regulations prescribed by the Secretary of the Treasury or his delegate—

"(1) the fair market value of such article shall be the fair market value determined as of such effective date;

"(2) only payments under a lease received on or after such effective date shall be considered in determining when the total tax (as defined in such section 4216 (d)) has been paid;

"(3) any lease existing on such effective date, or if there is none, the first lease entered into after such effective date, shall be considered an initial lease (except that fair market value shall be determined as provided in paragraph (1) of this sentence); and

"(4) any lease existing on such effective date shall be considered as having been entered into on such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4217, 4223, 6416 of this title.

§ 4217. Leases.

(a) Lease considered as sale.

For purposes of this chapter, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a sale of such article.

(b) Limitation on tax.

In the case of any lease described in subsection (a) of an article taxable under this chapter, if the tax under this chapter is based on the price for which such articles are sold, there shall be paid on each lease payment with respect to such article a percentage of such payment equal to the rate of tax in effect on the date of such payment, until the total of the tax payments under such lease and any prior lease to which this subsection applies equals the total tax.

(c) Definition of total tax.

For purposes of this section, the term "total tax" means—

(1) except as provided in paragraph (2), the tax computed on the constructive sale price for such article which would be determined under section 4216 (b) if such article were sold at retail on the date of the first lease to which subsection (b) applies; or

(2) if the first lease to which subsection (b) applies is not the first lease of the article, the tax computed on the fair market value of such article on the date of the first lease to which subsection (b) applies.

Any such computation of tax shall be made at the applicable rate specified in this chapter in effect on the date of the first lease to which subsection (b) applies.

(d) Special rules.

(1) Lessor must also be engaged in selling.

Subsection (b) shall not apply to any lease of an article unless at the time of making the lease, or any prior lease of such article to which subsection (b) applies, the person making the lease or prior lease was also engaged in the business of selling in arm's length transactions the same type and model of article.

(2) Sale before total tax becomes payable.

If the taxpayer sells an article before the total tax has become payable, then the tax payable on such sale shall be whichever of the following is the smaller:

(A) the difference between (i) the tax imposed on lease payments under leases of such article to which subsection (b) applies, and (ii) the total tax, or

(B) a tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold.

For purposes of subparagraph (B), if the sale is at arm's length, section 4216 (b) shall not apply.

(3) Sale after total tax has become payable.

If the taxpayer sells an article after the total tax has become payable, no tax shall be imposed under this chapter on such sale.

(4) Transitional rules.

For purposes of this subsection and subsections (b) and (c), in the case of any lease entered into before the effective date of subsection (b) and existing on such date—

(A) such lease shall be considered as having been entered into on such date;

(B) the total tax shall be computed on the fair market value of the article on such date; and

(C) the lease payments under such lease shall include only payments attributable to periods on and after such date.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 9, 1955, ch. 677, § 3, 69 Stat. 614; Sept. 2, 1958, Pub. L. 85-859, title I, § 117(a), 72 Stat. 1280.)

AMENDMENTS

1958—Pub. L. 85-859 substituted "Leases" for "Lease considered as sale" in the catchline.

Subsec. (a). Pub. L. 85-859 redesignated existing provisions as subsec. (a) and eliminated provisions which made subsection inapplicable to the lease of an article upon which the tax has been paid in the manner provided in section 4216(d)(1) or the total tax has been paid in the manner provided in section 4216(d)(2) of this title.

Subsecs. (b)—(d). Pub. L. 85-859 added subsecs. (b)—(d).

1955—Act Aug. 9, 1955, exempted the lease of an article upon which tax has been paid under section 4216(d)(1) or section 4216(d)(2) of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

EFFECTIVE DATE OF 1955 AMENDMENT

Section effective on the first day of the first month which begins more than ten days after Aug. 9, 1955, see section 4 of act Aug. 9, 1955, set out in note under section 4216 of this title.

APPLICATION OF LEASES OF UTILITY TRAILERS

Section 117 (c) of Pub. L. 85-859 provided that: "The amendments made by subsections (a) and (b) [to this section and subsecs. (c) and (d) of section 4216 of this title] shall not apply to any lease of an article if section 4216 (d) of the Internal Revenue Code of 1954 [former subsec. (d) of section 4216 of this title] applied to any lease of such article before the effective date specified in section 1 (c) of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4216 of this title.

§ 4218. Use by manufacturer or importer considered sale.

(a) General rule.

If any person manufactures, produces, or imports an article (other than an article specified in subsection (b), (c), or (d) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

(b) Tires and tubes.

Except as provided in subsection (d), if any person manufactures, produces, or imports a tire or inner tube taxable under section 4071, and sells it on or in connection with the sale of any article, or uses it, then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

(c) Automotive parts and accessories.

If any person manufactures, produces, or imports a part or accessory taxable under section 4061(b), and uses it (otherwise than as material in the manufacture or production of, or as a component part of, any other article to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

(d) Bicycle tires and tubes.

If any person manufactures, produces, or imports a bicycle tire (as defined in section 4221(e)(4)(B)) or an inner tube for such a tire, and uses it (otherwise than as material in the manufacture or production of, or as a component part of, a bicycle, other than a rebuilt or reconditioned bicycle, to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

(e) Computation of tax.

Except as provided in section 4223(b), in any case in which a person is made liable for tax by the preceding provisions of this section, the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as determined by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, § 1 (a), (b), 69 Stat. 689; Sept. 2, 1958, Pub. L. 85-859, title I, § 118, 72 Stat. 1281; Apr. 8, 1960, Pub. L. 86-418, § 2(a), 74 Stat. 38; June 29, 1961, Pub. L. 87-61, title II, § 205(b), 75 Stat. 126; June 21, 1965, Pub. L. 89-44, title II, § 208(c), 79 Stat. 141.)

AMENDMENTS

1965—Subsec. (b). Pub. L. 89-44, § 208(c) (1), (2), struck out references to automobile receiving sets from the subsection catchline, and "or an automobile radio or television receiving set taxable under section 4141,", which preceded "and sells it."

Subsec. (c). Pub. L. 89-44, § 208(c) (3), (4), eliminated reference to radio components and camera lenses from the subsection catchline, and "a radio or television component taxable under section 4141, or a camera lens taxable under section 4171,", which preceded "and uses it."

1961—Subsec. (a). Pub. L. 87-61 inserted sentence making subsection inapplicable in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

1960—Subsec. (a). Pub. L. 86-418, § 2(a)(1), substituted "subsection (b), (c), or (d)" for "subsection (b) or (c)."

Subsec. (b). Pub. L. 86-418, § 2(a)(2), substituted "Except as provided in subsection (d), if any" for "If any."

Subsec. (d). Pub. L. 86-418, § 2(a)(3), added subsec. (d), and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 86-418, § 2(a)(3), redesignated former subsec. (d) as (e).

1958—Pub. L. 85-859 amended section generally, by among other changes, eliminating provisions which related to refrigerator components and to sales free of tax by virtue of section 4220 or 4224 of this title, and substituting provisions making manufacturers, producers and importers of parts or accessories taxable under section 4061 (b), radio or television components taxable under section 4141, or camera lenses taxable under section 4171 liable for the tax if they use the parts or accessories otherwise than as material in the manufacture or production of, or as component parts of, any other article to be manufactured or produced by them, for provisions which made section inapplicable with respect to such parts if they were used by them as material in the manufacture or production of, or as a component part of, any article.

1955—Subsec. (a)(1). Act Aug. 11, 1955, § 1(a), inserted as tax exempt articles under this chapter, automobile parts or accessories, refrigerator, radio, or television components, or camera lenses taxable under section 4061(b), 4111, or 4171, respectively, of this title.

Subsec. (b). Act Aug. 11, 1955, § 1(b), excepted from application of section automobile parts or accessories, refrigerator, radio, or television components, and camera lenses, taxable under sections 4061(b), 4111, 4141, and 4171, respectively, of this title, when for use by the purchaser in the manufacture or production of, or as a component part of, any article.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsecs. (b) and (c) by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 applicable only in the case of gasoline used on or after October 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of this section by Pub. L. 86-418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86-418, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of subsec. (a) (1) and subsec. (b) by act Aug. 11, 1955 effective on the first day of the first month which begins more than ten days after Aug. 11, 1955, see note under section 6416 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4223, 4224, 6416 of this title.

§ 4219. Application of tax in case of sales by other than manufacturer or importer.

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax. (Aug. 16, 1954, ch. 736, 68A Stat. 494.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4224 of this title.

§ 4220. Repealed. Pub. L. 85-859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1282.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, § 1 (c), 69 Stat. 689, related to exemption for sales or resales to manufacturers. See section 4221 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

Subchapter G.—Exemptions, Registration, Etc.

Sec.
4221. Certain tax-free sales.
4222. Registration.
4223. Special rules relating to further manufacture.
5225. Exemption of articles manufactured or produced by Indians.
4226. Floor stocks taxes.
4227. Cross references.

AMENDMENTS

1965—Pub. L. 89-44, title I, § 101(b)(5), June 21, 1965, 79 Stat. 136, struck out item 4224 relating to articles taxable as jewelry.

1958—Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282 added subchapter heading and section analysis.

§ 4221. Certain tax-free sales.

(a) General rule.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this chapter on the sale by the manufacturer of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government, or

(5) to a nonprofit educational organization for its exclusive use,

but only if such exportation or use is to occur before any other use.

(b) Proof of resale for further manufacture; proof of export.

Where an article has been sold free of tax under subsection (a)—

(1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or

(2) for export, or for resale by the purchaser to a second purchaser for export,

subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has been exported or resold for use in further manufacture.

(c) Manufacturer relieved from liability in certain cases.

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4063 (b), 4083, or 4093, if the manufacturer in good faith accepts a certification by the purchaser that the article wil be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) Definitions.

For purposes of this section—

(1) Manufacturer.

The term "manufacturer" includes a producer or importer of an article.

(2) Export.

The term "export" includes shipment to a possession of the United States; and the term "exported" includes shipped to a possession of the United States.

(3) Supplies for vessels or aircraft.

The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) State or local government.

The term "State or local government" means any State, any political subdivision thereof, or the District of Columbia.

(5) Nonprofit educational organization.

The term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) Use in further manufacture.

An article shall be treated as sold for use in further manufacture if—

(A) such article (other than an article referred to in subparagraph (B)) is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him;

(B) in the case of a part or accessory taxable under section 4061(b), such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him; or

(C) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

For purposes of subparagraph (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

(e) Special rules.

(1) Reciprocity required in case of civil aircraft.

In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) Tires and tubes.

(A) Tax-free sales.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire or inner tube if—

(i) such tire or tube is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) Proof.

Where a tire or tube has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-moth period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire or tube receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) Subsection (a)(1) does not apply.

Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire or inner tube.

(3) Repealed. Pub. L. 89-44, title II, § 208(d)(6), June 21, 1965, 79 Stat. 141.

(4) Bicycle tires or tubes sold to bicycle manufacturer.

(A) In general.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4071 on the sale of a bicycle tire (or an inner tube for such a tire) by the manufacturer thereof if such tire or tube is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle).

(B) Bicycle tire defined.

As used in this paragraph the term "bicycle tire" means a tire, composed of rubber in combination with fabric or other reinforcing element, which is not more than 28 inches in outer diameter and not more than 2¼ inches in cross section and which is primarily designed or adapted for use on bicycles.

(C) Proof.

Where a bicycle tire or tube has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier, on the date of shipment by him), the manufacturer of such bicycle tire or tube receives proof that the tire or tube has

been used in the manner described in subparagraph (A).

(5) School buses.

Under regulations prescribed by the Secretary or his delegate, the tax imposed by section 4061(a) shall not apply to a bus sold to any person for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations. For purposes of this paragraph, incidental use of a bus in providing transportation for a State or local government or a nonprofit organization described in section 501(c) which is exempt from tax under section 501(a) shall be disregarded.

(Added Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282, and amended Pub. L. 86-70, § 22 (a), June 25, 1959, 73 Stat. 146; Pub. L. 86-344, § 2(b), Sept. 21, 1959, 73 Stat. 617; Pub. L. 86-418, § 1, Apr. 8, 1960, 74 Stat. 38; Pub. L. 86-624, § 18(e), July 12, 1960, 74 Stat. 416; Pub. L. 87-61, title II, § 205(a), June 29, 1961, 75 Stat. 126; Pub. L. 89-44, title II, § 208(d), title VIII, § 801(c), (d)(1), June 21, 1965, 79 Stat. 141, 158; Pub. L. 91-172, title I, § 101 (j)(26), Dec. 30, 1969, 83 Stat. 529.)

CODIFICATION

A prior section 4221, act Aug. 16, 1954, ch. 736, 68A Stat. 495, which related to exemption for articles taxable as jewelry, was repealed by Pub. L. 85-859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1282.

AMENDMENTS

1969—Subsec. (d)(5). Pub. L. 91-172 substituted "section 170(b)(1)(A)(ii)" for "section 503(b)(2)".

1965—Subsec. (d)(6)(B). Pub. L. 89-44, § 208(d)(1), struck out "a radio or television component taxable under section 4141, or a camera lens taxable under section 4171,".

Subsec. (d)(6). Pub. L. 89-44, § 801(c), added sentence providing that for purpose of subpar. (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (e)(2). Pub. L. 89-44, § 208(d)(2)—(5), eliminated reference to automobile receiving sets from the catchline and wherever appearing in subpars. (A)—(C), and reference to tax imposed under section 4141 of this title from subpars. (A) and (C).

Subsec. (e)(3). Pub. L. 89-44, § 208(d)(6), struck out subsec. (e)(3) dealing with musical instruments sold for religious use.

Subsec. (e)(5). Pub. L. 89-44, § 801(d)(1), added par. (5).

Subsec. (f). Pub. L. 89-44, § 208(d)(7), struck out subsec. (f) which related to sales of mechanical pencils and pens for export.

1961—Subsec. (d)(6). Pub. L. 87-61 added subpar. (C).

1960—Subsec. (d)(4). Pub. L. 86-624 substituted "any State, any political subdivision thereof, or the District of Columbia" for "any State, Hawaii, the District of Columbia, or any political subdivision of any of the foregoing."

Subsec. (e). Pub. L. 86-418 added par. (4).

1959—Subsec. (d)(4). Pub. L. 86-70 eliminated "Alaska," preceding "Hawaii."

Subsec. (d)(5). Pub. L. 86-344 included in the definition of "nonprofit educational organization" a school operated as an activity of certain organizations exempt from the income tax and having a regular situs, faculty, curriculum and student body.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsecs. (d), (e)(2), (3), and repeal of subsec. (f) by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

Amendment of subsec. (d)(6) by section 801(c) of Pub. L. 89-44 and amendment of subsec. (e)(5) by section 801(d)(1) of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, see section 801(e) of Pub. L. 89-44, set out as a note under section 4063 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 applicable only in the case of gasoline sold on or after Oct. 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment of subsec. (d) by Pub. L. 86-624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 2202 of this title.

Section 4 of Pub. L. 86-418 provided that: "The amendments made by this Act [to subsec. (e) of this section and to sections 4218, 4223 and 6416 of this title] shall apply only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [April 8, 1960]."

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment of subsec. (d) of this section by section 2(b) of Pub. L. 86-344 effective Jan. 1, 1959, see section 2(e) of Pub. L. 86-344, set out in part as a note under section 4057 of this title.

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 2202 of this title.

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4218, 4222, 4223, 4226, 6412, 6416 of this title.

§ 4222. Registration.

(a) General rule.

Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under this section. Registration under this section shall be made at such time, in such manner and form, and subject to such terms and conditions, as the Secretary or his delegate may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(b) Exceptions.

(1) Purchases by State and local governments.

Subsection (a) shall not apply to any State or local government in connection with the purchase by it of any article if such State or local government complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary or his delegate shall prescribe to carry out the purpose of this paragraph.

(2) Export.

Subject to such regulations as the Secretary or his delegate may prescribe for the purpose of this paragraph, in the case of any sale or resale for export, the Secretary or his delegate may relieve the purchaser or the second purchaser, or both, from the requirement of registering under this section.

(3) Certain purchases and sales by the United States.

Subsection (a) shall apply to purchases and sales by the United States only to the extent provided by regulations prescribed by the Secretary or his delegate.

(4) Repealed. Pub. L. 89-44, title II, § 208(e), June 21, 1965, 79 Stat. 141.

(5) Supplies for vessels or aircraft.

Subsection (a) shall not apply to a sale of an article for use by the purchaser as supplies for any vessel or aircraft if such purchaser complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary or his delegate shall prescribe to carry out the purpose of this paragraph.

(c) Revocation or suspension of registration.

Under regulations prescribed by the Secretary or his delegate, the registration of any person under this section may be revoked or suspended if the Secretary or his delegate determines—

(1) that such person has used such registration to avoid the payment of any tax imposed by this chapter, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that such revocation or suspension is necessary to protect the revenue.

The revocation or suspension under this subsection shall be in addition to any penalty provided by law for any act or failure to act.

(d) Registration in the case of certain other exemptions.

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4063 (b), 4083, 4093, and 4182 (b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary or his delegate.

(e) Definitions.

Terms used in this section which are defined in section 4221 (d) shall have the meaning given to them by section 4221 (d). (Added Pub. L. 85-859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1284, and amended June 21, 1965, Pub. L. 89-44, title II, § 208 (e), title VIII, § 802(c), 79 Stat. 141, 159.)

CODIFICATION

A prior section 4222, act Aug. 16, 1954, ch. 736, 68 Stat. 495, which related to exemption from tax of certain supplies for vessels and airplanes, was repealed by Pub. L. 85-859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1282, and is now covered by section 4221 of this title.

AMENDMENTS

1965—Subsec. (b)(4). Pub. L. 89-44, § 208(e), struck out par. (4) which related to mechanical pencils, fountain pens, and ball point pens.

Subsec. (b)(5). Pub. L. 89-44, § 802(c), added subsec. (b)(5).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b)(4) by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

Subsec. (b)(5) applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89-44, set out as a note under section 4082 of this title.

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

§ 4223. Special rules relating to further manufacture.

(a) Purchasing manufacturer to be treated as the manufacturer.

For purposes of this chapter, a manufacturer or producer to whom an article is sold or resold free of tax under section 4221 (a) (1) for use by him in further manufacture shall be treated as the manufacturer or producer of such article.

(b) Computation of tax.

If the manufacturer or producer referred to in subsection (a) incurs liability for tax under this chapter on his sale or use of an article referred to in subsection (a) and the tax is based on the price for which the article is sold, the article shall be treated as having been sold by him—

(1) at the price for which the article was sold by him (or, where the tax is on his use of the article, at the price referred to in section 4218(e)); or

(2) if he so elects and establishes such price to the satisfaction of the Secretary or his delegate—

(A) at the price for which the article was sold to him; or

(B) at the price for which the article was sold by the person who (without regard to subsection (a)) is the manufacturer, producer, or importer of such article.

For purposes of this subsection, the price for which the article was sold shall be determined as provided in section 4216. For purposes of paragraph (2) no adjustment or readjustment shall be made in such price by reason of any discount, rebate, allowance, return or repossession of a container or covering, or otherwise. An election under paragraph (2) shall be made in the return reporting the tax applicable to the sale or use of the article, and may not be revoked. (Added Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1285, and amended Pub. L. 86-418, § 2(b), Apr. 8, 1960, 74 Stat. 38.)

CODIFICATION

A prior section 4223, act Aug. 16, 1954, ch. 736, 68A Stat. 495, which related to exemption of articles manufactured or produced by Indians, was repealed by Pub. L. 85-859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1282, and is now covered by section 4225 of this title.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-418 substituted "section 4218(e)" for "section 4218(d)" in cl. (1).

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of this section by Pub. L. 86-418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after

the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4218, 6416 of this title.

§ 4224. Repealed. Pub. L. 89–44, title I, § 101(b)(5), June 21, 1965, 79 Stat. 136.

Section, Pub. L. 85–859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1286, exempted, with specified exceptions, articles taxable under section 4001 from the imposition of the manufacturers excise tax.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to articles sold on or after June 22, 1965, see section 707(a) of Pub. L. 89–44.

§ 4225. Exemption of articles manufactured or produced by Indians.

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska. (Added Pub. L. 85–859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1286.)

CODIFICATION

A prior section 4225, act Aug. 16, 1954, ch. 736, 68A Stat. 496, which related to exemption for exports, was repealed by Pub. L. 85–859, title I, § 119 (a), Sept. 2, 1958, 72 Stat. 1282, and is now covered by section 4221 of this title.

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c1€, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 4226. Floor stocks taxes.

(a) In general.

(1) 1956 tax on trucks, truck trailers, buses, etc.

On any article subject to tax under section 4061 (a) (1) (relating to tax on trucks, truck trailers, buses, etc.) which, on July 1, 1956, is held by a dealer for sale, there is hereby imposed a floor stocks tax at the rate of 2 percent of the price for which the article was purchased by such dealer. If the price for which the article was sold by the manufacturer, producer, or importer is established to the satisfaction of the Secretary or his delegate, then in lieu of the amount specified in the preceding sentence, the tax imposed by this paragraph shall be at the rate of 2 percent of the price for which the article was sold by the manufacturer, producer, or importer.

(2) 1956 tax on tires of the type used on highway vehicles.

On tires subject to tax under section 4071 (a) (1) (as amended by the Highway Revenue Act of 1956) which, on July 1, 1956, are held—

(A) by a dealer for sale,

(B) for sale on, or in connection with, other articles held by the manufacturer, producer, or importer of such other articles, or

(C) for use in the manufacture or production of other articles,

there is hereby imposed a floor stocks tax at the rate of 3 cents a pound. The tax imposed by this paragraph shall not apply to any tire which is held for sale by the manufacturer, producer, or importer of such tire or which will be subject under section 4218 (a) (2) or 4219 to the manufacturers excise tax on tires.

(3) 1956 tax on tread rubber.

On tread rubber subject to tax under section 4071 (a) (4) (as amended by the Highway Revenue Act of 1956) which, on July 1, 1956, is held by a dealer, there is hereby imposed a floor stocks tax at the rate of 3 cents a pound. The tax imposed by this paragraph shall not apply in the case of any person if such person establishes, to the satisfaction of the Secretary or his delegate, that all tread rubber held by him on July 1, 1956, will be used otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072 (c)).

(4) 1956 tax on gasoline.

On gasoline subject to tax under section 4081 which, on July 1, 1956, is held by a dealer for sale, there is hereby imposed a floor stocks tax at the rate of 1 cent a gallon. The tax imposed by this paragraph shall not apply to gasoline in retail stocks held at the place where intended to be sold at retail, nor to gasoline held for sale by a producer or importer of gasoline.

(5) 1959 tax on gasoline.

On gasoline subject to tax under section 4081 which, on October 1, 1959, is held by a dealer for sale, there is hereby imposed a floor stocks tax at the rate of 1 cent a gallon. The tax imposed by this paragraph shall not apply to gasoline in retail stocks held at the place where intended to be sold at retail, nor to gasoline held for sale by a producer or importer of gasoline.

(6) 1961 taxes on certain tires and inner tubes.

On tires subject to tax under section 4071(a) (1), and on inner tubes subject to tax under section 4071(a) (3), which, on July 1, 1961, are held—

(A) by a dealer for sale,

(B) for sale on, or in connection with, other articles held by the manufacturer, producer, or importer of such other articles, or

(C) for use in the manufacture or production of other articles,

there is hereby imposed a floor stocks tax at the rate of 2 cents a pound in the case of such tires, and a floor stocks tax at the rate of 1 cent a pound in the case of such inner tubes. The taxes imposed by this paragraph shall not apply to any tire or inner tube which is held for sale by the manufacturer, producer, or importer of such tire or tube, or which will be subject under section 4218(b) or 4219 to the manufacturers excise tax on tires or inner tubes. The tax on inner tubes imposed by this paragraph shall not apply to

inner tubes for bicycle tires (as defined in section 4221(e)(4)(B)).

(7) 1961 tax on tread rubber.

On tread rubber subject to tax under section 4071(a)(4) which, on July 1, 1961, is held by a dealer, there is hereby imposed a floor stocks tax at the rate of 2 cents a pound. The tax imposed by this paragraph shall not apply in the case of any person if such person establishes, to the satisfaction of the Secretary or his delegate, that all tread rubber held by him on July 1, 1961, will be used otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)).

(b) Overpayment of floor stocks taxes.

Section 6416 shall apply in respect of the floor stocks taxes imposed by this section, so as to entitle, subject to all provisions of section 6416, any person paying such floor stocks taxes to a credit or refund thereof for any of the reasons specified in section 6416.

(c) Meaning of terms.

For purposes of subsection (a), the terms "dealer" and "held by a dealer" have the meaning assigned to them by section 6412(a)(4).

(d) Due date of taxes.

The taxes imposed by subsection (a) shall be paid at such time after September 30, 1956, as may be prescribed by the Secretary or his delegate; except that the tax imposed by paragraph (5) shall be paid at such time after December 31, 1959, as may be prescribed by the Secretary or his delegate, and except that the taxes imposed by paragraphs (6) and (7) shall be paid at such time after September 30, 1961, as may be prescribed by the Secretary or his delegate.

(e) Tax on certain tires and tubes.

On any tire or inner tube which, on the first day of the first calendar quarter which begins more than 20 days after the date of the enactment of this subsection, is held at a retail store or retail outlet of the manufacturer, producer, or importer of such tire or tube, he shall be liable for tax under section 4071 (a) in the same manner as if such tire or inner tube had been sold by him on such first day. This subsection shall not apply to an article in respect of which tax has been imposed by section 4071 of the Internal Revenue Code of 1954. Such section 4071 shall not apply to an article in respect of which tax has been imposed by this subsection. (Added June 29, 1956, ch. 462, title II, § 207(a), 70 Stat. 391, and amended Sept. 21, 1959, Pub. L. 86-342, title II, § 201 (c) (1)-(3), 73 Stat. 614; June 29, 1961, Pub. L. 87-61, title II, § 206 (a), (b), 75 Stat. 127; Aug. 1, 1966, Pub. L. 89-523, § 2, 80 Stat. 331.)

REFERENCES IN TEXT

The Highway Revenue Act of 1956, referred to in subsec. (a) (2), (3), is title II of act June 29, 1956, which was classified to former sections 173 and 174 of Title 23, Highways, now being set out as a note under sections 120 and 307 of said title 23, and sections 4041(a—c), 4061 (a)(1), 4071, 4072, 4073(c), 4081, 4084, 4227, 4481—4484, 6206, 6412(a—c), 6416(b)(2)(J—M), 6422, 6504(14), 6511, 6612(c), 6675(a), (b), 7210, 7603, 7604 (b), (c), and 7605 of this title.

AMENDMENTS

1966—Subsec. (e). Pub. L. 89-523 added subsec. (e).

1961—Subsec. (a). Pub. L. 87-61, § 206(a), added pars. (6) and (7).

Subsec. (d). Pub. L. 87-61, § 206(b), required payment of the taxes imposed by pars. (6) and (7) at such time after Sept. 30, 1961, as may be prescribed by the Secretary or his delegate.

1959—Subsec. (a)(5). Pub. L. 86-342, § 201(c)(1), added subsec. (a)(5).

Subsec. (c). Pub. L. 86-342, § 201(c)(3), substituted "section 6412(a)(4)" for "section 6412(a)(3)."

Subsec. (d). Pub. L. 86-342, § 201(c)(2), required the tax imposed by paragraph (5) to be paid at such time after Dec. 31, 1959, as may be prescribed by the Secretary or his delegate.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 effective on June 29, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§ 4227. Cross references.

(1) For exemption from tax in case of certain sales to the United States, see section 4293.

(2) For credit for taxes on tires and inner tubes, see section 6416(c).

(3) For administrative provisions of general application to the taxes imposed under this chapter, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 496, § 4227, formerly § 4226, renumbered June 29, 1956, ch. 462, title II, § 207 (a), 70 Stat. 391, and amended June 21, 1965, Pub. L. 89-44, title II, § 208 (f), 79 Stat. 141.)

AMENDMENTS

1965—Pub. L. 89-44 struck out "and automobile radio and television receiving sets," following "tires and inner tubes," in par. 2.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of par. (2) by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4061 of this title.

Chapter 33.—FACILITIES AND SERVICES

Subchapter
B. Communications.
C. Transportation by air.
E. Special provisions applicable to services and facilities taxes.

REPEAL OF SUBCHAPTER B

Table of subchapters for Chapter 33 amended by striking out the item relating to subchapter B dealing with Communications, effective January 1, 1982, see Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201 (b)(3), Dec. 31, 1970, 84 Stat. 1843.

AMENDMENTS

1970—Pub. L. 91-258, title II, § 205(c)(5), May 21, 1970, 84 Stat. 242, substituted "Transportation by air" for "Transportation of persons by air" in subchapter C heading.

1965—Pub. L. 89-44, title III, §§ 301, 304, June 21, 1965, 79 Stat. 145, 148 struck out items relating to subchapters A and D.

1962—Pub. L. 87-508, § 5(c)(1), June 28, 1962, 76 Stat. 118, substituted "Transportation of persons by air" for "Transportation of persons" in subchapter C.

1958—Pub. L. 85-475, § 4(b)(1), June 30, 1958, 72 Stat. 260, substituted "Transportation of persons" for "Transportation" in subchapter C.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-508, § 5(d), June 28, 1962, 76 Stat. 119, provided in part that: "The amendment made by subsection (c)(1) [to Subchapter C in the Analysis] shall apply only with respect to transportation beginning after November 15, 1962."

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6103 of this title.

§§ 4231 to 4234. Repealed. Pub. L. 89-44, title III, § 301, June 21, 1965, 79 Stat. 145.

Section 4231, acts Aug. 16, 1954, ch. 736, 68A Stat. 497; Aug. 6, 1956, ch. 1019, § 1, 70 Stat. 1074; Sept. 2, 1958, Pub. L. 85-859, title I, § 131 (a)—(c), 72 Stat. 1286, 1287; Apr. 8, 1960, Pub. L. 86-422, § 1, 74 Stat. 41, imposed a tax on admissions, permanent use or lease of boxes or seats, sales outside of box office in excess of established price, sales by proprietors in excess of established price, and cabarets.

Section 4232, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Sept. 2, 1958, Pub. L. 85-859, title I, § 131(d), 72 Stat. 1287, defined admission, roof garden, cabaret, or other similar place, and performance for profit as used in section 4231.

Section 4233, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Aug. 11, 1955, ch. 792, § 1, 69 Stat. 675; Apr. 16, 1958, Pub. L. 85-380 §§ 1—3, 72 Stat. 88; Sept. 2, 1958, Pub. L. 85-859, title I, § 131 (e), (f), 72 Stat. 1287; June 25, 1959, Pub. L. 86-70, § 22(a), 73 Stat. 146; Sept. 21, 1959, Pub. L. 86-319, § 1, 73 Stat. 590; Sept. 21, 1959, Pub. L. 86-344, § 2(c), 73 Stat. 617; July 12, 1960, Pub. L. 86-624, § 18(d), 74 Stat. 416, granted certain exemptions to certain charitable, educational, or religious entertainments, agricultural fairs, certain musical or dramatic performances, swimming pools, etc., home and garden tours, historic sites, certain amateur theatricals, certain amateur baseball games, rodeos, pageants, and certain benefit performances.

Section 4234, act Aug. 16, 1954, ch. 736, 68A Stat. 501, required that the price of tickets be printed on the face or back of such tickets and provided a penalty for selling tickets not so stamped.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to admissions, services, or uses after noon, December 31, 1965, see section 701(b)(1) of Pub. L. 89-44, set out as a note under section 4291 of this title.

§§ 4241 to 4243. Repealed. Pub. L. 89-44, title III, § 301, June 21, 1965, 79 Stat. 145.

Section 4241, acts Aug. 16, 1954, ch. 736, 68A Stat. 501; Sept. 2, 1958, Pub. L. 85-859, title I, § 132(a), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86-344, § 3(b), 73 Stat. 618, imposed a tax on dues or membership fees, initiation fees, and life memberships in social, athletic, or sporting clubs or organizations.

Section 4242, act Aug. 16, 1954, ch. 736, 68A Stat. 501, defined dues and initiation fees as used in section 4241.

Section 4243, acts Aug. 16, 1954, ch. 736, 68A Stat. 502; Sept. 2, 1958, Pub. L. 85-859, title I, § 132(b), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86-344, § 3(a), 73 Stat. 618, granted exemptions to fraternal organizations, payments for capital improvements, and nonprofit swimming or skating facilities.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable with respect to dues and membership fees attributable to periods beginning on or after January 1, 1966, initiation fees and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966, initiation fees paid on or after July 1, 1965, to a new club or organization first making its facilities available to members on or after such a date, and, in the case of amounts described in section 4243(b) of this title, 3-year periods beginning on or after January 1, 1966, see section 701(b)(1) of Pub. L. 89-44, set out as a note under section 4291 of this title.

Subchapter B.—Communications

Sec.
4251. Imposition of tax.
4252. Definitions.
4253. Exemptions.
4254. Computation of tax.

REPEAL

This subchapter, relating to the tax on communication, was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702 (b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981.

§ 4251. Imposition of tax.

(a) In general.

(1) Except as provided in subsection (b), there is hereby imposed on amounts paid for the following communication services a tax equal to the percent of the amount so paid specified in paragraph (2):

Local telephone service.

Toll telephone service.

Teletypewriter exchange service.

The taxes imposed by this section shall be paid by the person paying for the services.

(2) The rate of tax referred to in paragraph (1) is as follows:

Amounts paid pursuant to bills first rendered—	Percent—
Before January 1, 1973	10
During 1973	9
During 1974	8
During 1975	7
During 1976	6
During 1977	5
During 1978	4
During 1979	3
During 1980	2
During 1981	1

(b) Termination of tax.

The tax imposed by subsection (a) shall not apply to amounts paid pursuant to bills first rendered on or after January 1, 1982.

(c) Special rule.

For purposes of subsections (a) and (b), in the case of communications services rendered before November 1 of a calendar year for which a bill has not been rendered before the close of such year, a bill shall be treated as having been first rendered on December 31 of such year. (Aug. 16, 1954, ch. 736, 68A Stat. 503; Sept. 2, 1958, Pub. L. 85-859, title I, § 133(a), 72 Stat. 1289; June 30, 1959, Pub. L. 86-75, § 5, 72 Stat. 158; June 30, 1960, Pub. L. 86-564, title II, § 202(a)(2), 74 Stat. 290; June 30, 1961, Pub. L. 87-72, § 3(a)(2), 75 Stat. 193; June 28, 1962, Pub. L. 87-508, § 3(a)(2), 76 Stat. 114; June 29, 1963, Pub. L. 88-52, § 3(a)(2), 77 Stat. 72; June 30, 1964, Pub. L. 88-348, § 2(a)(2), 78 Stat. 237;

June 21, 1965, Pub. L. 89–44, title III, § 302, title VII, § 701(b)(2)(B), 79 Stat. 145, 156; Mar. 15, 1966, Pub. L. 89–368, title II, § 202(a), 80 Stat. 66; Apr. 12, 1968, Pub. L. 90–285, § 1(a)(3), 82 Stat. 92; June 28, 1968, Pub. L. 90–364, title I, § 105(b) (1), (2), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91–172, title VII, § 702(b) (1), (2), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91–614, title II, § 201(b)(1), (2), 84 Stat. 1843.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702 (b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981.

AMENDMENTS

1970—Subsec. (a)(2). Pub. L. 91–614, § 201(b)(1), substituted provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1973 is 10% of such amount, amounts paid pursuant to bills first rendered during 1973 is 9% of such amount, during 1974 is 8% of such amount, during 1975 is 7% of such amount, during 1976 is 6% of such amount, during 1977 is 5% of such amount, during 1978 is 4% of such amount, during 1979 is 3% of such amount, during 1980 is 2% of such amount, and during 1981 is 1% of such amount for provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1971 is 10% of such amount, amounts paid pursuant to bills first rendered during 1971 is 5% of such amount, during 1972 is 3% of such amount, and during 1973 is 1% of such amount.

Subsec. (b). Pub. L. 91–614, § 201(b)(2), substituted "January 1, 1982" for "January 1, 1974".

1969—Subsec. (a)(2). Pub. L. 91–172, § 702(b)(1), increased the rate of tax on amounts paid for for communication services from 5 to 10 percent during 1970, from 3 to 5 percent during 1971, from 1 to 3 percent during 1972, and imposed a 1 percent tax on amounts paid for communication services during 1973.

Subsec. (b). Pub. L. 91–172, § 702(b)(2), substituted "January 1, 1974" for "January 1, 1973".

1968—Subsec. (a)(2). Pub. L. 90–364, § 105(b)(1), extended from April 30, 1968, through the end of 1969 the period for the imposition of the 10 percent rate, thereby increasing the rate from 1 percent to 10 percent for the period May 1, 1968, through the end of 1968 and from 0 percent to 10 percent for 1969, and imposed a rate of 5 percent during 1970, a rate of 3 percent during 1971, and a rate of 1 percent during 1972.

Subsec. (a)(2). Pub. L. 90–285 substituted "April 30, 1968" and "May 1, 1968" for "March 31, 1968" and "April 1, 1968" respectively.

Subsec. (b). Pub. L. 90–364, § 105(b)(2), substituted "1973" for "1969".

Subsec. (c). Pub. L. 90–364, § 105(b)(2), extended provisions calling for treatment of bills not rendered before the end of a year for service rendered before November 1 of that year as having been first rendered on December 31 of that year so as to include years subsequent to 1968 and struck out special provision for the application of subsec. (a) in the case of communication services rendered before March 1, 1968, for which a bill was not rendered before May 1, 1968.

Subsec. (c). Pub. L. 90–285 substituted "March 1, 1968," for "February 1, 1968", "May 1, 1968" for "April 1, 1968", "April 30, 1968" for "March 31, 1968", and "February 29, 1968" for "January 31, 1968".

1966—Subsec. (a)(2). Pub. L. 89–368, § 202(a)(1), increased to 10 percent the schedule of rates for tax imposed for the period up to April 1, 1968, and authorized a reduction to 1 percent for the period after March 31, 1968, and before January 1, 1969.

Subsec. (c). Pub. L. 89–368, § 202(a)(2), conformed subsection to rate reduction schedule alterations by providing that, in the case of communications services rendered before February 1, 1968, for which a bill has not been rendered before April 1, 1968, the bill shall be treated as having been first rendered on March 31, 1968, and, in the case of services rendered after January 31, 1968, and before November 1, 1968, for which a bill has not been rendered before January 1, 1969, the bill shall be treated as having first been rendered on December 31, 1968.

1965—Subsec. (a). Pub. L. 89–44, § 701(b)(2)(B), substituted local telephone service, toll telephone service, and teletypewriter exchange service, for general telephone service, toll telephone service, telegraph service, teletypewriter exchange service, wire mileage service, and wire and equipment service as the taxed services and reduced the rate of tax to 3 percent during 1966, 2 percent during 1967, and 1 percent during 1968.

Subsec. (b). Pub. L. 89–44, § 302, added subsec. (b). Pub. L. 89–44, § 701(b)(2)(B), repealed former subsec. (b), as in effect June 30, 1965, effective on and after July 1, 1965. Such repealed provision had called for termination of the tax on general telephone service as of July 1, 1965.

Subsec. (c). Pub. L. 89–44, § 302, added subsec. (c).

1964—Subsec. (b)(2). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in two instances.

1963—Subsec. (b)(2). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in two instances.

1962—Subsec. (b)(2). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in two instances.

1961—Subsec. (b)(2). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in two instances.

1960—Subsec. (b)(2). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in two instances.

1959—Pub. L. 86–75 designated former provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85–859 redesignated "local telephone service" as "general telephone service", "long distance telephone service" as "toll telephone service" and "leased wire, teletypewriter or talking circuit special service" as "teletypewriter exchange service" and "wire mileage service".

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment of section by section 105 of Pub. L. 90–364 effective Apr. 30, 1968, see section 105(c) of Pub. L. 90–364, set out as a note under section 4061 of this title.

Amendment by Pub. L. 90–285 effective Mar. 31, 1968, see section 1(b) of Pub. L. 90–285, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 202(c) of Pub. L. 89–368 provided that: "The amendments made by subsections (a) [amending subsecs. (a)(2) and (c) of this section] and (b) [amending section 4253 of this title] shall apply to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965 [see Effective Date of 1965 Amendment note set out under this section], shall apply to the amounts paid for such services."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(b)(2)(A) of Pub. L. 89–44 provided that: "The amendments made by section 302 [to this section and sections 4252, 4253, and 4254 of this title] (relating

to communication services) shall apply to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after January 1, 1966, for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered shall apply to the amounts paid for such services."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 133 (b) of Pub. L. 85-859 provided that:

"(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [to this section and sections 4252-4254 of this title] shall apply with respect to amounts paid on or after the effective date prescribed in section (1) (c) of this Act for ervices rendered on or after such date.

"(2) The amendment made by subsection (a) [to this section and sections 4252-4254 of this title] shall not apply with respect to amounts paid pursuant to bills rendered before the effective date prescribed in section 1 (c) of this Act. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1954 in effect at the time such services were rendered shall apply to the amounts paid for such services."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4253, 4254, 4292, 4294, 6415 of this title.

§ 4252. Definitions.

(a) Local telephone service.

For purposes of this subchapter, the term "local telephone service" means—

(1) the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and

(2) any facility or service provided in connection with a service described in paragraph (1).

The term "local telephone service" does not include any service which is a "toll telephone service" or a "private communication service" as defined in subsections (b) and (d).

(b) Toll telephone service.

For purposes of this subchapter, the term "toll telephone service" means—

(1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States, and

(2) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

(c) Teletypewriter exchange service.

For purposes of this subchapter, the term "teletypewriter exchange service" means the access from a teletypewriter or other data station to the teletypewriter exchange system of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter or other data stations constituting a part of the same teletypewriter exchange system, to which the subscriber is entitled upon payment of a charge or charges (whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or in some other manner). The term "teletypewriter exchange service" does not include any service which is "local telephone service" as defined in subsection (a).

(d) Private communication service.

For purposes of this subchapter, the term "private communication service" means—

(1) the communication service furnished to a subscriber which entitles the subscriber—

(A) to exclusive or priority use of any communication channel or groups of channels, or

(B) to the use of an intercommunication system for the subscriber's stations,

regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in subsection (a), (b), or (c),

(2) switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels or systems described in paragraph (1), and

(3) the channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system,

except that such term does not include any communication service unless a separate charge is made for such service. (Aug. 16, 1954, ch. 736, 68A Stat. 503; Sept. 2, 1958, Pub. L. 85-859, title I, § 133(a), 72 Stat. 1290; June 28, 1962, Pub. L. 87-508, § 4(a), 76 Stat. 115; June 21, 1965, Pub. L. 89-44, title III, § 302, 79 Stat. 145.)

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702 (b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-44 substituted definition of "local telephone service" for definition of "general telephone service".

Subsec. (b). Pub. L. 89-44 replaced the definition of "toll telephone service" as telephone or radio telephone

message or conversation for which there is a toll charge paid within the United States with a definition which defined the term as a telephonic quality communication carrying a varying toll charge depending upon distance and elapsed transmission time and a service entitling the subscriber, upon payment of a periodic charge, to unlimited telephonic communication in an area outside the local telephone system area.

Subsec. (c). Pub. L. 89–44 substituted definition of "teletypewriter exchange service" for definition of "telegraph service".

Subsec. (d). Pub. L. 89–44 substituted definition of "private communication service" for definition of "teletypewriter exchange service".

Subsecs. (e), (f). Pub. L. 89–44 eliminated subsecs. (e), (f), which defined wire mileage service and wire and equipment service.

1962—Subsec. (e) (1), (2). Pub. L. 87–508 limited wire mileage service to service not used in the conduct of a trade or business.

1958—Subsec. (a). Pub. L. 85–859 substituted the definition of "general telephone service" for provisions which defined "local telephone service" as any telephone service not taxable as long distance telephone service; leased wire; teletypewriter or talking circuit special service; or wire and equipment service, and provided that amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service, and that amounts paid for services and facilities which are exempted from other communication taxes by section 4253(b) should not be deemed to be within the definition of local telephone service.

Subsec. (b). Pub. L. 85–859 substituted "toll telephone service" for "long distance telephone service" and eliminated provisions which defined "long distance telephone service" as a telephone or radio telephone message or conversation for which the toll charge is more than 24 cents.

Subsec. (c). Pub. L. 85–859 substituted "For purposes of this subchapter, the term 'telegraph service' means a telegram" for "As used in section 4251 the term 'telegraph service' means a telegraph".

Subsec. (d). Pub. L. 85–859 substituted provisions defining "teletypewriter exchange service" for provisions which defined "leased wire, teletypewriter or talking circuit special service."

Subsec. (e). Pub. L. 85–859 substituted provisions defining "wire mileage service" for provisions which defined "wire and equipment service" which are now covered by subsec. (f) of this section.

Subsec. (f). Pub L. 85–859 added subsec. (f). Similar provisions were formerly contained in subsec. (e) of this section.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87–508 provided that: "The amendments made by subsections (a) and (b) [amending subsec. (e) (1), (2) of this section and adding section 4253(j) of this title] shall apply with respect to services furnished on or after January 1, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133 (b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

CROSS REFERENCES

Cases where persons receiving payment must collect tax, see section 4291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4253 of this title.

§ 4253. Exemptions.

(a) Certain coin-operated service.

Service paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by section 4251 with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(b) News services.

No tax shall be imposed under section 4251, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

(c) International, etc., organizations.

No tax shall be imposed under section 4251 on any payment received for services furnished to an international organization, or to the American National Red Cross.

(d) Servicemen in combat zone.

No tax shall be imposed under section 4251 on any payment received for any toll telephone service which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary or his delegate may by regulations prescribe, is furnished to the person receiving such payment.

(e) Items otherwise taxed.

Only one payment of tax under section 4251 shall be required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing such service.

(f) Common carriers and communications companies.

No tax shall be imposed under section 4251 on the amount paid for any toll telephone service described in section 4252(b)(2) to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

(g) Installation charges.

No tax shall be imposed under section 4251 on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(h) Nonprofit hospitals.

No tax shall be imposed under section 4251 on any amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this

subsection, the term "nonprofit hospital" means a hospital referred to in section 170(b)(1)(A)(iii) which is exempt from income tax under section 501(a). (Aug. 16, 1954, ch. 736, 68A Stat. 504; Sept. 2, 1958, Pub. L. 85–859, title I, § 133(a), 72 Stat. 1290; Sept. 21, 1959, Pub. L. 86–344, § 4(a), 73 Stat. 619; June 28, 1962, Pub. L. 87–508, § 4(b), 76 Stat. 115; June 21, 1965, Pub. L. 89–44, title III, § 302, 79 Stat. 146; Mar. 15, 1966, Pub. L. 89–368, title II, § 202(b), 80 Stat. 66; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(27), 83 Stat. 529.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981.

AMENDMENTS

1969—Subsec. (h). Pub. L. 91–172 substituted "section 170(b)(1)(A)(iii)" for "section 503(b)(5)".

1966—Subsec. (h). Pub. L. 89–368 added subsec. (h).

1965—Subsec. (a). Pub. L. 89–44 substituted "with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents", for "with respect to general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents".

Subsec. (b). Pub. L. 89–44 substituted "local telephone service" for "general telephone service" and "such service" for "such services".

Subsec. (c). Pub. L. 89–44 substituted "International, etc., organizations" for "Certain organizations" in the subsec. heading.

Subsec. (d). Pub. L. 89–44 re-enacted subsec. (d) without change.

Subsec. (e). Pub. L. 89–44 substituted "any service" for "toll telephone service, telegraph service, or teletypewriter exchange service".

Subsec. (f). Pub. L. 89–44 substituted amounts paid for any toll telephone service for amounts paid for wire mileage service, wire and equipment service, and use of any telephone or radiotelephone line or channel which constitutes general telephone service if such line or channel connects stations between any two of which there would otherwise be a toll charge.

Subsec. (g). Pub. L. 89–44 re-enacted subsec. (g) without change.

Subsecs. (h)—(j). Pub. L. 89–44 deleted subsecs. (h)—(j), which related to terminal facilities in case of wire mileage service and to certain interior and private communications services.

1962—Subsec. (j). Pub. L. 87–508 added subsec. (j).

1959—Subsec. (f). Pub. L. 86–344 substituted "Common carriers and communications companies" for "Special wire service in company business" in the catchline, incorporated existing provisions in the opening and closing statements and par. (1) and added par. (2).

1958—Subsec. (a). Pub. L. 85–859 substituted "general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents" for "local telephone service".

Subsec. (b). Pub. L. 85–859 substituted "general telephone service, on any payment received from any person for services used" for "local telephone service, upon any payment received from any person for services or facilities utilized".

Subsec. (c). Pub. L. 85–859 substituted "on any payment received for services furnished to an international organization, or to the American National Red Cross" for "upon any payment received for services or facilities furnished to an international organization, or any organization created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864".

Subsec. (d). Pub. L. 85–859 substituted "on any payment received for any toll telephone service" for "with respect to long distance telephone service upon any payment received for any telephone or radio telephone message".

Subsec. (e). Pub. L. 85–859 substituted "toll telephone service, telegraph service, or teletypewriter exchange service" for "long distance telephone service or telegraph service" and "in furnishing such service" for "in the transmission of such dispatch, message or conversation".

Subsec. (f). Pub. L. 85–859 substituted "any wire mileage service or wire and equipment service as is used in the conduct" for "the service described in sections 4252 (d) and (e) as is utilized in the conduct".

Subsecs. (g)—(i). Pub. L. 85–859 added subsecs. (g)—(i).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–368 applicable to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date and to amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered except with respect to such services as were rendered more than two months before such date and, as to services rendered more than 2 months before such date, direction that the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, be applied, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–508 applicable with respect to services furnished on or after Jan. 1, 1963, see section 4(c) of Pub. L. 87–508, set out as note under section 4252 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4(b) of Pub. L. 86–344 provided that:

"(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [to subsec. (f) of this section] shall apply with respect to amounts paid on or after January 1, 1959, for services rendered on or after such date.

"(2) The amendment made by subsection (a) [to subsec. (f) of this section] shall not apply with respect to amounts paid pursuant to bills rendered before January 1, 1959. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no bill was rendered before such date, such amendment shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1954 in effect at the time such services were rendered shall apply to the amounts paid for such services."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133 (b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

§ 4254. Computation of tax.

(a) General rule.

If a bill is rendered the taxpayer for local telephone service or toll telephone service—

(1) the amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that

(2) if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then (A) the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and (B) the tax on the remaining items not included in any such group shall be based on the charge for each item separately.

(b) Where payment is made for toll telephone service in coin-operated telephones.

If the tax imposed by section 4251 with respect to toll telephone service is paid by inserting coins in coin-operated telephones, tax shall be computed to the nearest multiple of 5 cents, except that, where the tax is midway between multiples of 5 cents, the next higher multiple shall apply. (Aug. 16, 1954, ch. 736, 68A Stat. 504; Sept. 2, 1958, Pub. L. 85–859, title I, § 133(a), 72 Stat. 1291; June 21, 1965, Pub. L. 89–44, title III, § 302, 79 Stat. 147.)

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90–364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, § 702 (b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44 substituted "local telephone service or toll telephone service" for "general telephone service, toll telephone service, or telegraph service".

Subsec. (b). Pub. L. 89–44 substituted "toll telephone service" for "toll telephone service or telegraph service" in catchline and text.

1958—Subsec. (a). Pub. L. 85–859 provided that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax with respect to each group shall be based shall be the sum of all items within that group, and the tax on remaining items not included in any such group shall be based on the charge of each item separately.

Subsec. (b). Pub. L. 85–859 substituted "toll telephone service" for "long distance telephone service".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for service rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701 (b)(2) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133 (b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

Subchapter C.—Transportation by Air

Part
I. Persons.
II. Property.
III. Special provisions relating to taxes on transportation by air.

PART I.—PERSONS

Sec.
4261. Imposition of tax.
4262. Definition of taxable transportation.
4263. Special rules.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 205(c)(4), May 21, 1970, 84 Stat. 242, substituted "Transportation by Air" for "Transportation of Persons by Air" in the subchapter heading, inserted Part I to III headings in the subchapter analysis, inserted "PART I—PERSONS" as analysis heading preceding section 4261, deleted item 4263, and redesignated item 4264 as 4263 in the analysis.

1962—Pub. L. 87–508, § 5(b), June 28, 1962, 76 Stat. 115, substituted "Transportation of Persons by Air" for "Transportation of Persons" in heading of subchapter.

1958—Pub. L. 85–475, § 4(b)(2), June 30, 1958, 72 Stat. 260, in the heading of subchapter substituted "Transportation of Persons" for "Transportation", and struck out Parts I—III, which were included in subchapter C.

1956—Act July 25, 1956, ch. 725, § 5, 70 Stat. 646, redesignated item 4262 as 4263, and added items 4262 and 4264.

§ 4261. Imposition of tax.

(a) In general.

There is hereby imposed upon the amount paid for taxable transportation (as defined in section 4262) of any person which begins after June 30, 1970, a tax equal to 8 percent of the amount so paid. In the case of amounts paid outside of the United States for taxable transportation, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States.

(b) Seats, berths, etc.

There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation which begins after June 30, 1970, and with respect to which a tax is imposed by subsection (a), a tax equal to 8 percent of the amount so paid.

(c) Use of international travel facilities.

There is hereby imposed a tax of $3 upon any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins in the United States and begins after June 30, 1970. This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(d) By whom paid.

Except as provided in section 4263 (a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

(e) Reduction, etc., of rates.

Effective with respect to transportation beginning after June 30, 1980—

(1) the rate of the taxes imposed by subsections (a) and (b) shall be 5 percent, and

(2) the tax imposed by subsection (c) shall not apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 506; July 25, 1956, ch. 725, §§ 1, 4(b), 70 Stat. 644, 646; June 30, 1959, Pub. L. 86–75, § 4, 73 Stat. 158; June 30, 1960, Pub. L. 86–564, title II, § 202(a)(3), 74 Stat. 290; June 30, 1961, Pub. L. 87–72, § 3(a)(3), 75 Stat. 193; June 28, 1962, Pub. L. 87–508, § 5(b), 76 Stat. 115; June 29, 1963, Pub. L. 88–52, § 3(a)(3), 77 Stat. 72; June 30, 1964, Pub. L. 88–348, § 2(a)(3), 78 Stat. 237; June 21, 1965, Pub. L. 89–44, title III, § 303(a), 79 Stat. 148, May 21, 1970, Pub. L. 91–258, title II, § 203(a), 84 Stat. 238.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–258 consolidated former provisions of subsecs. (a) and (b) for imposition of tax on amounts paid within and outside the United States, substituting therein an 8 percent rate commencing after June 30, 1970, for prior 5 percent rate commencing after Nov. 15, 1962.

Subsec. (b). Pub. L. 91–258 redesignated former subsec. (c) as (b), substituting therein an 8 percent rate in connection with transportation which begins after June 30, 1970, and with respect to which a tax is imposed by subsec. (a) for prior 5 percent rate in connection with transportation which began after Nov. 15, 1962, and with respect to which a tax had been imposed by former provisions of subsecs. (a) and (b). Former subsec. (b) provisions for imposition of tax on amounts paid outside the United States are now incorporated in subsec. (a).

Subsec. (c). Pub. L. 91–258 added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 91–258 substituted "section 4263 (a)" for "section 4264".

Subsec. (e). Pub. L. 91–258 added subsec. (e).

1965—Pub. L. 89–44 struck out "November 15, 1962, and before July 1, 1965" wherever appearing and inserted in lieu thereof "November 15, 1962".

1964—Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" wherever appearing.

1963—Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" wherever appearing.

1962—Subsecs. (a), (b). Pub. L. 87–508, § 5(b), eliminated the imposition of tax on transportation of persons by rail, motor vehicle, or water and substituted "tax equal to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963" for "tax equal to 10 percent of the amount so paid for transportation which begins before November 16, 1962."

Pub. L. 87–508, § 5(a), substituted provisions imposing a tax equal to 10 percent of the amount paid for transportation which begins before Nov. 16, 1962, for provisions imposing a tax equal to 10 percent of the amount before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

Subsec. (c). Pub. L. 87–508, § 5(b), substituted "tax equivalent to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963" for "tax equivalent to 10 percent of the amount so paid in connection with transportation which begins before November 16, 1962."

Pub. L. 87–508, § 5(a), substituted provision imposing a tax equivalent to 10 percent of the amount paid in connection with transportation which begins before Nov. 16, 1962 for provision imposing a tax equivalent to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

1961—Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961", wherever appearing.

1960—Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" wherever appearing.

1959—Pub. L. 86–75 reduced the tax on transportation of persons from ten to five percent effective July 1, 1960.

1956—Subsec. (a). Act July 25, 1956, § 1, substituted "taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air a tax" for "the transportation of persons by rail, motor vehicle, water, or air within or without the United States a tax".

Subsec. (b). Act July 25, 1956, § 1, substituted "taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air, but only if such transportation begins and ends in the United States" for "transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States".

Subsec. (d). Act July 25, 1956, § 4(b), substituted "Except as provided in section 4264, the" for "The".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(b)(3) of Pub. L. 89–44 provided that: "The amendments made by section 303 [to this section] shall apply with respect to amounts paid for transportation, and amounts paid for accommodations in connection with transportation, beginning on or after July 1, 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(b) of Pub. L. 87–508 provided in part that the amendment of this subchapter by section 5(b) shall be effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 6 of act July 25, 1956, provided that: "The amendments made by this Act [to sections 4261 (a), (b), (d), 4262—4264, 4291, and 6421 (d) (2) of this title] shall apply to amounts paid on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act [July 25, 1956] for transportation commencing on or after such first day."

CROSS REFERENCES

Cases where persons receiving payment must collect tax, see section 4291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4263, 6415, 7275 of this title.

§ 4262. Definition of taxable transportation.

(a) Taxable transportation; in general.

For purposes of this part, except as provided in subsection (b), the term "taxable transportation" means—

(1) transportation by air which begins in the United States or in the 225-mile zone and ends in the United States or in the 225-mile zone; and

(2) in the case of transportation by air other than transportation described in paragraph (1), that portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3)).

(b) Exclusion of certain travel.

For purposes of this part, the term "taxable transportation" does not include that portion of any transportation by air which meets all 4 of the following requirements:

(1) such portion is outside the United States;

(2) neither such portion nor any segment thereof is directly or indirectly—

(A) between (i) a point where the route of the transportation leaves or enters the continental United States, or (ii) a port or station in the 225-mile zone, and

(B) a port or station in the 225-mile zone;

(3) such portion—

(A) begins at either (i) the point where the route of the transportation leaves the United States, or (ii) a port or station in the 225-mile zone, and

(B) ends at either (i) the point where the route of the transportation enters the United States, or (ii) a port or station in the 225-mile zone; and

(4) a direct line from the point (or the port or station) specified in paragraph (3)(A), to the point (or the port or station) specified in paragraph (3)(B), passes through or over a point which is not within 225 miles of the United States.

(c) Definitions.

For purposes of this section—

(1) Continental United States.

The term "continental United States" means the District of Columbia and the States other than Alaska and Hawaii.

(2) 225-mile zone.

The term "225-mile zone" means that portion of Canada and Mexico which is not more than 225 miles from the nearest point in the continental United States.

(3) Uninterrupted international air transportation.

The term "uninterrupted international air transportation" means any transportation by air which is not transportation described in subsection (a)(1) and in which—

(A) the scheduled interval between (i) the beginning or end of the portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States and (ii) the end or beginning of the other portion of such transportation is not more than 6 hours, and

(B) the scheduled interval between the beginning or end and the end or beginning of any two segments of the portion of such transportation referred to in subparagraph (A)(i) is not more than 6 hours.

For purposes of this paragraph, in the case of personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform at their own expense when on official leave, furlough, or pass, the scheduled interval described in subparagraph (A) shall be deemed to be not more than 6 hours if a ticket for the subsequent portion of such transportation is purchased within 6 hours after the end of the earlier portion of such transportation and the purchaser accepts and utilizes the first accommodations actually available to him for such subsequent portion.

(d) Transportation.

For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service. (Added July 25, 1956, ch. 725, § 3, 70 Stat. 644, and amended June 25, 1959, Pub. L. 86-70, § 22(b), 73 Stat. 146; July 12, 1960, Pub. L. 86-624, § 18(a), 74 Stat. 416; June 28, 1962, Pub. L. 87-508, § 5(b), 76 Stat. 116; June 21, 1965, Pub. L. 89-44, title VIII, § 803(a), 79 Stat. 160; May 21, 1970, Pub. L. 91-258, title II, § 203(b), 84 Stat. 238.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-258, § 203(b)(1) to (3), substituted "part" for "subchapter" in the introductory text, "transportation by air" for "transportation" in par. (1), and "in the case of transportation by air" for "in the case of transportation" in par. (2), respectively.

Subsec. (b). Pub. L. 91-258, § 203(b)(1) and (4), substituted "part" for "subchapter' 'and "transportation by air which" for "transportation which", in the introductory text, respectively.

Subsec. (d). Pub. L. 91-258, § 203(b)(5), added subsec. (d).

1965—Subsec. (c)(4). Pub. L. 89-44 added the sentence relating to personnel of the Armed Forces traveling in uniform at their own expense following subpar. (B).

1962—Subsec. (a). Pub. L. 87-508 substituted in the introductory phrase "subchapter" for "part" and added to par. (2) ", but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3))."

Subsec. (b). Pub. L. 87-508 substituted in the introductory phrase "subchapter" for "part."

Subsec. (c). Pub. L. 87-508 added par. (3).

1960—Subsec. (c)(1). Pub. L. 86-624 inserted words "and Hawaii" following "Alaska."

1959—Subsec. (c)(1). Pub. L. 86-70 substituted "the District of Columbia and the States other than Alaska" for "the existing 48 States and the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 803(b) of Pub. L. 89-44 provided that: "The amendment made by subsection (a) [to subsec. (c) of this section] shall apply with respect to amounts paid for transportation beginning on or after July 1, 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-508, § 5(b), effective with respect to transportation beginning after Nov. 15, 1962, see note set out under section 4261 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86-624 effective on August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 2202 of this title.

EFFECTIVE DATE

Section applicable to amounts paid on or after the first day of the first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4263, 7275 of this title.

§ 4263. Special rules.

(a) Payments made outside the United States for prepaid orders.

If the payment upon which tax is imposed by section 4261 is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax.

(b) Tax deducted upon refunds.

Every person who refunds any amount with respect to a ticket or order which was purchased without payment of the tax imposed by section 4261 shall deduct from the amount refundable, to the extent available, any tax due under such section as a result of the use of a portion of the transportation purchased in connection with such ticket or order, and shall report to the Secretary or his delegate the amount of any such tax remaining uncollected.

(c) Payment of tax.

Where any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, under regulations prescribed by the Secretary or his delegate, to the extent that such tax is not collected under any other provision of this subchapter—

(1) such tax shall be paid by the person paying for the transportation or by the person using the transportation;

(2) such tax shall be paid within such time as the Secretary or his delegate shall prescribe by regulations after whichever of the following first occurs:

(A) the rights to the transportation expire; or

(B) the time when the transportation becomes subject to tax; and

(3) payment of such tax shall be made to the Secretary or his delegate, to the person to whom the payment for transportation was made, or, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of such transportation.

(d) Application of tax.

The tax imposed by section 4261 shall apply to any amount paid within the United States for transportation of any person by air unless the taxpayer establishes, pursuant to regulations prescribed by the Secretary or his delegate, at the time of payment for the transportation, that the transportation is not transportation in respect of which tax is imposed by section 4261.

(e) Round trips.

In applying this subchapter to a round trip, such round trip shall be considered to consist of transportation from the point of departure to the destination, and of separate transportation thereafter.

(f) Transportation outside the northern portion of the Western Hemisphere.

In applying this subchapter to transportation any part of which is outside the northern portion of the Western Hemisphere, if the route of such transportation leaves and reenters the northern portion of the Western Hemisphere, such transportation shall be considered to consist of transportation to a point outside such northern portion, and of separate transportation thereafter. For purposes of this subsection, the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any country of South America. (Added July 25, 1956, ch. 725, § 4(a), 70 Stat. 645, § 4263, formerly § 4264, amended June 28, 1962, Pub. L. 87-508, § 5(b), 76 Stat. 117, renumbered May 21, 1970, Pub. L. 91-258, title II, § 205(c)(2), 84 Stat. 242.)

CODIFICATION

A prior section 4263, acts Aug. 16, 1954, ch. 736, 68A Stat. 506, § 4263, formerly § 4262, renumbered and amended July 25, 1956, ch. 725, § 2, 70 Stat. 644; Aug. 7, 1956, ch. 1024, § 1, 70 Stat. 1077; June 29, 1957, Pub. L. 85-74, 71 Stat. 243; Sept. 2, 1958, Pub. L. 85-859, Title I, § 134, 72 Stat. 1292; June 28, 1962, Pub. L. 87-508, § 5(b), 76 Stat. 117, which provided for exemptions, subsecs. (a) to (d) relating to commutation travel, etc., certain organizations; members of the Armed Forces, and small aircraft on nonestablished lines, respectively, was repealed by Pub. L. 91-258, title II, § 205(c)(1), May 21, 1970, 84 Stat. 242, effective on July 1, 1970, as provided in section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

AMENDMENTS

1962—Subsec. (c)(3). Pub. L. 87-508 provided for payment of tax, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of the transportation.

Subsec. (d). Pub. L. 87-508 inserted "by air" following "transportation of any person."

Subsec. (e). Pub. L. 87-508 substituted "subchapter" for "part."

Subsec. (f). Pub. L. 87-508 substituted "subchapter" for "part", eliminated par. (1) designation for provision respecting transportation outside the northern portion of the Western Hemisphere and par. (2) prohibiting consideration as a stop at a port within the United States a stop at an intermediate port at which vessel is not authorized to discharge and take on passengers.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-508, § 5(b), effective with respect to transportation beginning after Nov. 15, 1962, see note set out under section 4261 of this title.

EFFECTIVE DATE

Section applicable to amounts paid on or after the first day of the first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4291 of this title.

PART II.—PROPERTY

Sec.
4271. Imposition of tax.
4272. Definition of taxable transportation, etc.

AMENDMENTS

1970—Pub. L. 91-258, title II, § 204, May 21, 1970, 84 Stat. 239, added "Part II—Property" and items 4271 and 4272.

§ 4271. Imposition of tax.

(a) In general.

There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property which begins after June 30, 1970, a tax equal to 5 percent of the amount so paid for such transportation. The tax imposed by this subsection shall

apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) By whom paid.

(1) In general.

Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

(2) Payments made outside the United States.

If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

(c) Determination of amounts paid in certain cases.

For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

(d) Termination.

Effective with respect to transportation beginning after June 30, 1980, the tax imposed by subsection (a) shall not apply. (Added Pub. L. 91–258, title II, § 204, May 21, 1970, 84 Stat. 239.)

CODIFICATION

A prior section 4271, Act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, which related to tax for the transportation of property, was repealed by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as Effective Date of 1970 Amendment note under section 4041 of this title.

§ 4272. Definition of taxable transportation, etc.

(a) In general.

For purposes of this part, except as provided in subsection (b), the term "taxable transportation" means transportation by air which begins and ends in the United States.

(b) Exceptions.

For purposes of this part, the term "taxable transportation" does not include—

(1) that portion of any transportation which meets the requirements of paragraphs (1), (2), (3), and (4) of section 4262(b), or

(2) under regulations prescribed by the Secretary or his delegate, transportation of property in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(c) Excess baggage of passengers.

For purposes of this part, the term "property" does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

(d) Transportation.

For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service. (Added Pub. L. 91–258, title II, § 204, May 21, 1970, 84 Stat. 240.)

CODIFICATION

A prior section 4272, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to exemptions from tax for the transportation of property.

A prior section 4273, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to registration in connection with the tax for the transportation of property.

Such sections were repealed by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

PART III.—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR

Sec.
4281. Small aircraft on nonestablished lines.
4282. Transportation by air for other members of affiliated group.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241, added "Part III—Special Provisions Applicable to Taxes on Transportation by Air."

§ 4281. Small aircraft on nonestablished lines.

The taxes imposed by sections 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight (as defined in section 4492(b)) of 6,000 pounds or less, except when such aircraft is operated on an established line. (Added Pub. L. 91–258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241.)

CODIFICATION

A prior section 4281, act Aug. 16, 1954, ch. 736, 68A Stat. 508; 509, which related to tax on transportation of oil by pipeline, was repealed by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

§ 4282. Transportation by air for other members of affiliated group.

(a) General rule.

Under regulations prescribed by the Secretary or his delegate, if—

(1) one member of an affiliated group is the owner or lessee of an aircraft, and

(2) such aircraft is not available for hire by persons who are not members of such group.

no tax shall be imposed under section 4261 or 4271 upon any payment received by one member of the affiliated group from another member of such group for services furnished to such other member in connection with the use of such aircraft.

(b) Affiliated group.

For purposes of subsection (a), the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)). (Added Pub. L. 91–258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241.)

CODIFICATION

A prior section 4282, act Aug. 16, 1954, ch. 736, 68A Stat. 508, 509, defined "fair charge" in connection with the tax on transportation of oil by pipeline.

A prior section 4283, act Aug. 16, 1954, ch. 736, 68A Stat. 508, 509, related to exemption for oil transported within premises of a plant in connection with the tax on transportation of oil by pipeline.

Such sections were repealed by Pub. L. 85–475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

§§ 4286, 4287. Repealed. Pub. L. 89–44, title III, § 304, June 21, 1965, 79 Stat. 148.

Section 4286, act Aug. 16, 1954, ch. 736, 68A Stat. 510, imposed a tax equivalent to 10 percent of the amount collected for the use of safety deposit boxes.

Section 4287, act Aug. 16, 1954, ch. 736, 68A Stat. 510, defined safety deposit box.

EFFECTIVE DATE OF REPEAL

Section 701(b)(4) of Pub. L. 89–44 provided that: "The amendments made by section 304 [repealing these sections] shall apply with respect to use periods beginning on or after July 1, 1965."

Subchapter E.—Special Provisions Applicable to Services and Facilities Taxes

Sec.
4291. Cases where persons receiving payment must collect tax.
4292. State and local governmental exemption.
4293. Exemption for United States and possessions.
4294. Exemption for nonprofit educational organizations.
4295. Cross reference to general administrative provisions.

AMENDMENTS

1958—Pub. L. 85–859, title I, § 135(b), Sept. 2, 1958, 72 Stat. 1292, added item 4294 and redesignated former item 4294 as 4295.

§ 4291. Cases where persons receiving payment must collect tax.

Except as otherwise provided in section 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under this chapter shall collect the amount of the tax from the person making such payment. (Aug. 16, 1954, ch. 736, 68A Stat. 511; July 25, 1956, ch. 725, § 4(c), 70 Stat. 646; Sept. 2, 1958, Pub. L. 85–859, title I, § 131(g), 72 Stat. 1287; June 21, 1965, Pub. L. 89–44, title III, § 305(a), 79 Stat. 148; May 21 1970, Pub. L. 91–258, title II, § 205(c)(3), 84 Stat. 242.)

AMENDMENTS

1970—Pub. 91–258 substituted "section 4263(a)" for "section 4264(a)".

1965—Pub. L. 89–44 deleted reference to section 4231 and eliminated sentence referring to the tax imposed on life memberships by section 4241.

1958—Pub. L. 85–859 substituted "Except as otherwise provided in sections 3241 and 4262(a)" for "Except as provided in section 4264(a)".

1956—Act July 25, 1956, inserted "Except as provided in section 4264(a)", and eliminated provisions which related to collection of tax where payment specified in section 4261 was made outside the United States for a prepaid order, exchange order, or similar order.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(b)(1) of Pub. L. 89–44 provided that:

"(A) The amendments made by sections 301 and 305 [repealing sections 4231—4234 and 4241—4243 of this title and amending this section and section 6040 of this title] insofar as they relate to the taxes imposed by section 4231 of the Code, shall apply with respect to admissions, services, or uses after noon, December 31, 1965.

"(B) The amendments made by sections 301 and 305 [repealing sections 4231—4234 and 4241—4243 of this title and amending this section and section 6040 of this title] insofar as they relate to the taxes imposed by section 4241 of the Code, shall apply with respect to—

"(i) dues and membership fees attributable to periods beginning on or after January 1, 1966;

"(ii) initiation fees (other than initiation fees to which clause (iii) applies) and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966;

"(iii) initiation fees paid on or after July 1, 1965, to a new club or organization which first makes its facilities available to members on or after such date; and

"(iv) in the case of amounts described in section 4243(b) of the Code, 3-year periods beginning on or after January 1, 1966."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act July 25, 1956, applicable to amounts paid on or after the first day of the first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

§ 4292. State and local governmental exemption.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4251 upon any payment received for services or facilities furnished to the Government of any State, Territory of the United States, or any political subdivision of the foregoing or the District of Columbia. (Aug. 16, 1954, ch. 736, 68A Stat. 511; June 30, 1958, Pub. L. 85–475, § 4(b)(3), 72 Stat. 260; May 21, 1970, Pub. L. 91–258, title II, § 205(a)(2), 84 Stat. 241.)

AMENDMENTS

1970—Pub. L. 91–258 struck out "or 4261" following "section 4251".

1958—Pub. L. 85–475 eliminated provisions which related to taxation under section 4271 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258 set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 4 (c) of Pub. L. 85-462 provided that:

"(1) Except as provided in paragraph (2), the repeals and amendments made by subsections (a) and (b) [repealing sections 4271—4273 and 4281—4283 of this title, and amending this section and sections 6415, 6416 (a), (f), 7012 (1), (j), and 7272 (b) of this title] shall apply only with respect to amounts paid on or after August 1, 1958.

"(2) In the case of transportation with respect to which the second sentence of section 4281 of the Internal Revenue Code of 1954 applies, the repeals and amendments made by subsections (a) and (b) [repealing sections 4271—4273 and 4281—4283 of this title, and amending this section and sections 6415, 6416 (a), (f), 7012 (1), (j), and 7272 (b) of this title] shall apply only if the transportation begins on or after August 1, 1958."

§ 4293. Exemption for United States and possessions.

The Secretary may authorize exemption from the taxes imposed by chapters 31 and 32 and subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 511; May 21, 1970, Pub. L. 91-258, title II, § 205(a)(3), 84 Stat. 241.)

AMENDMENTS

1970—Pub. L. 91-258 substituted "subchapter B" for "subchapters B and C."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258 set out as note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4222 of this title.

§ 4294. Exemption for nonprofit educational organizations.

(a) Exemption.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization.

(b) Definition.

For purposes of subsection (a), the term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. (Added Pub. L. 85-859, title I, § 135(a), Sept. 2, 1958, 72 Stat. 1292, and amended Pub. L. 86-344, § 2(d), Sept. 21, 1959, 73 Stat. 618; Pub. L. 91-172, title I, § 101(j)(28), Dec. 30, 1969, 83 Stat. 529; May 21, 1970, Pub. L. 91-258, title II, § 205(a)(4), 84 Stat. 241.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-258 struck out "or 4261" following "section 4251".

1969—Subsec. (b). Pub. L. 91-172 substituted "section 170(b)(1)(A)(ii)" for "section 503(b)(2)".

1959—Subsec. (b). Pub. L. 86-344 included in the definition of "nonprofit educational organization" a school operated as an activity of certain organizations exempt from the income tax and having a regular situs, faculty, curriculum and student body.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (b) of this section by section 2(d) of Pub. L. 86-344 effective Jan. 1, 1959, see section 2(e) of Pub. L. 86-344, set out in part as a note under section 4057 of this title.

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

§ 4295. Cross reference to general administrative provisions.

See Subtitle F for administrative provisions of general application to the taxes imposed under this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 511, § 4295, formerly § 4294, renumbered Sept. 2, 1958, Pub. L. 85-859, title I, § 135(a), 72 Stat. 1292.)

Chapter 34.—DOCUMENTARY STAMP TAXES

Subchapter
C. Conveyances.
D. Policies issued by foreign insurers.
E. Miscellaneous provisions applicable to documentary stamp taxes.

AMENDMENTS

1965—Pub. L. 89-44, title IV, § 401(a), June 21, 1965, 79 Stat. 148, struck out the items relating to subchapters A and B.

§§ 4301 to 4305. Repealed. Pub. L. 89-44, title IV, § 401 (a), June 21, 1965, 79 Stat. 148.

Section 4301, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1293; Apr. 8, 1960, Pub. L. 86-416, § 1, 74 Stat. 36, imposed a tax, based upon the actual value of the certificates or shares, upon each original issue of shares or certificates of stock issued by a corporation.

Section 4302, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1293, made provision for a determination of tax in the case of recapitalization.

Section 4303, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1293 granted exemptions for common trust funds, pooled investment funds, and installment purchases of certain shares or certificates, and directed attention to section 4382 for other exemptions.

Section 4304, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1294, called for the affixing of the stamps representing the tax imposed by section 4301 upon the stock books or corresponding records of the corporation.

Section 4305, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1294, made cross-references to sections 4381 and 4384 and subtitle F.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89-44, set out as a note under section 4361 of this title.

§§ 4311 to 4315. Repealed. Pub. L. 89–44, title IV, § 401 (a), June 21, 1965, 79 Stat. 148.

Section 4311, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958. Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, imposed a tax on all certificates of indebtedness issued by a corporation.

Section 4312, acts Aug. 16, 1954, ch. 736, § 4312, formerly § 4313, 68A Stat. 514, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, provided that every renewal of any certificate of indebtedness should be taxed as a new issue.

Section 4313, acts Aug. 16, 1954, ch. 736, § 4313, formerly § 4314, 68A Stat. 514, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, provided for the method of determining the rate of taxation in the case of a bond conditioned for the repayment of money and given in a penal sum greater than the debt secured.

Section 4314, acts Aug. 16, 1954, ch. 736, § 4314, formerly § 4315, 68A Stat. 514, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, granted an exemption to instruments under the terms of which the obligee was required to make installment payments of not more than 20 percent annually, and made reference to section 4382 for other exemptions.

Section 4315, acts Aug. 16, 1954, ch. 736, § 4315, formerly § 4316, 68A Stat. 514, renumbered and amended Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1294, made cross references to sections 4381 and 4384 and subtitle F.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89–44, set out as a note under section 4361 of this title.

§§ 4321 to 4324. Repealed. Pub. L. 89–44, title IV, § 401 (a), June 21, 1965, 79 Stat. 148.

Section 4321, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1295; Sept. 21, 1959, Pub. L. 86–344, § 5(a), 73 Stat. 619, imposed a tax upon the sale or transfer of shares or certificates of stock or of rights to subscribe to receive such shares or certificates issued by a corporation.

Section 4322, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1295, granted exemptions in the case of sales by brokers or registered nominees and in the case of odd lot sales.

Section 4323, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296; Sept. 21, 1959, Pub. L. 86–344, § 5(b), 73 Stat. 619, called for the affixing of the stamps representing the tax upon the books of the corporation and the certification of the actual value of the shares transferred, and made reference to section 4352 in the case of transfers shown otherwise than by the books of the corporation.

Section 4324, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89–44, set out as a note under section 4361 of this title.

§§ 4331 to 4333. Repealed. Pub. L. 89–44, title IV, § 401 (a), June 21, 1965, 79 Stat. 148.

Section 4331, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, imposed a tax upon each sale or transfer of any certificate of indebtedness issued by a corporation.

Section 4332, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Jan. 28, 1956, ch. 19, 70 Stat. 9; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, granted exemptions in the case of transfers and sales by brokers and installment purchases of obligations and made reference to other exemptions listed in other sections.

Section 4333, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89–44, set out as a note under section 4361 of this title.

§§ 4341 to 4346. Repealed. Pub. L. 89–44, title IV, § 401 (a), June 21, 1965, 79 Stat. 148.

Section 4341, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1297, granted an exemption from the imposition of the tax under sections 4321 and 4331 in the case of transfers as collateral security and as security for performance.

Section 4342, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1297, granted exemptions in the case of delivery or transfer of instruments by a fiduciary to his nominee or between nominees or by a custodian.

Section 4343, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1297, provided that taxes imposed by sections 4321 and 4331 would not apply in specified cases involving decedents, minors, incompetents, financial institutions, bankrupts, successors, foreign governments and aliens, trustees, and survivors.

Section 4344, Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1298, made provision for an exemption from tax in the case of specified loan transactions, worthless stock and obligations, and transfers between certain revocable trusts.

Section 4345, acts Aug. 16, 1954, ch. 736, § 4345, formerly § 4344, 68A Stat. 518, renumbered and amended Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1298, required an exemption certificate setting forth the facts as prescribed by regulations.

Section 4346, acts Aug. 16, 1954, ch. 736, § 4346, formerly § 4345, 68A Stat. 518, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1298, made cross reference to other sections for additional exemptions.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89–44, set out as a note under section 4361 of this title.

§§ 4351 to 4354. Repealed. Pub. L. 89–44, title IV, § 401 (a), June 21, 1965, 79 Stat. 148.

Section 4351, acts Aug. 16, 1954, ch. 736, 68A Stat. 518; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299, defined registered nominee and sale or transfer.

Section 4352, acts Aug. 16, 1954, ch. 736, § 4352, formerly § 4353, 68A Stat. 519, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299, provided for the affixing of the stamps required either on the instrument itself or on the memorandum or bill of sale.

Section 4353, Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1299, made provision for the payment of tax through the national securities exchanges without the use of stamps.

Section 4354, acts Aug. 16, 1954, ch. 736, 68A Stat. 519; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299, made cross references to section 4384 and subtitle F for penalties and other general and administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89–44, set out as a note under section 4361 of this title.

Subchapter C.—Conveyances

Sec.
4361. Imposition of tax.
4362. Exemptions.
4363. Cross references.

§ 4361. Imposition of tax.

There is hereby imposed, on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or

persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100, a tax at the rate of 55 cents for each $500 or fractional part thereof. The tax imposed by this section shall not apply on or after January 1, 1968. (Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1299; June 21, 1965, Pub. L. 89–44, title IV, § 401(b), 79 Stat. 148.)

AMENDMENTS

1965—Pub. L. 89–44 added sentence which provided that the tax imposed by this section would not apply on or after January 1, 1968.

1958—Pub. L. 85–859 eliminated provisions which exempted deeds, instruments, or writings deposited in escrow before Apr. 1, 1932.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(c)(1) of Pub. L. 89–44 provided that: "The amendments made by section 401 [amending this section and repealing sections 4301—4305, 4311—4315, 4321—4324, 4331—4333, 4341—4346, 4351—4354 and 4381 of this title] (relating to documentary stamp taxes) shall apply on and after January 1, 1966."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

CROSS REFERENCES

Exemptions, see section 4382 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4362, 4382, 4383 of this title.

§ 4362. Exemptions.

(a) Security for debt.

The tax imposed by section 4361 shall not apply to any instrument or writing given to secure a debt.

(b) State and local government conveyances.

No State or Territory, or political subdivision thereof, or the District of Columbia, shall be liable for the tax imposed by section 4361 with respect to any deed, instrument, or writing to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

(c) Other exemptions.

For other exemptions, see section 4382.

(Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1300.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–859 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–859 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

§ 4363. Cross references.

For penalties and other general and administrative provisions applicable to this subchapter, see section 4384 and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1300.)

AMENDMENTS

1958—Pub. L. 85–859 substituted "section 4384" for "section 4383".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

Subchapter D.—Policies Issued by Foreign Insurers

Sec.
4371. Imposition of tax.
4372. Definitions.
4373. Exemptions.
4374. Payment of tax.
4375. Cross references.

AMENDMENTS

1965—Pub. L. 89–44, title VIII, § 804(a)(3), June 21, 1965, 79 Stat. 160, substituted "Payment of tax" for "Affixing of stamps" in item 4374.

§ 4371. Imposition of tax.

There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

(1) Casualty insurance and indemnity bonds.

Four cents on each dollar, or fractional part thereof, of the premium charged on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372 (d);

(2) Life insurance, sickness, and accident policies, and annuity contracts.

One cent on each dollar, or fractional part thereof, of the premium charged on the policy of life, sickness, or accident insurance, or annuity contract, unless the insurer is subject to tax under section 819;

(3) Reinsurance.

One cent on each dollar, or fractional part thereof, of the premium charged on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

If the tax imposed by this section is paid on the basis of a return under regulations prescribed under section 4374, the tax under paragraphs (1), (2), and (3) shall be computed on the premium paid in lieu of the premium charged. (Aug. 16, 1954, ch. 736, 68A Stat. 521; Mar. 13, 1956, ch. 83, § 5 (9), 70 Stat. 49; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1300; June 25, 1959, Pub. L. 86–69, § 3 (f)(3), 73 Stat. 140; June 21, 1965, Pub. L. 89–44, title VIII, § 804(b), 79 Stat. 160.)

AMENDMENTS

1965—Pub. L. 89–44 added the final sentence relating to the computation of tax on the premium paid in lieu of the premium charged.

1959—Pub. L. 86–69 substituted "section 819" for "section 816" in par. (2).

1958—Pub. L. 85–859 substituted "is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax" for "shall be imposed a tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer".

1956—Act Mar. 13, 1956, in par. (2) substituted the reference to section 816 for section 807.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable with respect to policies, bonds, and contracts with respect to which the tax imposed by this section is required to be paid on the basis of a return, see section 804(c) of Pub. L. 89–44, set out as a note under section 4374 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see note set out under section 821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4372, 4373, 4374 of this title.

§ 4372. Definitions.

(a) Foreign insurer or reinsurer.

For purposes of this subchapter, the term "foreign insurer or reinsurer" means an insurer or reinsurer who is a nonresident alien individual, a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond.

(b) Policy of casualty insurance.

For purposes of section 4371 (1), the term "policy of casualty insurance" means any policy (other than life) or other instrument by whatever name called whereby a contract of insurance is made, continued, or renewed.

(c) Indemnity bond.

For purposes of this subchapter, the term "indemnity bond" means any instrument by whatever name called whereby an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed. The term includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

(d) Insured.

For purposes of section 4371 (1), the term "insured" means—

(1) a domestic corporation or partnership, or an individual resident of the United States, against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

(2) a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, against, or with respect to hazards, risks, or liabilities within the United States.

(e) Policy of life, sickness, or accident insurance, or annuity contract.

For the purpose of section 4371 (2), the term "policy of life, sickness, or accident insurance, or annuity contract" means any policy or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed with respect to the life or hazards to the person of a citizen or resident of the United States.

(f) Policy of reinsurance.

For the purpose of section 4371 (3), the term "policy of reinsurance" means any policy or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371. (Aug. 16, 1954, ch. 736, 68A Stat. 521; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1300.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–859 inserted "against, or" preceding "with respect to" in cl. (2).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4371 of this title.

§ 4373. Exemptions.

The tax imposed by section 4371 shall not apply to—

(1) Domestic agent.

Any policy, indemnity bond, or annuity contract signed or countersigned by an officer or agent of the insurer in a State, Territory, or District of the United States within which such insurer is authorized to do business.

(2) Indemnity bond.

Any indemnity bond required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-saving certificate, warrant or check, issued by the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1301.)

AMENDMENTS

1958—Pub. L. 85–859 reenacted section without change.

§ 4374. Payment of tax.

Any person to or for whom or in whose name any policy, indemnity bond, or annuity contract referred to in section 4371 is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such instrument, shall affix the proper stamps to such instrument. Notwithstanding the preceding sentence, the Secretary or his delegate may, by regulations, provide that the tax imposed by section 4371 shall be paid on the basis of a return. (Aug. 16, 1954, ch. 736, 68A Stat. 522; Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1301;

June 21, 1965, Pub. L. 89–44, title VIII, § 804(a)(1), (2), 79 Stat. 160.)

AMENDMENTS

1965—Pub. L. 89–44 substituted "Payment of tax" for "Affixing of stamps" in the catchline, and added the sentence authorizing the Secretary or his delegate to provide by regulation for the payment on the basis of a return of the tax imposed by section 4371.

1958—Pub. L. 85–859 reenacted section without change.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 804(c) of Pub. L. 89–44 provided that: "The amendments made by subsection (a) [to this section] shall take effect on July 1, 1965. The amendments made by subsection (b) [to section 4371 of this title] shall apply with respect to policies, bonds, and contracts with respect to which the tax imposed by section 4371 of the Code is required to be paid on the basis of a return."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4371, 7270 of this title.

§ 4375. Cross references.

For penalties and other general and administrative provisions, see section 4384 and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1301.)

AMENDMENTS

1958—Pub. L. 85–859 substituted "section 4384" for "section 4383".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

Subchapter E.—Miscellaneous Provisions Applicable to Documentary Stamp Taxes

Sec.
4382. Exemptions.
4383. Certain changes in partnerships.
4384. Liability for tax.

AMENDMENTS

1965—Pub. L. 89–44, title IV, § 401(c), June 21, 1965, 79 Stat. 148, struck out the item relating to section 4381.

1958—Pub. L. 85–859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1301, added item 4383 and redesignated former item 4383 as 4384.

§ 4381. Repealed. Pub. L. 89–44, title IV, § 401(c), June 21, 1965, 79 Stat. 148.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 523, Sept. 2, 1958, Pub. L. 85–859, title I, § 141(a), 72 Stat. 1302, defined certificates of indebtedness, corporation, and shares or certificates of stock.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable on and after January 1, 1966, see section 701(c)(1) of Pub. L. 89–44, set out as a note under section 4361 of this title.

§ 4382. Exemptions.

(a) Governments; certain associations.

The taxes imposed by this chapter shall not apply to—

(1) Government and State obligations.

Any certificate of indebtedness, note, or other instrument, issued by the United States, or by any foreign Government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power.

(2) Domestic building and loan associations and mutual ditch or irrigation companies.

Shares or certificates of stock issued by domestic building and loan associations and cooperative banks, to the extent such shares or certificates represent deposits or withdrawable accounts; or shares or certificates of stock and certificates of indebtedness issued by mutual ditch or irrigation companies.

(3) Farmers', fruit growers', or cooperative associations.

Shares or certificates of stock and certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in section 521.

(b) Certain reorganizations, etc.

The taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 shall not apply to—

(1) Corporate and railroad reorganization.

The issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, to make effective any plan of reorganization or adjustment—

(A) confirmed under the Bankruptcy Act, as amended (11 U. S. C.),

(B) approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77 (m) of the Bankruptcy Act, as amended (11 U. S. C. 205 (m)),

(C) approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106 (3) of the Bankruptcy Act, as amended (11 U. S. C. 506), or

(D) whereby a mere change in identity, form, or place of organization is effected,

but only if the issuance, transfer, or exchange of securities, or the making, delivery, or filing of instruments of transfer or conveyances, occurs within 5 years from the date of such confirmation, approval, or change.

(2) Orders of the Securities and Exchange Commission.

The issuance, transfer, or exchange of securities, or making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083 (a); but only if—

(A) the order of the Securities and Exchange Commission in obedience to which such issuance, transfer, exchange, or conveyance is made recites that such issuance, transfer, exchange, or conveyance is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935 (15 U. S. C. 79k (b)),

(B) such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed, and

(C) such issuance, transfer, exchange, or conveyance is made in obedience to such order.

(Aug. 16, 1954, ch. 736, 68A Stat. 523; Sept. 2, 1958, Pub. L. 85–859, title I, § 141 (a), 72 Stat. 1302; Oct. 16, 1962, Pub. L. 87–834, § 6(e)(2), 76 Stat. 984.)

AMENDMENTS

1962—Subsec. (a)(2). Pub. L. 87–834 substituted "Shares or certificates of stock issued by domestic building and loan associations and cooperative banks, to the

extent such shares or certificates represent deposits or withdrawable accounts; or shares or certificates of stock and certificates of indebtedness issued by mutual ditch or irrigation companies" for "Shares or certificates of stock and certificates of indebtedness issued by domestic building and loan associations, savings and loan associations, cooperative banks, and homestead associations substantially all the business of which is confined to making loans to members, or by mutual ditch or irrigation companies."

1958—Subsec. (b). Pub. L. 85-859 made taxes inapplicable where a mere change in identity, form, or place of organization is effected.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 6(g)(4) of Pub. L. 87-834 provided that:

"Subsection (e) of this section [amending subsec. (a)(2) of this section and section 1464(h) of Title 12, Banks and Banking] shall become effective on January 1, 1963, except that—

"(A) in the case of the tax imposed by section 4251 of the Internal Revenue Code of 1954, such subsection shall apply only with respect to amounts paid pursuant to bills rendered after December 31, 1962; and

"(B) in the case of the tax imposed by section 4261 of such Code, such subsection shall apply only with respect to transportation beginning after December 31, 1962."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859, set out as a note under section 4001 of this title.

§ 4383. Certain changes in partnerships.

(a) Continuing partnerships.

In the case of any share, certificate, right, or realty held by a partnership, no tax shall be imposed under section 4321, 4331, or 4361 by reason of any transfer of an interest in a partnership or otherwise, if—

(1) such partnership (or another partnership) is considered as a continuing partnership (within the meaning of section 708), and

(2) such continuing partnership continues to hold the share, certificate, right, or realty concerned.

(b) Terminated partnerships.

If there is a termination of any partnership (within the meaning of section 708)—

(1) for purposes of this chapter, such partnership shall be treated—

(A) as having transferred all shares, certificates, and rights held by such partnership at the time of such termination; and

(B) as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination; but

(2) not more than one tax shall be imposed under section 4321, 4331, or 4361, as the case may be, by reason of such termination (and any transfer pursuant thereto) with respect to the shares, certificates, rights, or realty held by such partnership at the time of such termination.

(Added Pub. L. 85-859, title I, § 141 (a), Sept. 2, 1958, 72 Stat. 1303.)

EFFECTIVE DATE

Section effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859, set out as a note under section 4001 of this title.

DETERMINATION OF PARTNERSHIP AS CONTINUING OR TERMINATED PARTNERSHIP

Section 141 (b) of Pub. L. 85-859 provided that: "In applying section 4383 of the Internal Revenue Code of 1954 as amended by subsection (a) of this section [this section], the determination of whether a partnership is considered as a continuing or terminated partnership (within the meaning of section 708 of such Code) shall be made by taking into account only changes in the partnership occurring on or after the effective date specified in section 1(c) of this Act [set out as a note under section 4001 of this title]."

§ 4384. Liability for tax.

The taxes imposed by this chapter shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the taxes imposed by this chapter, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor. (Aug. 16, 1954, ch. 736, 68A Stat. 524, § 4384, formerly § 4383, renumbered and amended Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1303.)

AMENDMENTS

1958—Pub. L. 85-859 substituted "taxed imposed by this chapter shall" for "tax imposed by this chapter shall".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

Chapter 35.—TAXES ON WAGERING

Subchapter
A. Tax on wagers.
B. Occupational tax.
C. Miscellaneous provisions.

Subchapter A.—Tax on Wagers

Sec.
4401. Imposition of tax.
4402. Exemptions.
4403. Record requirements.
4404. Territorial extent.
4405. Cross references.

§ 4401. Imposition of tax.

(a) Wagers.

There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.

(b) Amount of wager.

In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax.

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him. (Aug. 16, 1954, ch. 736, 68A Stat. 525; Sept. 2, 1958, Pub. L. 85–859, title I, § 151 (a), 72 Stat. 1304.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–859 made all persons required to register under section 4412 of this title who receive wagers for or on behalf of another person without having registered under section 4412 of this title the name and place of residence of such other person liable for the tax on all such wagers received by them.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 151 (b) of Pub. L. 85–859 provided that: "The amendment made by subsection (a) [to subsec. (c) of this section] shall apply with respect to wagers received after the date of the enactment of this Act [September 2, 1958]."

CROSS REFERENCES

Imposition of occupational tax, see section 4411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4411 of this title.

§ 4402. Exemptions.

No tax shall be imposed by this subchapter—

(1) Parimutuels.

On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

(2) Coin-operated devices.

On any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 4461, or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462 (a) (2), if an occupational tax is imposed with respect to such device by section 4461, or

(3) State-conducted sweepstakes.

On any wager placed in a sweepstakes, wagering pool, or lottery—

(A) which is conducted by an agency of a State acting under authority of State law, and

(B) the ultimate winners in which are determined by the results of a horse race,

but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Sept. 2, 1958, Pub. L. 85–859, title I, § 152(b), 72 Stat. 1305; June 21, 1965, Pub. L. 89–44, title IV, § 405(a), title VIII, § 813(a), 79 Stat. 149, 170.)

AMENDMENTS

1965—Pub. L. 89–44, § 405(a), struck out "section 4462 (a) (2) (B)," and inserted in lieu thereof "section 4462 (a) (2)," in par. (2).

Pub. L. 89–44, § 813(a), added par. (3).

1958—Pub. L. 85–859 inserted provisions in cl. (2) exempting from the tax amounts paid to operate a device described in section 4462 (a) (2) (B), if an occupational tax is imposed with respect to such device by section 4461 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of par. (2) by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(c) (2) of Pub. L. 89–44, set out in part as a note under section 4461 of this title.

Section 813(b) of Pub. L. 89–44 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to wagers placed after March 10, 1964."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment of this section by Pub. L. 85–859, see section 152 (c) of Pub. L. 85–859, set out as a note under section 4462 of this title.

§ 4403. Record requirements.

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001 (a). (Aug. 16, 1954, ch. 736, 68A Stat. 525.)

§ 4404. Territorial extent.

The tax imposed by this subchapter shall apply only to wagers

(1) accepted in the United States, or

(2) placed by a person who is in the United States

(A) with a person who is a citizen or resident of the United States, or

(B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

§ 4405. Cross references.

For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 526.)

Subchapter B.—Occupational Tax

Sec.
4411. Imposition of tax.
4412. Registration.
4413. Certain provisions made applicable.
4414. Cross references.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6806 of this title.

§ 4411. Imposition of tax.

There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable. (Aug. 16, 1954, ch. 736, 68A Stat. 527.)

CROSS REFERENCES

General provisions relating to occupational taxes, see section 4901 et seq. of this title.

Posting occupational tax stamps, see section 6806 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4901, 4903, 4907 of this title.

§ 4412. Registration.

(a) Requirement.

Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Firm or company.

Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) Supplemental information.

In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 527.)

CROSS REFERENCES

Liability in case of death or change of location, see section 4905 of this title.

Penalty for failure to register, see section 7272 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4401 of this title.

§ 4413. Certain provisions made applicable.

Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provision of sections 4901 to 4907, inclusive, shall so extend or apply. (Aug. 16, 1954, ch. 736, 68A Stat. 527.)

§ 4414. Cross references.

For penalties and other general and administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

Subchapter C.—Miscellaneous Provisions

Sec.
4421. Definitions.
4422. Applicability of federal and state laws.
4423. Inspection of books.

§ 4421. Definitions.

For purposes of this chapter—

(1) Wager.

The term "wager" means—

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

(2) Lottery.

The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include—

(A) any game of a type in which usually

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and

(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4401 of this title.

§ 4422. Applicability of federal and state laws.

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes. (Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§ 4423. Inspection of books.

Notwithstanding section 7605 (b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 528.)

Chapter 36.—CERTAIN OTHER EXCISE TAXES

Subchapter
B. Occupational tax on coin-operated devices.
D. Tax on use of certain vehicles.
E. Tax on use of civil aircraft.

AMENDMENTS

1970—Pub. L. 91-258, title II, § 206(d)(1), May 21, 1970, 84 Stat. 246, added subchapter E heading.

1965—Pub. L. 89-44, title IV, §§ 402, 404, June 21, 1965, 79 Stat. 148, 149, struck out the items relating to subchapters A and C.

1956—Act June 29, 1956, ch. 462, title II, § 206(c), 70 Stat. 391 added item D.

§§ 4451 to 4457. Repealed. Pub. L. 89-44, title IV, § 402, June 21, 1965, 79 Stat. 148.

Section 4451, act Aug. 16, 1954, ch. 736, 68A Stat. 529, imposed a tax of 13 cents per pack upon playing cards.

Section 4452, act Aug. 16, 1954, ch. 736, 68A Stat. 529, defined as manufacturer every person who offered or exposed playing cards for sale and made such person subject to all duties, liabilities, and penalties relating to sale of domestic articles without proper stamps.

Section 4453, act Aug. 16, 1954, ch. 736, 68A Stat. 529, provided for an exemption in the case of playing cards removed for export or shipment to United States possessions.

Section 4454, act Aug. 16, 1954, ch. 736, 68A Stat 529, made the person who made, sold, removed, consigned, or

shipped playing cards, or the person for whose benefit the cards were made, removed, consigned, or shipped liable for the tax thereon.

Section 4455, act Aug. 16, 1954, ch. 736, 68A Stat. 529, provided for the required registration of all playing card manufacturers.

Section 4456, act Aug. 16, 1954, ch. 736, 68A Stat. 529, limited the sale of stamps to only those manufacturers who had registered and to importers required to affix the stamps, and made provision for the keeping of records of stamps and their denominations by the Secretary.

Section 4457, act Aug. 16, 1954, ch. 736, 68A Stat. 530, made cross references to subtitle F for penalties and other administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after June 22, 1965, see section 701(c)(2) of Pub. L. 89-44, set out in part under section 4905 of this title.

Subchapter B.—Occupational Tax on Coin-Operated Devices

Sec.
4461. Imposition of tax.
4462. Definition of coin-operated gaming device.
4463. Administrative provisions.

AMENDMENTS

1965—Pub. L. 89-44, title IV, § 403(c), June 21, 1965, 79 Stat. 149, struck out "amusement or" following "coin-operated" in item 4462.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6806 of this title.

§ 4461. Imposition of tax.

(a) In general.

There shall be imposed a special tax to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated gaming device (as defined in section 4462) at the following rates:

(1) $250 a year; and

(2) $250 a year for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device.

(b) Exception.

No tax shall be imposed on a device which is commonly known as a claw, crane, or digger machine if—

(1) the charge for each operation of such device is not more than 10 cents,

(2) such device never dispenses a prize other than merchandise of a maximum retail value of $1, and with respect to such device there is never a display or offer of any prize or merchandise other than merchandise dispensed by such machine,

(3) such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and

(4) such device is not operated other than in connection with and as part of carnivals or county or State fairs.

(Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 21, 1959, Pub. L. 86-344, § 6(a), 73 Stat. 620; June 21, 1965, Pub. L. 89-44, title IV, §403(a), 79 Stat. 148.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-44 substituted "gaming device (as defined in section 4462)" for "amusement or gaming device" following "coin-operated" in the material preceding par. (1).

Subsec. (a)(1). Pub. L. 89-44 substituted "$250 a year; and" for "$10 a year, in the case of a device defined in paragraph (1) of section 4462(a);".

Subsec. (a)(2). Pub. L. 89-44 substituted "$250 a year for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device." for "$250 a year, in the case of a device defined in paragraph (2) of section 4462(a); and".

Subsec. (a)(3). Pub. L. 89-44 eliminated subsec. (a)(3), which imposed a tax for additional devices.

Subsec. (b). Pub. L. 89-44 substituted "Exception" for "Reduced rate" as the subsec. heading and substituted "No tax shall be imposed on a device which is commonly known as a claw, crane, or digger machine if" for "In the case of a device which is defined in paragraph (2) of section 4462(a) and which is commonly known as a claw, crane, or digger machine, the tax imposed by subsection (a) shall be at the rate of $10 a year (in lieu of $250 a year) if" as the material preceding par. (1).

1959—Pub. L. 86-344 designated former provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(c)(2) of Pub. L. 89-44 provided in part that: "The amendments made by sections 403 [to subsecs. (a) and (b) of this section and section 4462 of this title] (relating to occupational tax on coin-operated devices) and 404 [repealing sections 4471-4474] (relating to occupational tax on bowling alleys, billiard and pool tables), and by subsections (a) [to section 4402(2) of this title], (b) [to section 4901(a) of this title] and (d) [to section 4914(a)(2) of this title] of section 405 (relating to technical and conforming changes) shall apply on and after July 1, 1965."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 6(b) of Pub. L. 86-344 provided that: "The amendment made by subsection (a) [to this section] shall apply with respect to periods after June 30, 1960."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4402, 4901, 6806, 7326 of this title.

§ 4462. Definition of coin-operated gaming device.

(a) In general.

For purposes of this subchapter, the term "coin-operated gaming device" means any machine which is—

(1) a so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive, cash, premiums, merchandise, or tokens, or

(2) a machine which is similar to machines described in paragraph (1) and is operated without the insertion of a coin, token, or similar object.

(b) Exclusions.

The term "coin-operated gaming device" does not include—

(1) a bona fide vending or amusement machine in which gaming features are not incorporated; or

(2) a vending machine operated by means of the insertion of a one cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens.

(Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 2, 1958, Pub. L. 85-859, title I, § 152(a), 72 Stat. 1304;

June 21, 1965, Pub. L. 89–44, title IV, § 403(b), 79 Stat. 149.)

AMENDMENTS

1965—Pub. L. 89–44 removed coin operated amusement devices from the section heading and amended the section to define only coin operated gaming devices, including slot machines but excluding bona fide vending or amusement machines and penny vending devices dispensing merchandise prizes worth 5 cents or less.

1958—Pub. L. 85–859 included within the definition of "coin-operated amusement or gaming device" machines and so-called "slot" machines which are operated without the insertion of a coin, token, or similar object.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as a note under section 4461 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 152 (c) of Pub. L. 85–859 provided that: "The amendments made by subsections (a) and (b) [to this section and section 4402 (2) of this title] shall take effect on the effective date specified in section 1 (c) of this Act [set out as a note under section 4001 of this title]. In the case of the year beginning July 1, 1958, where the trade or business on which the tax is imposed under section 4461 of the Internal Revenue Code of 1954 was commenced before such effective date, the tax imposed for such year solely by reason of the amendment made by subsection (a)—

"(1) shall be the amount reckoned proportionately from such effective date through June 30, 1959, and

"(2) shall be due on, and payable on or before, the last day of the month the first day of which is such effective date."

CROSS REFERENCES

Payment of tax, see section 4901 of this title.

Posting occupational tax stamps, see section 6806 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4402, 4461, 7326 of this title.

§ 4463. Administrative provisions.

(a) Trade or business.

An operator of a place or premises who maintains for use or permits the use of any coin-operated device shall be considered, for purposes of chapter 40, to be engaged in a trade or business in respect of each such device.

(b) Cross reference.

For penalties and other administrative provisions applicable to this subchapter, see chapter 40 and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 531.)

§§ 4471 to 4474. Repealed. Pub. L. 89–44, title IV, § 404, June 21, 1965, 79 Stat. 149.

Section 4471, act Aug. 16, 1954, ch. 736, 68A Stat. 532, imposed a $20 annual tax upon bowling alleys, billiard tables, and pool tables to be paid by operators of bowling alleys, billiard rooms, and pool rooms.

Section 4472, act Aug. 16, 1954, ch. 736, 68A Stat. 532, defined bowling alley, billiard room, and pool room.

Section 4473, acts Aug. 16, 1954, ch. 736, 68A Stat. 532; Sept. 2, 1958, Pub. L. 85–859, Title I, § 153(a), 72 Stat. 1305, granted exemptions for hospitals, the armed forces, and certain non-profit and governmental organizations.

Section 4474, act Aug. 16, 1954, ch. 736, 68A Stat. 532, made cross references to chapter 40 and subtitle F for penalties and administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part under section 4461 of this title.

Subchapter D.—Tax on Use of Certain Vehicles

Sec.
4481. Imposition of tax.
4482. Definitions.
4483. Exemptions.
4484. Cross reference.

AMENDMENTS

1956—Subchapter D added by act June 29, 1956, ch. 462, title II, § 206 (a), 70 Stat. 389.

§ 4481. Imposition of tax.

(a) Imposition of tax.

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of more than 26,000 pounds, at the rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof. In the case of the taxable period beginning on July 1, 1977, and ending on September 30, 1977, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof.

(b) By whom paid.

The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

(c) Proration of tax.

If in any taxable period the first use of the highway motor vehicle is after the first month in such period, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such taxable period.

(d) One tax liability per period.

(1) In general.

To the extent that the tax imposed by this section is paid with respect to any highway motor vehicle for any taxable period, no further tax shall be imposed by this section for such taxable period with respect to such vehicle.

(2) Cross reference.

For privilege of paying tax imposed by this section in installments, see section 6156.

(e) Period tax in effect.

The tax imposed by this section shall apply only to use before October 1, 1977. (Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 390, and amended June 29, 1961, Pub. L. 87–61, title II, § 203 (a), (b) (1), (2) (A), (B), 75 Stat. 124; Dec. 31, 1970, Pub. L. 91–605, title III, § 303(a)(7), (8), 84 Stat. 1744.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–605 § 303(a)(7), substituted "1977" for "1972" in two places.

Subsec. (e). Pub. L. 91–605, § 303(a)(8), substituted "1977" for "1972."

1961—Subsec. (a). Pub. L. 87–61, § 203 (a), (b)(2)(A), increased the rate of tax from $1.50 to $3.00 a year, and provided for a tax at the rate of 75 cents for each 1,000 pounds during the period beginning on July 1, 1972, and ending on September 30, 1972.

Subsec. (c). Pub. L. 87–61, § 203(b)(2)(B), substituted "any taxable period" for "any year", "after the first

month in such period" for "after July 31", and "the last day in such taxable period" for "the last day of June following."

Subsec. (d). Pub. L. 87-61, § 203(b)(2)(B), made conforming changes to refer to payment of tax for a taxable period instead of payment for a year, and inserted the cross reference to section 6156.

Subsec. (e). Pub. L. 87-61, § 203(b)(1), substituted "before October 1, 1972" for "after June 30, 1956, and before July 1, 1972."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 effective on July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4483, 6302 of this title.

§ 4482. Definitions.

(a) Highway motor vehicle.

For purposes of this subchapter, the term "highway motor vehicle" means any motor vehicle which is a highway vehicle.

(b) Taxable gross weight.

For purposes of this subchapter, the term "taxable gross weight" when used with respect to any highway motor vehicle, means the sum of—

(1) the actual unloaded weight of—

(A) such highway motor vehicle fully equipped for service, and

(B) the semitrailers and trailers (fully equipped for service) customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle, and

(2) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on the semitrailers and trailers referred to in paragraph (1)(B).

Taxable gross weight shall be determined under regulations prescribed by the Secretary or his delegate (which regulations may include formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise).

(c) Other definitions.

For purposes of this subchapter—

(1) State.

The term "State" means a State, a Territory of the United States, and the District of Columbia.

(2) Year.

The term "year" means the one-year period beginning on July 1.

(3) Use.

The term "use" means use in the United States on the public highways.

(4) Taxable period.

The term "taxable period" means any year beginning before July 1, 1977, and the period which begins on July 1, 1977, and ends at the close of September 30, 1977.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 390, and amended June 29, 1961, Pub. L. 87-61, title II, § 203(b)(2)(C), 75 Stat. 125; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(9), 84 Stat. 1744.)

AMENDMENTS

1970—Subsec. (c)(4). Pub. L. 91-605 substituted "1977" for "1972" in three places.

1961—Subsec. (c). Pub. L. 87-61 added par. (4).

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-61 effective on July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§ 4483. Exemptions.

(a) State and local governmental exemption.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed by section 4481 on the use of any highway motor vehicle by any State or any political subdivision of a State.

(b) Exemption for United States.

The Secretary may authorize exemption from the tax imposed by section 4481 as to the use by the United States of any particular highway motor vehicle, or class of highway motor vehicles, if he determines that the imposition of such tax with respect to such use will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(c) Certain transit-type buses.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary or his delegate may by regulations prescribe for purposes of this subsection), met the 60-percent passenger fare revenue test set forth in section 6421 (b) (2) as applied to the period prescribed for purposes of this subsection. (Added June 29, 1956, ch. 462, title II, § 206 (a), 70 Stat. 391.)

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§ 4484. Cross reference.

For penalties and administrative provisions applicable to this subchapter, see subtitle F.

(Added June 29, 1956, ch. 462, title II, § 206 (a), 70 Stat. 391.)

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

Subchapter E.—Tax on Use of Civil Aircraft

Sec.
4491. Imposition of tax.
4492. Definitions.
4493. Special rules.
4494. Cross reference.

AMENDMENTS

1970—Pub. L. 91-258, title II, § 206(a), May 21, 1970, 84 Stat. 243, added subchapter E.

§ 4491. Imposition of tax.

(a) Imposition of tax.

A tax is hereby imposed on the use of any taxable civil aircraft during any year at the rate of—

(1) $25, plus

(2) (A) in the case of an aircraft (other than a turbine-engine-powered aircraft) 2 cents a pound for each pound of the maximum certificated takeoff weight in excess of 2,500 pounds, or (B) in the case of any turbine engine powered aircraft, 3½ cents a pound for each pound of the maximum certificated takeoff weight.

(b) By whom paid.

Except as provided in section 4493(a), the tax imposed by this section shall be paid—

(1) in the case of a taxable civil aircraft described in section 4492(a)(1), by the person in whose name the aircraft is, or is required to be, registered, or

(2) in the case of a taxable civil aircraft described in section 4492(a)(2), by the United States person by or for whom the aircraft is owned.

(c) Proration of tax.

If in any year the first use of the taxable civil aircraft is after the first month in such year, that portion of the tax which is determined under subsection (a)(2) shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such year.

(d) One tax liability per year.

(1) In general.

To the extent that the tax imposed by this section is paid with respect to any taxable civil aircraft for any year, no further tax shall be imposed by this section for such year with respect to such aircraft.

(2) Cross reference.

For privilege of paying tax imposed by this section in installments, see section 6158.

(e) Termination.

On and after July 1, 1980, the tax imposed by subsection (a) shall not apply. (Added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 243, and amended Pub. L. 91–614, title III, § 305(a), Dec. 31, 1970, 84 Stat. 1846.)

AMENDMENTS

1970—Subsec. (a)(2)(A). Pub. L. 91–614 substituted provisions taxing non-turbine powered aircraft 2 cents a pound for each pound of maximum certificated takeoff weight in excess of 2,500 pounds, for provisions taxing non-turbine powered aircraft having a maximum certificated takeoff weight of more than 2,500 pounds, 2 cents a pound for each pound of the maximum certificated takeoff weight.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 305(b) of Pub. L. 91–614 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1971."

§ 4492. Definitions.

(a) Taxable civil aircraft.

For purposes of this subchapter, the term "taxable civil aircraft" means any engine driven aircraft—

(1) registered, or required to be registered under section 501(a) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1401(a)), or

(2) which is not described in paragraph (1) but which is owned by or for a United States person.

(b) Weight.

For purposes of this subchapter, the term "maximum certificated takeoff weight" means the maximum such weight contained in the type certificate or airworthiness certificate.

(c) Other definitions.

For purposes of this subchapter—

(1) Year.

The term "year" means the one-year period beginning on July 1.

(2) Use.

The term "use" means use in the navigable airspace of the United States.

(3) Navigable airspace of the United States.

The term "navigable airspace of the United States" has the definition given to such term by section 101(24) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1301(24), except that such term does not include the navigable airspace of the Commonwealth of Puerto Rico or of any possession of the United States.

(Added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 243.)

§ 4493. Special rules.

(a) Payment of tax by lessee.

(1) In general.

Any person who is the lessee of any taxable civil aircraft on the day in any year on which occurs the first use which subjects such aircraft to the tax imposed by section 4491 for such year may, under regulations prescribed by the Secretary or his delegate, elect to be liable for payment of such tax. Notwithstanding any such election, if such lessee does not pay such tax, the lessor shall also be liable for payment of such tax.

(2) Exception.

No election may be made under paragraph (1) with respect to any taxable civil aircraft which is leased from a person engaged in the business of transporting persons or property for compensation or hire by air.

(b) Certain persons engaged in foreign air commerce.

(1) Election to pay tentative tax.

Any person who is a significant user of taxable civil aircraft in foreign air commerce may, with respect to that portion of the tax imposed by section 4491 which is determined under section 4491 (a)(2) on any taxable civil aircraft for any year beginning on or after July 1, 1970, elect to pay the tentative tax determined under paragraph (2). The payment of such tentative tax shall not relieve such person from payment of the net liability for the tax imposed by section 4491 on such taxable civil aircraft (determined as of the close of such year).

(2) Tentative tax.

For purposes of paragraph (1), the tentative tax with respect to any taxable civil aircraft for any year is an amount equal to that portion of the tax imposed by section 4491 on such aircraft for such

year which is determined under section 4491(a)(2), reduced by a percentage of such amount equal to the percentage which the aggregate of the payments to which such person was entitled under section 6426 (determined without regard to section 6426(c)(2)) with respect to the preceding year is of the aggregate of the taxes imposed by section 4491 for which such person was liable for payment for the preceding year. In the case of the year beginning on July 1, 1970, this subsection shall apply only if the person electing to pay the tentative tax establishes what the tentative tax would have been for such year if section 4491 had taken effect on July 1, 1969.

(3) Significant users of aircraft in foreign air commerce.

For purposes of paragraph (1), a person is a significant user of taxable civil aircraft in foreign air commerce for any year only if the aggregate of the payments to which such person was entitled under section 6426 (determined without regard to section 6426(c)(2)) with respect to the preceding year was at least 10 percent of the aggregate of the taxes imposed by section 4491 for which such person was liable for payment for the preceding year.

(4) Net liability for tax.

For purposes of paragraph (1), the net liability for the tax imposed by section 4491, with respect to any taxable civil aircraft for any year is—

(A) the amount of the tax imposed by such section, reduced by

(B) the amount payable under section 6426 with respect to such aircraft for the year (determined without regard to section 6426(c)(2).

(Added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 244.)

§ 4494. Cross reference.

For penalties and administrative provisions applicable to this subchapter, see subtitle F.

(Added Pub. L. 91–258, title II, § 206(a), May 21, 1970, 84 Stat. 245.)

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as Effective Date of 1970 Amendment note under section 4041 of this title.

Chapter 37.—SUGAR, COCONUT AND PALM OIL

Subchapter
A. Sugar.

AMENDMENTS

1962—Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, repealed subchapter B.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6103 of this title.

Subchapter A.—Sugar

Sec.
4501. Imposition of tax.
4502. Definitions.
4503. Exemptions for sugar manufactured for home consumption.

AMENDMENTS

1962—Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, repealed item 4504.

§ 4501. Imposition of tax.

(a) General.

There is hereby imposed upon manufactured sugar manufactured in the United States, a tax, to be paid by the manufacturer at the rate of 0.53 cent per pound of the total sugars therein. The manufacturer shall pay the tax with respect to manufactured sugar (1) which has been sold, or used in the production of other articles, by the manufacturer during the preceding month (if the tax has not already been paid) and (2) which has not been so sold or used within 12 months ending during the preceding calendar month, after it was manufactured (if the tax has not already been paid). For the purpose of determining whether sugar has been sold or used within 12 months after it was manufactured, sugar shall be considered to have been sold or used in the order in which it was manufactured.

(b) Termination of tax.

No tax shall be imposed under this subchapter on the manufacture or use of sugar or articles composed in chief value of sugar after June 30, 1972. Notwithstanding the provisions of subsection (a), no tax shall be imposed under this subchapter with respect to unsold sugar held by a manufacturer on June 30, 1972, or with respect to sugar or articles composed in chief value of sugar held in customs custody or control on such date. (Aug. 16, 1954, ch. 736, 68A Stat. 533; May 29, 1956, ch. 342, § 19, 70 Stat. 221; Sept. 2, 1958, Pub. L. 85–859, title I, § 162(b), 72 Stat. 1306; July 6, 1960, Pub. L. 86–592, § 2, 74 Stat. 330; Mar. 31, 1961, Pub. L. 87–15, § 2(a), 75 Stat. 40; May 24, 1962, Pub. L. 87–456, title III, § 302 (a), (b), 76 Stat. 77; July 13, 1962, Pub. I. 87–535, § 18(a), 76 Stat. 166; Nov. 8, 1965, Pub. L. 89–331, §13, 79 Stat. 1280.)

AMENDMENTS

1965—Subsec. (b). Pub. L. 89–331 substituted "1972" for "1967" wherever appearing.

1962—Subsec. (a). Pub. L. 87–456, § 302(a), substituted provisions requiring the manufacturer to pay a tax at the rate of 0.53 cent per pound of the total sugars for provisions which required payment of 0.465 cent per pound for all manufactured sugar testing by the polariscope 92 sugar degrees, 0.00875 cent per pound additional for each additional sugar degree shown by the polariscopic test, and fractions of a degree in proportion, and 0.5144 cent per pound of the total sugars on all manufactured sugar testing by the polariscope less than 92 sugar degrees.

Subsec. (b). Pub. L. 87–456, § 302(b), redesignated former subsec. (c) as (b), and substituted therein "manufacture or use" for "manufacture, use, or importation" and "subsection (a)" for "subsection (a) or (b)." Former subsec. (b), which prescribed an import tax on sugar, was repealed by section 302(b) of Pub. L. 87–456, and is now covered by the Revised Tariff Schedules set forth in section 1202 of Title 19, Customs Duties.

Subsec. (c). Pub. L. 87–535 substituted "June 30, 1967" for "December 31, 1962", in two instances.

1961—Subsec. (c). Pub. L. 87–15 substituted "December 31, 1962" for "September 30, 1961", in two instances.

1960—Subsec. (c). Pub. L. 86–592 substituted "September 30, 1961" for "June 30, 1961", in two instances.

1958—Subsec. (c). Pub. L. 85–859 eliminated provisions that authorized refund of an amount equal to the tax paid with respect to any sugar or articles composed in chief value of sugar and which, on June 30, 1961, are held by the importer and intended for sale or other disposition. See section 6412(d) of this title.

1956—Subsec. (c). Act May 29, 1956 substituted "1961" in lieu of "1957" in three instances.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–331 effective Jan. 1, 1965, see section 14 of Pub. L. 89–331, set out as a note under section 1111 of Title 7, Agriculture.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of section by Pub. L. 87–535 effective Jan. 1, 1962, see section 19(a) of Pub. L. 87–535, set out as a note under section 1111 of Title 7, Agriculture.

Section 501(b) of Pub. L. 87–456 provided that: "The amendment made by section 302(a) [to subsec. (a) of this section] shall become effective on the 10th day following the date of the proclamation of the President provided for in section 102 [set out as a note preceding section 1202 of Title 19, Customs Duties]." The proclamation provided for in section 102 was signed by the President on August 21, 1963, and is set out preceding section 1202 of Title 19.

Amendment of section by Pub. L. 87–456, § 302(b), effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act May 29, 1956, effective Jan. 1, 1956, see section 22 of act May 29, 1956, set out as a note under section 1101 of Title 7, Agriculture.

CROSS REFERENCES

Floor stocks refunds, see section 6412 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4502, 4503, 6302, 6418 of this title.

§ 4502. Definitions.

For the purposes of this subchapter—

(1) Manufacturer.

Any person who acquires any sugar which is to be manufactured into manufactured sugar but who, without further refining or otherwise improving it in quality, sells such sugar as manufactured sugar or uses such sugar as manufactured sugar in the production of other articles for sale shall be considered, for the purposes of section 4501 (a), the manufacturer of manufactured sugar and, as such, liable for the tax under section 4501 (a) with respect thereto.

(2) Person.

The term "person" means an individual, partnership, corporation, or association.

(3) Manufactured sugar.

The term "manufactured sugar" means any sugar derived from sugar beets or sugarcane, which is not to be, and which shall not be, further refined or otherwise improved in quality; except sugar in liquid form which contains nonsugar solids (excluding any foreign substance that may have been added or developed in the product) equal to more than 6 per centum of the total soluble solids and except also sirup of cane juice produced from sugarcane grown in continental United States. The grades or types of sugar within the meaning of this definition shall include, but shall not be limited to, granulated sugar, lump sugar, cube sugar, powdered sugar, sugar in the form of blocks, cones, or molded shapes, confectioners' sugar, washed sugar, centrifugal sugar, clarified sugar, turbinado sugar, plantation white sugar, muscovado sugar, refiners' soft sugar, invert sugar mush, raw sugar, sirups, molasses, and sugar mixtures.

(4) Total sugars.

The term "total sugars" means the total amount of the sucrose and of the reducing or invert sugars.

(5) United States.

The term "United States" shall be deemed to include the States, the District of Columbia, and Puerto Rico.

(Aug. 16, 1954, ch. 736, 68A Stat. 534; May 29, 1956, ch. 342, § 20, 70 Stat. 221; June 25, 1959, Pub. L. 86–70, § 22(c), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, § 18(f), 74 Stat. 416.)

AMENDMENTS

1960—Pub. L. 86–624 eliminated the Territory of Hawaii from par. (5).

1959—Pub. L. 86–70 substituted "the Territory of Hawaii" for "the Territories of Hawaii and Alaska" in par. (5).

1956—Act May 29, 1956, in par. (4) omitted "(Clerget)" which followed "sucrose", and provisions relating to the ascertainment of the total sugars contained in any grade or type of manufactured sugar.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–624 effective on August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(1) of Pub. L. 86–70, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act May 29, 1956, effective Jan. 1, 1956, see section 22 of act May 29, 1956, set out as a note under section 1101 of Title 7, Agriculture.

§ 4503. Exemptions for sugar manufactured for home consumption.

No tax shall be required to be paid under sec. 4501 (a) upon the manufacture of manufactured sugar by or for the producer of the sugar beets or sugarcane from which such manufactured sugar was derived, for consumption by the producer's own family, employees, or household. (Aug. 16, 1954, ch. 736, 68A Stat. 534.)

§ 4504. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 535; May 29, 1956, ch. 342, § 21(a), 70 Stat. 221, required the tax imposed by section 4501(b) to be levied, assessed, collected and paid in the same manner as a duty imposed by the Tariff Act of 1930. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of section effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4511 to 4514. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 536, 537, imposed a tax upon the processing of coconut and palm oil. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1201 of Title 19, Customs Duties.

SUSPENSION OF PROVISIONS

Pub. L. 86–37, May 29, 1959, 73 Stat. 64, as amended Pub. L. 86–432, §1(2), Apr. 22, 1960, 74 Stat. 73; Pub. L. 87–859, § 1(2), Oct. 23, 1962, 76 Stat. 1138, provided that: "The tax imposed under section 4511(a) of the Internal Revenue Code of 1954 [subsection (a) of this section] shall not apply with respect to the first domestic processing of palm oil, palm-kernel oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of one or more of such oils, fatty acids, or salts, during the period beginning with the first day of the first month which begins more than 10 days after the date of the enactment of this Act [May 29, 1959] and ending with the close of June 30, 1966."

Section 3 of Pub. L. 85–235, August 30, 1957, 71 Stat. 516, as amended Pub. L. 86–432, § 1(1), Apr. 22, 1960, 74 Stat. 73; Pub. L. 87–859, § 1(1), Oct. 23, 1962, 76 Stat. 1138, provided that: "The tax imposed under section 4511 (a) of the Internal Revenue Code of 1954 shall not apply with respect to the first domestic processing of coconut oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of such oil, fatty acids, or salts, during the period beginning with the first day of the first month which begins more than ten days after the date of the enactment of this Act [August 30, 1957] and ending with the close of June 30, 1966."

Chapter 38.—IMPORT TAXES

Subchapter
F. Oleomargarine.

AMENDMENTS

1962—Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, struck out subchapters A–E, and G.

§ 4521. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 539, imposed a tax on petroleum products imported into the United States. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of section effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4531, 4532. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 540, imposed a tax on coal imported into the United States. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4541, 4542. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 541, imposed a tax on copper imported into the United States. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4551 to 4553. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 542, imposed a tax on lumber imported into the United States. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4561, 4562. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, imposed a tax on animal oils imported into the United States. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4571, 4572. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, 544, imposed a tax on seeds and seed oil imported into the United States. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§§ 4581, 4582. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 544, imposed a tax on imports of any article, merchandise, or combination (except oils specified in section 4511), 10 percent or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified in sections 4561 and 4571, or of the oils, fatty acids, or salts specified in section 4511. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preecding section 1202 of Title 19, Customs Duties.

Subchapter F.—Oleomargarine

Sec.
4591. Imposition of tax.
4592. Definitions.
4593. Exemption.
4594. Packing requirements for manufacturers.
4595. Wholesale and retail selling requirements.
4596. Bonds.
4597. Books and returns.

§ 4591. Imposition of tax.

(a) Rate.

There is hereby imposed on all oleomargarine imported from foreign countries, in addition to any import duty imposed on the same, an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps. The Secretary or his delegate is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this subchapter; and his decision in matters of taxation under this subchapter shall be final.

(b) Affixing of stamps.

The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper custom house officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than 10 pounds, before the stamps are affixed. Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct. (Aug. 16, 1954, ch. 736, 68A Stat. 545.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4592, 4593, 7234 of this title.

§ 4592. Definitions.

(a) Oleomargarine.

For the purposes of section 4591, certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances known prior to August 2, 1886, as oleomargarine, oleo, oleo margarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat;—if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, of other liquid, and containing moisture in excess of 1 per centum or common salt.

(b) Manufacturer.

Every person who manufactures oleomargarine for sale shall be deemed a manufacturer of oleomargarine. And any person that sells, vends, or furnishes oleomargarine for the use and consumption of others, except to his own family table without compensation, who shall add to or mix with such oleomargarine any substance which causes such oleomargarine to be yellow in color, shall also be held to be a manufacturer of oleomargarine within the meaning of this chapter.

(c) Wholesale dealer.

Every person who sells or offers for sale oleomargarine in the original manufacturer's packages shall be deemed a wholesale dealer in oleomargarine.

(d) Retail sales.

Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine. (Aug. 16, 1954, ch. 736, 68A Stat. 545.)

§ 4593. Exemption.

(a) Shortening or condiments.

Section 4591 shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of 118 degrees Fahrenheit or more, nor to any of the following containing condiments and spices: salad dressings, mayonnaise dressings, or mayonnaise products, nor to liquid emulsion, pharmaceutical preparations, oil meals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

(b) Exports.

Oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Secretary or his delegate may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin, or other package containing such article the word "Oleomargarine", in plain Roman letters not less than one-half inch square. (Aug. 16, 1954, ch. 736, 68A Stat. 546.)

§ 4594. Packing requirements for manufacturers.

(a) Kind and weight of packages.

All oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages, not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds.

(b) Marks and stamps.

The packages described in subsection (a) shall be marked, stamped, and branded as the Secretary or his delegate shall prescribe; and all sales made by manufacturers of oleomargarine shall be in original stamped packages.

(c) Caution label.

Every manufacturer of oleomargarine shall securely affix, by pasting, on each package containing oleomargarine manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(d) Factory number and signs.

Every manufacturer of oleomargarine shall put up such signs and affix such number to his factory

as the Secretary or his delegate may, by regulation, require. (Aug. 16, 1954, ch. 736, 68A Stat. 546.)

CROSS REFERENCES

Penalties, see sections 7234 and 7265 of this title.

§ 4595. Wholesale and retail selling requirements.

(a) Wholesale.

All sales made by wholesale dealers in oleomargarine shall be in original stamped packages.

(b) Retail.

Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack, or cause to be packed, the oleomargarine sold by them in suitable wooden, tin-plate, or paper packages which shall be marked and branded as the Secretary or his delegate shall prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 546.)

§ 4596. Bonds.

Every manufacturer of oleomargarine shall file such bonds as the Secretary or his delegate, may, by regulation, require. But the bonds required of such manufacturer shall be with sureties satisfactory to the Secretary or his delegate, and in a penal sum of not less than $5,000; and the sum of said bond may be increased from time to time, and additional sureties required at the discretion of the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 547.)

§ 4597. Books and returns.

(a) Wholesale dealers.

Wholesale dealers in oleomargarine shall keep such books and render such returns in relation thereto as the Secretary or his delegate may, by regulation, require; and such books shall be open at all times to the inspection of any internal revenue officer or agent.

(b) Manufacturers.

See section 7641.

(Aug. 16, 1954, ch. 736, 68A Stat. 547.)

CROSS REFERENCES

Penalties, see section 7234 of this title.

§§ 4601 to 4603. Repealed. Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Section 4601, acts Aug. 16, 1954, ch. 736, 68A Stat. 548; Sept. 2, 1958, Pub. L. 85–859, title I, § 119(b)(4), 72 Stat. 1286, related to applicability of certain tariff provisions. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

Sections 4602, 4603, act Aug. 16, 1954, ch. 736, 68A Stat. 548, related to contravention of trade agreements by certain taxes. See Revised Tariff Schedules set out in section 1202 of Title 19.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of Title 19, Customs Duties.

Chapter 39.—REGULATORY TAXES

Subchapter

B. White phosphorus matches.
C. Adulterated butter and filled cheese.
D. Cotton futures.
E. Circulation other than of national banks.

AMENDMENTS

1970—Pub. L. 91–513, title III, § 1101(b)(3)(B), Oct. 27, 1970, 84 Stat. 1292, struck out item "A. Narcotic drugs and marihuana."

1963—Pub. L. 88–36, title II, § 201(b), June 4, 1963, 77 Stat. 54, deleted item "F. Silver bullion."

CROSS REFERENCES

Drug Abuse Prevention and Control, see section 801 et seq. of Title 21, Food and Drugs.

§§ 4701 to 4707. Repealed. Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Sections comprised former subchapter A of this chapter consisting of parts I, II, and III which related, respectively to narcotic drugs, marihuana, and miscellaneous provisions covering both narcotic drugs and marihuana. See, now, section 801 et seq. of Title 21, Food and Drugs.

Section 4701, act Aug. 16, 1954, ch. 736, 68A Stat. 549, imposed an internal revenue tax upon narcotic drugs produced in or imported into the United States and sold, or removed for consumption or sale.

Section 4702, acts Aug. 16, 1954, ch. 736, 68A Stat. 549; Apr. 22, 1960, Pub. L. 86–429, § 4(c), 74 Stat. 58, set out specified exemptions to the imposition of the tax on narcotic drugs.

Section 4703, act Aug. 16, 1954, ch. 736, 68A Stat. 550, required that the tax stamp be firmly affixed to the container so as to seal it.

Section 4704, acts Aug. 16, 1954, ch. 736, 68A Stat. 550; Aug. 31, 1954, c. 1147, § 8, 68 Stat. 1004, prohibited the purchase, sale, dispensing, or distribution of narcotic drugs except in their original stamped package, and set out specified exceptions.

Section 4705, acts Aug. 16, 1954, ch. 736, 68A Stat. 551; Aug. 31, 1954, c. 1147, §§ 6, 7, 68 Stat. 1003; Aug. 1, 1956, c. 852, § 12(c), 70 Stat. 909, provided for the issuance of order forms by the Secretary and required their use in the sale of narcotic drugs.

Section 4706, act Aug. 16, 1954, ch. 736, 68A Stat. 553, provided for the forfeiture of unstamped packages of narcotic drugs.

Section 4707, act Aug. 16, 1954, ch. 736, 68A Stat. 553, contained cross references.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings, commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4711 to 4716. Repealed. Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4711, act Aug. 16, 1954, ch. 736, 68A Stat. 553, imposed a tax on opium manufactured in the United States for smoking purposes.

Section 4712, act Aug. 16, 1954, ch. 736, 68A Stat. 553, required a tax stamp for opium prepared for smoking.

Section 4713, act Aug. 16, 1954, ch. 736, 68A Stat. 554, required a bond from manufacturers of opium suitable for smoking.

Section 4714, act Aug. 16, 1954, ch. 736, 68A Stat. 554, required the forfeiture and destruction of all unstamped opium prepared for smoking.

Section 4715, act Aug. 16, 1954, ch. 736, 68A Stat. 554, contained cross references.

Section 4716, act Aug. 1, 1956, ch. 852, § 13, 70 Stat. 910, rendered sections 4711 to 4715 applicable to Guam.

See section 801 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after

Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4721 to 4726. Repealed. Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4721, act Aug. 16, 1954, ch. 736, 68A Stat. 554, imposed an occupational tax on persons dealing in narcotic drugs.

Section 4722, act Aug. 16, 1954, ch. 736, 68A Stat. 555, required the registration of all persons dealing in narcotic drugs.

Section 4723, act Aug. 16, 1954, ch. 736, 68A Stat. 555, made possession of stamped packages of narcotic drugs prima facie evidence of liability to pay the occupational tax.

Section 4724, acts Aug. 16, 1954, ch. 736, 68A Stat. 555; Aug. 31, 1954, ch. 1147, § 10, 68 Stat. 1004, enumerated the unlawful acts, acts in case of failure to pay the special occupational tax.

Section 4725, act Aug. 16, 1954, ch. 736, 68A Stat. 557, made all provisions relating to special taxes applicable to the special occupational tax on persons dealing in narcotic drugs.

Section 4726, act Aug. 16, 1954, ch. 736, 68A Stat. 557, contained cross references.

See section 801 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4731 to 4736. Repealed. Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4731, acts Aug. 16, 1954, ch. 736, 68A Stat. 557; Apr. 22, 1960, Pub. L. 86–429, § 4(a), (b), 74 Stat. 57, defined terms used in sections 4701 et seq. of this title.

Section 4732, act Aug. 16, 1954, ch. 736, 68A Stat. 558, required the keeping of records, statements, and returns.

Section 4733, act Aug. 16, 1954, ch. 736, 68A Stat. 558, provided for the confiscation and disposal of seized drugs.

Section 4734, act Aug. 16, 1954, ch. 736, 68A Stat. 559, provided that the Narcotic Drug Import and Export Act and the Federal Food, Drug, and Cosmetic Act should not be affected by section 4701 et seq. of this title.

Section 4735, acts Aug. 16, 1954, ch. 736, 68A Stat. 559; Aug. 1, 1956, ch. 852, § 12(a), (b), 70 Stat. 909, covered administration of sections 4701 to 4707 and 4721 to 4726 of this title in Puerto Rico, the Trust Territory of the Pacific Islands, Guam, the Canal Zone, and the Virgin Islands.

Section 4736, act Aug. 16, 1954, ch. 736, 68A Stat. 559, rendered generally applicable to these sections all administrative, special, and stamp provisions of law.

See section 801 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513. set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4741 to 4746. Repealed. Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4741, act Aug. 16, 1954, ch. 736, 68A Stat. 560, imposed a tax on the transfer of marihuana.

Section 4742, act Aug. 16, 1954, ch. 736, 68A Stat. 560, provided for the issuance of order forms by the Secretary to be used in the transfer of marihuana.

Section 4743, act Aug. 16, 1954, ch. 736, 68A Stat. 562, required the affixing of stamps to the original order form.

Section 4744, acts Aug. 16, 1954, ch. 736, 68A Stat. 562; July 18, 1956, ch. 629, title I, § 101, 70 Stat. 567, rendered unlawful the possession of marihuana by persons who had not paid the required transfer tax.

Section 4745, act Aug. 16, 1954, ch. 736, 68A Stat. 562, covered the forfeiture and disposal of marihuana.

Section 4746, act Aug. 16, 1954, ch. 736, 68A Stat. 562, contained cross references.

See section 801 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISIONS

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4751 to 4757. Repealed. Pub. L. 91–513, title III, § 1101(b)(3(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4751, act Aug. 16, 1954, ch. 736, 68A Stat. 563, imposed a special occupational tax on persons engaging in transactions involving marihuana.

Section 4752, act Aug. 16,1954, ch. 736, 68A Stat. 563, set out provisions covering the computation and liability for the special occupational tax.

Section 4753, act Aug. 16, 1954, ch. 736, 68A Stat. 564, provided for the registration of persons subject to the special occupational tax.

Section 4754, act Aug. 16, 1954, ch. 736, 68A Stat. 564, provided for the filing of returns by registrants.

Section 4755, acts Aug. 16, 1954, ch. 736, 68A Stat. 565; July 18, 1956, ch. 629, title I, § 102, 70 Stat. 567, enumerated the unlawful acts in case of failure to register and pay the special tax.

Section 4756, act Aug. 16, 1954, ch. 736, 68A Stat. 565, rendered applicable to taxes imposed by sections 4741–4762 of this title all laws applicable in respect of the taxes imposed by sections 4701 and 4721 of this title.

Section 4657, act Aug. 16, 1954, ch. 736, 68A Stat. 565, contained cross references.

See section 801 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4761, 4762. Repealed. Pub. L. 91–513, title III, § 1101 (b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4761, act Aug. 16, 1954, ch. 736, 68A Stat 565, defined the terms "person", "marihuana", "producer", and "transfer".

Section 4762, act Aug. 16, 1954, ch. 736, 68A Stat. 566, provided for the administration of the marihuana tax provisions in the insular possessions.

See section 801 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§§ 4771 to 4776. Repealed. Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 4771, act Aug. 16, 1954, ch. 736, 68A Stat. 566, provided for the use of stamps for the taxes imposed on narcotic drugs and marihuana.

Section 4772, act Aug. 16, 1954, ch. 736, 68A Stat. 567, made provision for the grant of exemptions from the tax and registration requirements.

Section 4773, acts Aug. 16, 1954, ch. 736, 68A Stat. 567; Aug. 31, 1954, ch. 1147, § 9, 68 Stat. 1004, provided for the inspection of returns, order forms, and prescriptions by Treasury Department officers and authorized employees and by appropriate state and local law enforcement personnel.

Section 4774, acts Aug. 16, 1954, ch. 736, 68A Stat. 568; July 18, 1956, ch. 629, Title I, § 109, 70 Stat. 572; Aug. 1, 1956, ch. 852, § 14, 70 Stat. 910; June 25, 1959, Pub. L. 86–70, § 22(d), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, § 18(g), 74 Stat. 416, set out the territorial extent of sections 4701 to 4707 and 4721 to 4776 of this title.

Sections 4775, act Aug. 16, 1954, ch. 736, 68A Stat. 568, provided for the availability of a list of the special taxpayers registered under sections 4721 to 4726, 4702(a), 4751, or 4752 of this title.

Section 4776, act Aug. 16, 1954, ch. 736, 68A Stat. 568, contained cross references.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

Subchapter B.—White Phosphorus Matches

Sec.
4801. Imposition of tax.
4802. Definition of white phosphorus.
4803. Stamps.
4804. Requirements on manufacturers.
4805. Importation and exportation.
4806. Cross references.

§ 4801. Imposition of tax.

(a) Rate.

There shall be imposed upon white phosphorus matches manufactured, sold, or removed a tax at the rate of 2 cents per one hundred matches.

(b) By whom paid.

The tax imposed by subsection (a) shall be paid by the manufacturer. (Aug. 16, 1954, ch. 736, 68A Stat. 569.)

CROSS REFERENCES

Penalty for offenses relating to white phosphorus matches, see section 7274 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4803 of this title.

§ 4802. Definition of white phosphorus.

For the purpose of this subchapter, the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus. (Aug. 16, 1954, ch. 736, 68A Stat. 569.)

§ 4803. Stamps.

(a) Method of payment.

(1) Stamps.

The tax imposed by section 4801 shall be represented by adhesive stamps.

(2) Assessment.

For assessment in case of omitted taxes, see subtitle F.

(b) Sale.

The Secretary or his delegate shall require that stamps be sold only to duly qualified manufacturers.

(c) Accounts.

The Secretary or his delegate shall cause to be kept accounts of the number and denominate values of the stamps sold to each manufacturer.

(d) Other stamp provisions.

All the provisions and penalties of law governing the engraving, issuing, sale, affixing, cancellation, accountability, effacement, destruction, and forgery of stamps provided for internal revenues shall apply to stamps provided for by this subchapter. (Aug. 16, 1954, ch. 736, 68A Stat. 569.)

CROSS REFERENCES

Revenue stamps—
Accounting for, see section 6803 of this title.
Attachment of, see section 6804 of this title.
Cancellation of, see section 6804 of this title.
Penalties generally relating to, see sections 7208, 7270, 7271, 7303 of this title.

§ 4804. Requirements on manufacturers.

(a) Packing.

(1) Number in packages.

All white phosphorus matches shall be packed by the manufacturer thereof in packages containing 100, 200, 500, 1,000, or 1,500 matches each, which shall then be packed by the manufacturer in packages containing not less than 14,400 matches.

(2) Stamping.

The manufacturer shall affix to every package containing 100, 200, 500, 1,000, or 1,500 matches an adhesive stamp of the required value and shall place thereon the initials of his name and the date on which such stamp is affixed, so that the same may not again be used.

(3) Factory number.

Every manufacturer of matches shall mark, brand, affix, stamp, or print, in such manner as the Secretary or his delegate shall prescribe, on every package of white phosphorus matches manufactured, sold, or removed by him, the factory number required under subsection (b).

(4) Label.

Every manufacturer of white phosphorus matches shall securely affix by pasting on each original package containing stamped packages of white phosphorus matches manufactured by him a label, on which shall be printed, besides the number of the manufactory and the district in which it is situated, these words: "NOTICE.—The manufacturer of the white phosphorus matches herein contained has complied with all the requirements of law. Every person is cautioned not to use again the stamps on the packages herein contained under the penalty provided by law in such cases."

(b) Factory number and signs.

Every manufacturer of white phosphorus matches shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) Bonds.

Every manufacturer of white phosphorus matches shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in the penal sum of not less than $1,000; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the Secretary or his delegate.

(d) Registration.

Every manufacturer of white phosphorus matches shall register with the official in charge of the internal revenue district his name or style, place of manufactory, and the place where such business is to be carried on. (Aug. 16, 1954, ch. 736, 68A Stat. 569.)

CROSS REFERENCES

Forfeiture for violation of law relating to white phosphorus matches, see section 7303(6) of this title.

Penalty for offenses relating to white phosphorus matches, see section 7274 of this title.

Punishment for violation of laws relating to white phosphorus matches, see section 7239 of this title.

§ 4805. Importation and exportation.

(a) Importation.

White phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary or his delegate that they are not white phosphorus matches.

(b) Exportation.

It shall be unlawful to export from the United States any white phosphorus matches. (Aug. 16, 1954, ch. 736, 68A Stat. 570.)

CROSS REFERENCES

Confiscation of white phosphorus matches exported, see section 7328 of this title.

Offenses relating to white phosphorus matches, see section 7267 of this title.

Penalty for offenses relating to white phosphorus matches, see section 7274 of this title.

§ 4806. Cross references.

For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 570.)

Subchapter C.—Adulterated Butter and Filled Cheese

Part
I. Adulterated and process or renovated butter.
II. Filled cheese.

PART I.—ADULTERATED AND PROCESS OR RENOVATED BUTTER

Subpart
A. Tax on products.
B. Occupational tax.
C. Definitions.

SUBPART A.—TAX ON PRODUCTS

Sec.
4811. Imposition of tax.
4812. Importation of adulterated butter.
4813. Stamps.
4814. Requirements applicable to manufacturers.
4815. Requirements applicable to dealers.
4816. Exportation of adulterated butter.
4817. Inspection of process or renovated butter.
4818. Administrative decisions relating to adulterated butter.
4819. Cross references.

§ 4811. Imposition of tax.

(a) Rate.

(1) Adulterated butter.

There shall be imposed upon adulterated butter, when manufactured or sold or removed for consumption or use, a tax of 10 cents per pound, and any fractional part of a pound shall be taxed as a pound.

(2) Process or renovated butter.

There shall be imposed upon process or renovated butter, when manufactured or sold or removed for consumption or use, a tax of one-fourth of 1 cent per pound, and any fractional part of a pound shall be taxed as a pound.

(b) By whom paid.

The tax imposed by subsection (a) shall be paid by the manufacturer. (Aug. 16, 1954, ch. 736, 68A Stat. 571.)

CROSS REFERENCES

Stamps representing tax imposed by this section, see section 4813 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4813 of this title.

§ 4812. Importation of adulterated butter.

There shall be imposed upon adulterated butter imported from a foreign country, in addition to any

import duty imposed on the same, an internal revenue tax of 15 cents per pound, such tax to be represented by coupon stamps as in the case of adulterated butter manufactured in the United States. The stamps shall be affixed and canceled by the owner or importer of the adulterated butter while it is in the custody of the officers or employees designated by the Secretary or his delegate; and the adulterated butter shall not pass out of the custody of said officers or employees until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than 10 pounds, as prescribed in this subpart for adulterated butter manufactured in the United States, before the stamps are affixed; and the owner or importer of such adulterated butter shall be liable to all the penal provisions of this subpart prescribed for manufacturers of adulterated butter manufactured in the United States. Whenever it is necessary to take any adulterated butter so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the Secretary or his delegate shall designate a bonded warehouse to which it shall be taken, under the control of such officer or employee as the Secretary or his delegate may direct. (Aug. 16, 1954, ch. 736, 68A Stat. 571.)

CROSS REFERENCES

Exportation of adulterated butter, see section 4816 of this title.

Stamps, see section 4813 of this title.

§ 4813. Stamps.

(a) Method of payment.

(1) Stamps.

The tax imposed by section 4811 shall be represented by coupon stamps.

(2) Assessment.

For assessment in case of omitted taxes, see subtitle F.

(b) Emptied packages.

Whenever any stamped package containing adulterated butter is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. The Secretary or his delegate may destroy any emptied package of adulterated butter upon which the tax-paid stamp is found.

(c) Other stamp provisions.

The provisions of law governing the engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to the stamps provided in paragraph (1) of subsection (a). (Aug. 16, 1954, ch. 736, 68A Stat. 572.)

CROSS REFERENCES

Criminal penalties relating to tobacco, etc., stamps, see section 5762 of this title.

Importation and exportation of adulterated butter, see sections 4812, 4816 of this title.

Packages of tobacco, etc., having stamps affixed thereto, see section 5723 of this title.

Requirements applicable to manufacturers and dealers, see sections 4814, 4815 of this title.

Restrictions relating to used stamps for tobacco, etc., see section 5752 of this title.

Stamps to evidence tax on tobacco, etc., see section 5703 of this title.

§ 4814. Requirements applicable to manufacturers.

(a) Packing, stamping, and selling requirements.

(1) Adulterated butter.

All adulterated butter shall be packed by the manufacturer thereof in firkins, tubs, or other wooden, tin-plate, or paper packages not before used for that purpose, containing, or encased in a manufacturer's package made from any of such materials of, not less than ten pounds, and marked, stamped, and branded as the Secretary or his delegate shall prescribe, and all sales made by manufacturers of adulterated butter shall be in original, stamped packages. Every manufacturer of adulterated butter shall securely affix, by pasting, on each package containing adulterated butter manufactured by him a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice.—The manufacturer of the adulterated butter herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(2) Process or renovated butter.

For marking process or renovated butter, see section 4817.

(b) Factory number and signs.

Every manufacturer of process or renovated butter or adulterated butter shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) Bonds.

Every manufacturer of process or renovated butter or adulterated butter shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in a penal sum of not less than $500; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 572.)

CROSS REFERENCES

Offenses relating to adulterated butter operations, see section 7265 of this title.

Other provisions for bonds, see section 7103 of this title.

Stamps, see section 4813 of this title.

§ 4815. Requirements applicable to dealers.

(a) Selling requirements.

Dealers in adulterated butter must sell only original or from original stamped packages, and when such original stamped packages are broken the adulterated butter sold from same shall be placed in suitable wooden, tin-plate, or paper packages, which shall be marked and branded as the Secretary or his delegate shall prescribe.

(b) Books of wholesale dealers.

Books required by section 6001 to be kept by wholesale dealers in process, renovated, or adulterated butter shall be open at all times to the inspection of any officer or employee designated by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 573.)

CROSS REFERENCES

Inspection of books, papers, records, or other data, see section 7607 of this title.

Stamps, see section 4813 of this title.

Violation of laws relating to adulterated butter and process or renovated butter, see section 7235 of this title.

§ 4816. Exportation of adulterated butter.

Adulterated butter may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Secretary or his delegate may prescribe. Every person who shall export adulterated butter shall brand upon every tub, firkin, or other package containing such article the words "Adulterated Butter", in plain Roman letters not less than one-half inch square. (Aug. 16, 1954, ch. 736, 68A Stat. 573.)

CROSS REFERENCES

Importation of adulterated butter, see section 4812 of this title.

Stamps, see section 4813 of this title.

§ 4817. Inspection of process or renovated butter.

For the purpose of protecting interstate and foreign commerce from process or renovated butter which is unclean, unwholesome, unhealthful, or otherwise unfit for human food—

(1) Ingredients.

The Secretary of Agriculture shall, through inspectors appointed by him, cause inspections to be made of all milk, butter, butter oil, and other ingredients intended for use in the manufacture of process or renovated butter. All ingredients which are found to be putrid or decomposed or which contain organic or inorganic substances which are foreign to such ingredients when properly made, manufactured, produced, collected, stored, transported, or handled, and which organic or inorganic substances cannot be removed by processing, shall be deemed unfit for use in the manufacture of process or renovated butter, shall be marked "U. S. Inspected and Condemned", and shall be denatured or destroyed under the supervision of the inspector. All other ingredients shall be marked "U. S. Inspected and Passed", and shall be deemed fit for use in the manufacture of process or renovated butter.

(2) Finished product.

The Secretary of Agriculture shall cause inspections to be made of all process or renovated butter. If such butter is found to be clean, wholesome, healthful, and otherwise fit for human food, it shall be marked "U. S. Inspected and Passed". Process or renovated butter that is found to be unclean, unwholesome, unhealthful, or otherwise unfit for human food shall be denatured or destroyed under the supervision of the inspector.

(3) Factories.

The Secretary of Agriculture shall cause inspections to be made of all factories wherein process or renovated butter is manufactured to determine the sanitary conditions thereof, and if it is found that the conditions existing in any such factory do not meet the standards prescribed by the Secretary in his regulations, he shall cause inspection to be withdrawn therefrom.

(4) Compliance by manufacturer.

The Secretary of Agriculture is authorized to withdraw inspection from any factory wherein process or renovated butter is made, if the manufacturer shall fail to comply with any of the provisions of this section or with any of the rules and regulations prescribed hereunder.

(5) Rules and regulations.

The Secretary of Agriculture is authorized to make such rules and regulations as he deems necessary for the efficient administration of the provisions of this section, and all inspections hereunder shall be made in such manner as may be prescribed in such regulations. The Secretary of Agriculture may, from time to time, by regulations define the foreign substances and the extent thereof that render the ingredients unfit for use in manufacturing process or renovated butter.

(6) Statistics.

The Secretary of Agriculture shall cause to be ascertained, and he shall report, from time to time, the quantity and quality of all process or renovated butter manufactured and the character and condition of the materials from which it is made.

(7) Forgery, etc., of stamps, etc.

No person, firm, or corporation shall forge, counterfeit, simulate, falsely represent, detach, or, knowingly alter, deface, or destroy, or use without proper authority any of the marks, stamps, labels, or tabs provided for in this section or in any regulations prescribed hereunder by the Secretary of Agriculture for use on process or renovated butter or on wrappers, packages, containers, or cases in which the product is contained, or any certificate in relation thereto.

(8) Labels on containers.

All process or renovated butter and the packages or containers thereof shall be marked with the words "Process Butter" and by such other marks, labels, or brands, and in such manner, as may be prescribed by the Secretary of Agriculture.

(9) False or misleading labels.

No statement that is false or misleading in any particular shall be placed on or affixed to any wrapper, label, carton, or container of process or renovated butter.

(10) Unapproved product in interstate or foreign commerce.

No person, firm, or corporation shall transport, or offer for transportation, or sell or offer for sale, in interstate or foreign commerce, or in commerce affecting commerce among the States, any process or renovated butter that has not been inspected and passed and marked, labeled, and branded in accordance with this section and the regulations issued hereunder.

(11) Administration.

The administration and enforcement of the provisions of this section, other than its provisions relating to revenue, but including the seizure and denaturing or destruction of ingredients intended to be used in the manufacture of process or renovated butter and the denaturing or destruction of

process or renovated butter, are committed exclusively to the Secretary of Agriculture: *Provided,* That any powers and duties of the Food and Drug Administration of the Department of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act, as amended (52 Stat. 1040; 21 U. S. C., chapter 9), as regards such ingredients before they come into the possession of the manufacturers of process or renovated butter, or as regards such powers and duties in connection with process or renovated butter after it leaves such manufacturers and comes into the hands of wholesale or retail dealers, or others, shall not be affected by this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 573.)

CROSS REFERENCES

Property subject to forfeiture, see section 7303 of this title.

Violation of laws relating to adulterated butter and process or renovated butter, see section 7235 of this title.

§ 4818. Administrative decisions relating to adulterated butter.

The Secretary or his delegate is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed as adulterated butter under this subpart; and his decision in such matters of taxation under this subpart shall be final.

(Aug. 16, 1954, ch. 736, 68A Stat. 575; Sept. 2, 1958, Pub. L. 85-881, § 1(a), 72 Stat. 1704.)

AMENDMENTS

1958—Pub. L. 85-881 designated provisions of subsec. (a) as entire section and struck out subsecs. (b) and (c), which related to decisions, and appeals therefrom, as to whether substances made in imitation or semblance of butter and intended for human consumption contained deleterious ingredients.

§ 4819. Cross references.

(a) Definitions.

For definitions applicable to this subpart, see section 4826.

(b) Other provisions.

For penalties and other general and administrative provisions applicable to this subpart see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 575.)

SUBPART B.—OCCUPATIONAL TAX

Sec.
4821. Imposition of tax.
4822. Cross references.

§ 4821. Imposition of tax.

(a) Manufacturers.

(1) Process or renovated butter.

Manufacturers of process or renovated butter shall pay a special tax of $50 a year.

(2) Adulterated butter.

Manufacturers of adulterated butter shall pay a special tax of $600 a year.

(b) Wholesale dealers in adulterated butter.

Wholesale dealers in adulterated butter shall pay a special tax of $480 a year.

(c) Retail dealers in adulterated butter.

Retail dealers in adulterated butter shall pay a special tax of $48 a year. (Aug. 16, 1954, ch. 736, 68A Stat. 575.)

CROSS REFERENCES

Property subject to forfeiture, see section 7303 of this title.

§ 4822. Cross references.

(a) Definitions.

For definitions applicable to this subpart, see section 4826.

(b) Other provisions.

For penalties and other general and administrative provisions applicable to this subpart, see chapter 40 and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 575.)

SUBPART C.—DEFINITIONS

Sec.
4826. Definitions.

§ 4826. Definitions.

(a) Butter.

For the purpose of this part, the word "butter" shall be understood to mean the food product usually known as butter, and made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

(b) Adulterated butter.

"Adulterated butter" is defined to mean a grade of butter produced by mixing, reworking, rechurning in milk or cream, refining, or in any way producing a uniform, purified, or improved product from different lots or parcels of melted or unmelted butter or butter fat, in which any acid, alkali, chemical, or any substance whatever is introduced or used for the purpose or with the effect of deodorizing or removing therefrom rancidity, or any butter or butter fat with which there is mixed any substance foreign to butter as defined in subsection (a), with intent or effect of cheapening in cost the product, or any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream.

(c) Process or renovated butter.

"Process butter" or "renovated butter" is defined to mean butter which has been subjected to any process by which it is melted, clarified, or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by subsection (b).

(d) Manufacturer.

Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof.

(e) Dealer.

Every person who sells adulterated butter shall be regarded as a dealer in adulterated butter.

(f) Retail dealer.

Every person who sells adulterated butter in less quantities than 10 pounds at one time shall be regarded as a retail dealer in adulterated butter.

(Aug. 16, 1954, ch. 736, 68A Stat. 576.)

PART II.—FILLED CHEESE

Subpart
A. Tax on products.
B. Occupational tax.
C. Definitions.

SUBPART A.—TAX ON PRODUCTS

Sec.
4831. Imposition of tax.
4832. Stamps.
4833. Requirements applicable to manufacturers.
4834. Requirements applicable to wholesale and retail dealers.
4836. Cross references.

AMENDMENTS

1958—Pub. L. 85-881, § 1 (b) (2), Sept. 2, 1958, 72 Stat. 1704, struck out item "4835. Administrative decisions".

§ 4831. Imposition of tax.

(a) Domestic.

There shall be imposed upon all filled cheese which shall be manufactured a tax of 1 cent per pound payable by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound.

(b) Imported.

There shall be imposed upon all filled cheese imported from a foreign country, in addition to any import duty imposed on the same, an internal revenue tax of 8 cents per pound; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 576.)

CROSS REFERENCES

Federal Food, Drug, and Cosmetic Act as not affecting, modifying, repealing, or superseding the Filled Cheese Act of June 6, 1896, see section 392(b) of Title 21, Food and Drugs.

Property subject to forfeiture, see section 7303 of this title.

Stamps representing tax imposed by this section, see section 4832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4832 of this title.

§ 4832. Stamps.

(a) Method of payment.

(1) Stamps.

The taxes imposed by section 4831 shall be represented by coupon stamps.

(2) Assessment.

For assessment in case of omitted taxes, see subtitle F.

(b) Emptied packages.

Whenever any stamped package containing filled cheese is emptied, it shall be the duty of the person in whose hands the same is to destroy the stamps thereon.

(c) Other stamp provisions.

The provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, shall apply to stamps provided for by paragraph (1) of subsection (a). (Aug. 16, 1954, ch. 736, 68A Stat. 577.)

CROSS REFERENCES

Criminal penalties relating to tobacco, etc., stamps, see section 5762 of this title.

Packages of tobacco, etc., having stamps affixed thereto, see section 5723 of this title.

Requirements applicable to manufacturers and wholesale and retail dealers, see sections 4833, 4834 of this title.

Restrictions relating to used stamps for tobacco, etc., see section 5752 of this title.

Stamps to evidence tax on tobacco, etc., see section 5703 of this title.

§ 4833. Requirements applicable to manufacturers.

(a) Packing requirements.

(1) Marks, stamps, and packages.

Filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages.

(2) Label.

Every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "NOTICE.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases."

(b) Factory number and signs.

Every manufacturer of filled cheese shall put up such signs and affix such number to his factory as the Secretary or his delegate may by regulation require.

(c) Bonds.

Every manufacturer of filled cheese shall file with the official in charge of the internal revenue district in which his manufactory is located such bonds as the Secretary or his delegate may by regulation require. The bond required of such manufacturer shall be in a penal sum of not less than $5,000; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 577.)

CROSS REFERENCES

Offenses relating to filled cheese, see section 7266 of this title.

Other provisions for bonds, see section 7103 of this title.

Stamps, see section 4832 of this title.

§ 4834. Requirements applicable to wholesale and retail dealers.

(a) Signs.

Every wholesale dealer and every retail dealer in filled cheese shall display in a conspicuous place in his salesroom a sign bearing the words "Filled

cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his business is conducted.

(b) Selling requirements.

Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 578.)

CROSS REFERENCES

Offenses relating to filled cheese, see sections 7236, 7266 of this title.

Stamps, see section 4832 of this title.

§ 4835. Repealed. Pub. L. 85-881, § 1 (b) (1), Sept. 2, 1958, 72 Stat. 1704.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 578, related to decisions, and appeals therefrom, as to whether substances used in the manufacture of filled cheese contained deleterious ingredients.

§ 4836. Cross references.

For definitions, penalties, and other general and administrative provisions, see section 4846 and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 578.)

SUBPART B.—OCCUPATIONAL TAX

Sec.
4841. Imposition of tax.
4842. Cross references.

§ 4841. Imposition of tax.

(a) Manufacturers.

Manufacturers of filled cheese shall pay a special tax of $400 a year for each and every factory.

(b) Wholesale dealers.

(1) In general.

Wholesale dealers in filled cheese shall pay a special tax of $250 a year.

(2) Manufacturers selling at wholesale.

Any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

(c) Retail dealers.

Retail dealers in filled cheese shall pay a special tax of $12 a year. (Aug. 16, 1954, ch. 736, 68A Stat. 578.)

CROSS REFERENCES

Offenses relating to filled cheese, see section 7266 of this title.

Property subject to forfeiture, see section 7303 of this title.

§ 4842. Cross references.

(a) Definitions.

For definitions applicable to this subpart, see section 4846.

(b) Other provisions.

For penalties and other general and administrative provisions applicable to this subpart, see chapter 40 and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 579.)

SUBPART C.—DEFINITIONS

Sec.
4846. Definitions.

§ 4846. Definitions.

For the purposes of this part—

(1) Cheese.

The word "cheese" shall be understood to mean the food product known as cheese, and made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.

(2) Filled cheese.

Certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered "filled cheese" within the meaning of this part.

(3) Manufacturer.

Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese.

(4) Wholesale dealer.

Every person, firm, or corporation who sells or offers for sale filled cheese, in the original manufacturer's packages for resale, or to retail dealers as defined in paragraph (5) shall be deemed a wholesale dealer in filled cheese.

(5) Retail dealer.

Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese.

(Aug. 16, 1954, ch. 736, 68A Stat. 579.)

Subchapter D.—Cotton Futures

Part
I. General provisions.
II. Exemptions.
III. Administrative provisions.

PART I.—GENERAL PROVISIONS

Sec.
4851. Imposition of tax.
4852. Definition.
4853. Form and validity of contracts.
4854. Cotton standards.

§ 4851. Imposition of tax.

(a) Rate.

Upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there shall be imposed a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract.

(b) By whom paid.

The tax imposed by subsection (a) shall be paid by the seller of the cotton involved in the contract of sale. (Aug. 16, 1954, ch. 736, 68A Stat. 580.)

CROSS REFERENCES

Collection and enforcement, see section 4872 of this title.

Exemptions, see section 4861 et seq. of this title.

Form and validity of contracts, see section 4853 of this title.

Method of payment, see section 4871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4853, 4864, 4865, 4871, 4872, 7492 of this title.

§ 4852. Definition.

For the purpose of this subchapter, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. (Aug. 16, 1954, ch. 736, 68A Stat. 580.)

§ 4853. Form and validity of contracts.

(a) Form.

Each contract of sale of cotton for future delivery mentioned in section 4851 (a) shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purpose of this subchapter, be deemed to weigh 500 pounds.

(b) Validity.

No contract of sale of cotton for future delivery mentioned in section 4851 (a), which does not conform to the requirements of subsection (a) of this section and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. (Aug. 16, 1954, ch. 736, 68A Stat. 580.)

CROSS REFERENCES

Basic grade contracts, exemption of, see section 4863 of this title.

Enforceability of cotton futures contracts, see section 7492 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections, 4863, 7492 of this title.

§ 4854. Cotton standards.

(a) Source and description.

Subject to the provisions of section 6 of the Act of March 4, 1923 (42 Stat. 1518; 7 U. S. C. 56), the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purpose of this subchapter, shall be known as the "Official cotton standards of the United States": *Provided,* That any standard of any cotton established and promulgated under this subchapter by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of the promulgation thereof by the Secretary of Agriculture: *Provided further,* That no change or replacement of any standard of any cotton established and promulgated under this subchapter by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when same is to become effective.

(b) Practical forms.

(1) Preparation, certification, and distribution.

The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

(2) Disposition of receipts from sales.

All sums collected by the Secretary of Agriculture for furnishing practical forms under paragraph (1) shall be deposited and covered into the Treasury as miscellaneous receipts.

(Aug. 16, 1954, ch. 736, 68A Stat. 580.)

PART II.—EXEMPTIONS

Sec.
4861. Spot cotton.
4862. Definition of bona fide spot markets.
4863. Basis grade contracts.
4864. Tendered grade contracts.
4865. Specific grade contracts.

§ 4861. Spot cotton.

This subchapter shall not be construed to impose a tax on any sale of spot cotton. (Aug. 16, 1954, ch. 736, 68A Stat. 581.)

§ 4862. Definition of bona fide spot markets.

(a) Definition.

For the purpose of this subchapter, the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(b) Determination.

In determining, pursuant to the provisions of this subchapter, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided,* That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section 4863 (c), he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the

value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to section 4863 (a) and (b) shall be determined in compliance with such rules and regulations: *Provided further,* That it shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary of Agriculture or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. (Aug. 16, 1954, ch. 736, 68A Stat. 581.)

CROSS REFERENCES

Penalties relating to cotton futures, see section 7263 of this title.

§ 4863. Basis grade contracts.

(a) Conditions.

No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851 (a) if the contract comply with each of the following conditions:

(1) Conformity with section 4853 (a) and regulations.

Conform to the requirements in section 4853 (a) and the rules and regulations made pursuant to this subchapter.

(2) Specification of grade, price, and dates of sale and settlement.

Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth paragraph of this subsection, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided,* That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(3) Provision for delivery of standard grades only.

Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by paragraph (5) and no other grade or grades.

(4) Provision for settlement on basis of actual commercial differences.

Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(5) Prohibition of delivery of inferior cotton.

Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

(6) Provisions for tender in full, notice of delivery date, and certificate of grade.

Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(7) Provision for tender and settlement in accordance with government classification.

Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary of Agriculture by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed collected, and paid as provided in such regulations. All moneys collected as such costs may be used as a revolving fund for carrying out the purposes of this paragraph. The Secretary of Agriculture is authorized to prescribe regulations for carrying out the purposes of this paragraph, and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this paragraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(b) Incorporation of conditions in contracts.

The provisions of subsection (a) (3), (4), (5), (6), and (7) shall be deemed fully incorporated into any such contract if there be written or printed thereon,

or on the memoranda evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 4863."

(c) Delivery allowances.

For the purpose of this section, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with subsection (a) (6), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided,* That for the purpose of this subsection such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further,* That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. (Aug. 16, 1954, ch. 736, 63A Stat. 582.)

CROSS REFERENCES

Definition and determination of bona fide spot markets, see section 4862 of this title.

Specific grade contracts, see section 4865 of this title.

Tendered grade contracts, see section 4864 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4862 of this title.

§ 4864. Tendered grade contracts.

(a) Conditions.

No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851 (a) if the contract—

(1) Compliance with section 4863.

Comply with all the terms and conditions of section 4863 not inconsistent with this section; and

(2) Provision for contingent specific performance.

Provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(b) Incorporation of conditions in contract.

Contracts made in compliance with this section shall be known as "Section 4864 Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to Internal Revenue Code, section 4864."

(c) Application of section.

Nothing in this section shall be so construed as to relieve from the tax imposed by section 4851 (a) any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this subchapter. (Aug. 16, 1954, ch. 736, 68A Stat. 584.)

CROSS REFERENCES

Specific grade contracts, see section 4865 of this title.

§ 4865. Specific grade contracts.

(a) Conditions.

No tax shall be imposed under this subchapter on any contract of sale mentioned in section 4851 (a) if the contract comply with each of the following conditions:

(1) Conformity with rules and regulations.

Conform to the rules and regulations made pursuant to this subchapter.

(2) Specification of grade, price, dates of sale and delivery.

Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(3) Prohibition of delivery of other than specified grade.

Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(4) Provision for specific performance.

Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(b) Incorporation of conditions in contract.

The provisions of subsection (a) (1), (3), and (4) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to Internal Revenue Code, section 4865."

(c) Application of section.

This section shall not be construed to apply to any contract of sale made in compliance with section 4863 or 4864. (Aug. 16, 1954, ch. 736, 68A Stat. 584.)

PART III.—ADMINISTRATIVE PROVISIONS

Sec.
4871. Method of payment.
4872. Collection and enforcement.
4873. Liability of principal for acts of agent.
4875. Operation of State laws.
4876. Reports of Secretary of Agriculture.
4877. Cross references.

AMENDMENTS

1970—Pub. L. 91-452, title II, § 231(b), Oct. 15, 1970, 84 Stat. 930, struck out item 4874 "Immunity of witnesses".

§ 4871. Method of payment.

The tax imposed by section 4851 (a) shall be paid by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 585.)

CROSS REFERENCES

Enforceability of contracts, see section 7492 of this title.
Validity of contracts, see section 4853 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections, 4863, 7492 of this title.

§ 4872. Collection and enforcement.

(a) Rules and regulations.

The Secretary or his delegate is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this subchapter and otherwise to enforce its provisions.

(b) Records and returns.

Further to effect the purpose of subsection (a), the Secretary or his delegate shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section 4851 (a), including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section 4851 (a) to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions.

(c) Employment of officers and employees.

The Secretary or his delegate may appoint officers and employees to conduct the inspection necessary to collect said tax and otherwise to enforce this subchapter and all rules and regulations made by him in pursuance hereof. (Aug. 16, 1954, ch. 736, 68A Stat. 585.)

§ 4873. Liability of principal for acts of agent.

When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation, as well as that of the person. (Aug. 16, 1954, ch. 736, 68A Stat. 586.)

§ 4874. Repealed. Pub. L. 91-452, title II, § 231(a), Oct. 15, 1970, 84 Stat. 930.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 586, provided that no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this subchapter withhold his testimony because of complicity by him in any violation of this subchapter or of any regulation made pursuant to this subchapter, but that such person called by such officer who testifies in the case be exempt from prosecution for any offense to which his testimony relates. See, now, section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Repeal of this section by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 4875. Operation of State laws.

The payment of any tax imposed by this subchapter shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this subchapter be held to prohibit any State or municipality from imposing a tax on the same transaction. (Aug. 16, 1954, ch. 736, 68A Stat. 586.)

§ 4876. Reports of Secretary of Agriculture.

The Secretary of Agriculture is directed to publish from time to time the results of investigations made in pursuance of this subchapter. (Aug. 16, 1954, ch. 736, 68A Stat. 586.)

§ 4877. Cross references.

For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 586.)

Subchapter E.—Circulation Other Than of National Banks

Sec.
4881. Imposition of tax.
4882. Definition of bank or banker.
4883. Exemptions.
4884. Returns and payment of tax.
4885. Estimation of outstanding circulation in default of return.
4886. Cross references.

§ 4881. Imposition of tax.

(a) Average circulation outstanding.

There shall be imposed—

(1) Entire circulation.

A tax of one-twelfth of 1 percent each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and

(2) Circulation exceeding 90 percent of capital.

An additional tax of one-sixth of 1 percent each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of 90 percent of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

(b) Circulation paid out.

(1) Own circulation.

Every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of 10 percent on the amount of their own notes used for circulation and paid out by them.

(2) Other circulation.

Every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of 10 percent on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them.

(Aug. 16, 1954, ch. 736, 68A Stat. 587.)

CROSS REFERENCES

Exemptions, see section 4883 of this title.

Returns and payment of tax, see section 4884 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4883, 4884 of this title.

§ 4882. Definition of bank or banker.

Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker. (Aug. 16, 1954, ch. 736, 68A Stat. 587.)

§ 4883. Exemptions.

(a) Circulation reduced to not over 5 percent of capital.

Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding 5 percent of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation.

(b) Circulation under redemption in whole.

Whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary or his delegate shall prescribe, it shall be exempt from any tax upon such circulation.

(c) National banks.

The provisions of this subchapter, relating to the tax on the circulation of banks, and to their returns, except as contained in sections 4881 (b) (2), 4883 (a) and (b), 4884 (a) (3), and such parts of sections 4884 (a) (1) and (2) and (b), 4885, and 4886, as relate to the tax of 10 percent on certain notes, shall not apply to associations which are taxed as national banks.

(d) Circulation of insolvent banks.

For exemption in case of insolvent banks, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 588.)

§ 4884. Returns and payment of tax.

(a) Circulation outstanding.

(1) Time for making return.

A true and complete return of the monthly amount of circulation as aforesaid for the previous six months shall be made and rendered in duplicate on the first day of December, and the first day of June, by each of such banks, associations, corporations, companies, or persons.

(2) Calculation of tax.

The tax imposed by section 4881 (a) shall be calculated at the rate per month prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly.

(3) Return and payment when state bank converted into national bank.

Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed 5 per centum of the capital before such conversion of such State bank or banking association.

(b) Circulation paid out.

The amount of circulating notes referred to in section 4881 (b), and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as provided by law for the return and payment of taxes on circulation imposed by section 4881 (a). (Aug. 16, 1954, ch. 736, 68A Stat. 588.)

CROSS REFERENCES

Estimation of outstanding circulation in default of return, see section 4885 of this title.

Exemptions, see section 4883 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4883, 4885 of this title.

§ 4885. Estimation of outstanding circulation in default of return.

In default of the returns provided in section 4884, the amount of circulation and notes of persons. town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Secretary or his delegate, upon the best information he can obtain. (Aug. 16, 1954, ch. 736, 68A Stat. 589.)

CROSS REFERENCES

Exemptions, see section 4883 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4883 of this title.

§ 4886. Cross references.

For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 589.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4883 of this title.

§§ 4891 to 4897. Repealed. Pub. L. 88–36, title II, § 201(a), June 4, 1963, 77 Stat. 54.

Sections 4891—4897, act Aug. 16, 1954, ch. 736, 68A Stat. 590–592, provided for: imposition of tax; definitions of "cost", "transfer", "interest in silver bullion", "allowed expenses", "memorandum", "wash sale" and "silver bullion"; liability for tax; abatement or refund; stamps; applicability; and cross references, respectively.

EFFECTIVE DATE OF REPEAL

Section 202 of Pub. L. 88–36 provided that: "Section 201 [amending sections 6422 and 6808 of this title and repealing these sections] shall apply only with respect to transfers after the date of the enactment of this title [June 4, 1963]."

Chapter 40.—GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES

Sec.
4901. Payment of tax.
4902. Liability of partners.
4903. Liability in case of business in more than one location.
4904. Liability in case of different businesses of same ownership and location.
4905. Liability in case of death or change of location.
4906. Application of State laws.
4907. Federal agencies or instrumentalities.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4463 of this title.

§ 4901. Payment of tax.

(a) Condition precedent to carrying on certain business.

No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering) or 4461(a)(1) (coin-operated gaming devices) until he has paid the special tax therefor.

(b) Computation.

All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid.

(1) Stamp.

All special taxes imposed by law shall be paid by stamps denoting the tax.

(2) Assessment.

For authority of the Secretary or his delegate to make assessments where the special taxes have not been duly paid by stamp at the time and in the manner provided by law, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 593; June 21, 1965, Pub. L. 89–44, title IV, § 405(b), 79 Stat. 149; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(a), 84 Stat. 1292.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–513 struck out references to tax imposed by sections 4721 (narcotic drugs) and 4751 (marihuana).

1965—Subsec. (a). Pub. L. 89–44 substituted "4461(a)(1)" for "4461(2)".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as a note under section 4461 of this title.

SAVINGS PROVISION

Prosecution for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

CROSS REFERENCES

Wagering, occupational tax, section as applicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4413 of this title.

§ 4902. Liability of partners.

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax. (Aug. 16, 1954, ch. 736, 68A Stat. 593.)

CROSS REFERENCES

Wagering, occupational tax, section as applicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4413 of this title.

§ 4903. Liability in case of business in more than one location.

The payment of the special tax imposed, other than the tax imposed by section 4411, shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this subtitle, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchan-

dise shall be kept except as samples at said office or place of business. (Aug. 16, 1954, ch. 736, 68A Stat. 593.)

CROSS REFERENCES

List of special taxpayers for public inspection, see section 6107 of this title.

Registration of persons paying special tax, see section 7011 of this title.

Wagering, occupational tax, section as inapplicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4413 of this title.

§ 4904. Liability in case of different businesses of same ownership and location.

Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed. (Aug. 16, 1954, ch. 736, 68A Stat. 594.)

CROSS REFERENCES

Wagering, occupational tax, section as applicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4413 of this title.

§ 4905. Liability in case of death or change of location.

(a) Requirements.

When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided,* That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary or his delegate, under regulations to be prescribed by the Secretary or his delegate.

(b) Registration.

(1) For registration in case of wagering and white phosphorous matches, see sections 4412 and 4804(d), respectively.

(2) For other provisions relating to registration, see subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 594; June 2, 1965, Pub. L. 89–44, title IV, § 405(c), 79 Stat. 149; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(b), 84 Stat. 1292.)

AMENDMENTS

1970—Subsec. (b)(1). Pub. L. 91–513 struck out references to narcotics and marihuana and to sections 4722 and 4753.

1965—Subsec. (b)(1). Pub. L. 89–44 struck out "playing cards," following "wagering," and "4455," following "4412,".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(c)(2) of Pub. L. 89–44 provided in part that: "The amendments made by section 402 [repealing sections 4451—4457 of this title] (relating to playing cards) and by subsections (c) of section 405 [to subsec. (b)(1) of this section] shall apply on and after the day after the date of the enactment of this Act [June 21, 1965]."

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

CROSS REFERENCES

List of special taxpayers for public inspection, see section 6107 of this title.

Registration of persons paying special tax, see section 7011 of this title.

Wagering occupational tax, section as applicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4413, 7011 of this title.

§ 4906. Application of State laws.

The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes. (Aug. 16, 1954, ch. 736, 68A Stat. 594.)

CROSS REFERENCES

Wagering, occupational tax, section as applicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4413 of this title.

§ 4907. Federal agencies or instrumentalities.

Any special tax imposed by this subtitle, except the tax imposed by section 4411, shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax. (Aug. 16, 1954, ch. 736, 68A Stat. 594.)

CROSS REFERENCES

Wagering, occupational tax, section as inapplicable to, see section 4413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4413 of this title.

Chapter 41.—INTEREST EQUALIZATION TAX

Subchapter

A. Acquisitions of foreign stock and debt obligations.

B. Acquisitions by commercial banks.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6103 of this title.

Subchapter A—Acquisitions of Foreign Stock and Debt Obligations

Sec.
4911. Imposition of tax.
4912. Acquisitions.
4913. Limitation on tax on certain acquisitions.
4914. Exclusion for certain acquisitions.
4915. Exclusion for direct investments.
4916. Exclusion for investments in less developed countries.
4917. Exclusion for original or new issues where required for international monetary stability.
4918. Exemption for prior American ownership and compliance.
4919. Sales by underwriters and dealers to foreign persons.
4920. Definitions and special rules.

AMENDMENTS

1967—Pub. L. 90-59, § 4(g), July 31, 1967, 81 Stat. 156, inserted "and compliance" in item 4918.

1964—Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 809, added chapter 41.

§ 4911. Imposition of tax.

(a) In general.

There is hereby imposed, on each acquisition by a United States person (as defined in section 4920(a)(4)) of stock of a foreign issuer, or of a debt obligation of a foreign obligor (if such obligation has a period remaining to maturity of 1 year or more), a tax determined under subsection (b).

(b) Amount of tax.

(1) Rates of tax.

Except as provided in paragraphs (2) and (3)—

(A) Stock.

The tax imposed by subsection (a) on the acquisition of stock shall be equal to 15 percent of the actual value of the stock.

(B) Debt obligations.

The tax imposed by subsection (a) on the acquisition of a debt obligation shall be equal to a percentage of the actual value of the debt obligation measured by the period remaining to its maturity and determined under column II (A) of the following table:

I	II	
If the period remaining to maturity is—	The tax, as a percentage of actual value, is—	
	(A)	(B)
At least 1 year, but less than 1¼ years	1.05	1.58
At least 1¼ years, but less than 1½ years	1.30	1.95
At least 1½ years, but less than 1¾ years	1.50	2.25
At least 1¾ years, but less than 2¼ years	1.85	2.78
At least 2¼ years, but less than 2¾ years	2.30	3.45
At least 2¾ years, but less than 3½ years	2.75	4.13
At least 3½ years, but less than 4½ years	3.55	5.33
At least 4½ years, but less than 5½ years	4.35	6.53
At least 5½ years, but less than 6½ years	5.10	7.65
At least 6½ years, but less than 7½ years	5.80	8.70
At least 7½ years, but less than 8½ years	6.50	9.75
At least 8½ years, but less than 9½ years	7.10	10.65
At least 9½ years, but less than 10½ years	7.70	11.55
At least 10½ years, but less than 11½ years	8.30	12.45
At least 11½ years, but less than 13½ years	9.10	13.65
At least 13½ years, but less than 16½ years	10.30	15.45
At least 16½ years, but less than 18½ years	11.35	17.03
At least 18½ years, but less than 21½ years	12.25	18.38
At least 21½ years, but less than 23½ years	13.05	19.58
At least 23½ years, but less than 26½ years	13.75	20.63
At least 26½ years, but less than 28½ years	14.35	21.53
28½ years or more	15.00	22.50

(2) Modification of tax rates by executive order.

(A) In general.

If the President of the United States determines that the rates of tax imposed by paragraph (1), or provided in any prior Executive order issued pursuant to this paragraph, are lower or higher than the rates of tax necessary to limit the total acquisitions by United States persons of stock of foreign issuers and debt obligations of foreign obligors within a range consistent with the balance-of-payments objectives of the United States (including achieving a minimum reliance on the tax), he may by Executive order (effective as provided in subparagraph (C)(ii)) increase or decrease such rates of tax. To the extent specified in such Executive order, the rates applicable to acquisitions of stock or debt obligations which are part of an original or new issue may be lower than the rates applicable to acquisitions of stock or debt obligations which are not part of an original or new issue. An Executive order which has the effect of establishing lower rates for original or new issues may be applicable to all original or new issues or to any aggregate amount or classification thereof and to acquisitions occurring during such period of time as may be stated therein, and may provide for other limitations and implementing procedures. In determining whether stock or a debt obligation shall be treated as part of an "original or new issue" for purposes of this subparagraph, the provisions of section 4917(c) shall apply.

(B) Maximum rate.

No increase in the rates of tax which is prescribed in an Executive order issued under subparagraph (A) shall—

(i) cause the rate applicable to the acquisition of stock to be higher than 22.5 percent, or

(ii) cause the rates applicable to the acquisition of debt obligations to be higher than the rates set forth in column II(B) of the table in paragraph (1)(B) of this subsection.

(C) Application of executive orders.

(i) Subject to the authorization to establish lower rates with respect to acquisitions of stock or debt obligations which are part of an original or new issue, each increase and each decrease in the rates of tax which is prescribed in an Executive order issued under subparagraph (A) shall provide for the same proportionate increase or decrease in each rate of tax, except that any such rate may be rounded to the nearest 0.01 percent.

(ii) Any Executive order issued under subparagraph (A) shall apply with respect to acquisitions made after the date on which such order is issued (or, if later, after the 29th day following the date of the enactment of this paragraph); except that in the case of any such order which increases the rates of tax (as in effect without regard to such order), to the extent specified in such order, rules similar to the rules prescribed by paragraphs

(2), (3), and (4) of section 3(c) of the Interest Equalization Tax Extension Act of 1967 shall apply.

(iii) If, by reason of an Executive order issued under subparagraph (A), the rates of tax in effect on the date of an acquisition described in paragraph (2) or (4) of section 3(c) of the Interest Equalization Tax Extension Act of 1967 are lower than the rates of tax in effect on January 25, 1967, the applicable rate of tax prescribed in such Executive order shall apply to such acquisition.

(3) Rates during interim period.

In the case of acquisitions of stock and debt obligations made after January 25, 1967, and before the thirtieth day after the date of the enactment of this paragraph, the tax imposed by subsection (a) shall be 22.5 percent in the case of acquisition of stock, and shall be determined under column II(B) (rather than column II(A)) of the table in paragraph (1)(B) in the case of acquisition of a debt obligation.

(4) Regulations.

The Secretary or his delegate may prescribe such regulations (not inconsistent with the provisions of this section or of any Executive order issued and in effect under this section) as may be necessary to carry out the provisions of this section.

(c) Persons liable for tax.

(1) In general.

The tax imposed by subsection (a) shall be paid by the person acquiring the stock or debt obligation involved.

(2) Cross reference.

For imposition of penalty on maker of false certificate in lieu of or in addition to tax on acquisition in certain cases, see section 6681.

(d) Termination of tax.

The tax imposed by subsection (a) shall not apply to any acquisition made after March 31, 1971. (Added Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 809, and amended Pub. L. 89-243, §§ 2, 3(a)(1), (b), Oct. 9, 1965, 79 Stat. 954; Pub. L. 90-59, §§ 2, 3(a), July 31, 1967, 81 Stat. 145; Pub. L. 91-50, Aug. 2, 1969, 83 Stat. 86; Pub. L. 91-65, § 2, Aug. 25, 1969, 83 Stat. 105; Pub. L. 91-128, §§ 2, 3, Nov. 26, 1969, 83 Stat. 261, 262.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(C)(ii), is July 31, 1967.

Section 3(c) of the Interest Equalization Tax Extension Act of 1967, referred to in subsec. (b)(2)(C)(ii), (iii), is section 3(c) of Pub. L. 90-59, which is set out as a note under this section.

AMENDMENTS

1969—Subsec. (b)(2)(A). Pub. L. 91-128, § 3(a), directed the President to rely on the tax to the minimum in exercising his rate varying authority to achieve the balance-of-payments objective of the United States, and, as to any original or new issue that he deemed appropriate for such treatment, gave him discretion to prescribe, by executive order, tax rates lower than those for stock acquisitions or debt obligations not part of an original or new issue, and authorized him to provide limitations and implementing procedures in such executive order.

Subsec. (b)(2)(C)(i). Pub. L. 91-128, § 3(b), excepted the President's authority to establish lower rates for acquisitions or debt obligations that are part of an original or new issue from the requirement that an executive order provide for the same proportionate increase or decrease in each tax rate.

Subsec. (d). Pub. L. 91-128, § 2, substituted "March 31, 1971" for "September 30, 1969."

Pub. L. 91-65 substituted "September 30, 1969" for "August 31, 1969."

Pub. L. 91-50 substituted "August 31, 1969" for "July 31, 1969".

1967—Subsec. (b). Pub. L. 90-59, § 3(a), among other changes, designated existing provisions as par. (1), inserted column II(B) in the table, and added pars. (2)—(4).

Subsec. (d). Pub. L. 90-59, § 2, substituted "July 31, 1969" for "July 31, 1967."

1965—Subsec. (a). Pub. L. 89-243, § 3(a)(1), substituted "1 year" for "3 years."

Subsec. (b)(2). Pub. L. 89-243, § 3(b), changed the tax rate from 2.75 percent for at least 3 years, but less than 3½ years to 1.05 percent for at least 1 year, but less than 1¼ years, 1.30 percent for at least 1¼ years, but less than 1½ years, 1.50 percent for at least 1½ years, but less than 1¾ years, 1.85 percent for at least 1¾ years, but less than 2¼ years, 2.30 percent for at least 2¼ years, but less than 2¾ years, and 2.75 percent for at least 2¾ years, but less than 3½ years.

Subsec. (d). Pub. L. 89-243, § 2, substituted "July 31, 1967" for "December 31, 1965".

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 2 of Pub. L. 91-128 provided in part that the amendment of subsec. (d) of this section by section 2 of Pub. L. 91-128 shall be effective with respect to acquisitions made after September 30, 1969.

Section 2 of Pub. L. 91-65 provided that the amendment of subsec. (d) by such section shall be effective with respect to acquisitions made after Aug. 31, 1969.

Section 1 of Pub. L. 91-50 provided in part that amendment of subsec. (d) by section 1 of Pub. L. 91-50 shall be effective with respect to acquisitions made after July 31, 1969.

EFFECTIVE DATE OF 1967 AMENDMENT: SPECIAL RULES

Section 3 (c), (d) of Pub. L. 90-59 provided that:

"(c) **Effective Date and Special Rules.**—

"(1) **General rule.**—The amendments made by subsection (a) [to subsec. (b) of this section] shall apply only with respect to acquisitions of stock or debt obligations made after January 25, 1967. The amendment made by paragraph (1) of subsection (b) [to section 4931(c) of this title as amended by Pub. L. 90-59] shall apply only with respect to acquisitions of debt obligations made after January 25, 1967, and before February 21, 1967 (the date on which the amendments made by section 3(e)(1) of the Interest Equalization Tax Extension Act of 1965 [set out as a note under section 4931 of this title] became effective).

"(2) **Preexisting commitments.**—Except as provided in section 4911(b)(2)(C)(iii) of the Internal Revenue Code of 1954 (as added by such amendments) [subsec. (b)(2)(C)(iii) of this section], such amendments shall not apply to an acquisition—

"(A) made pursuant to an obligation to acquire which on January 25, 1967—

"(i) was unconditional, or

"(ii) was subject only to conditions contained in a formal contract under which partial performance had occurred; or

"(B) as to which on or before January 25, 1967, the acquiring United States person (or, in a case where 2 or more United States persons are making acquisitions as part of a single transaction, a majority in interest of such persons) had taken every action to signify approval of the acquisition under the procedures ordinarily employed by such person (or persons) in similar transactions and had sent or deposited for delivery to the foreign person from whom the acquisition was made written evidence of

such approval in the form of a commitment letter, memorandum of terms, draft purchase contract, or other document setting forth, or referring to a document sent by the foreign person from whom the acquisition was made which set forth, the principal terms of such acquisition, subject only to the execution of formal documents evidencing the acquisition and to customary closing conditions.

"(3) **Public offerings.**—Such amendments shall not apply to an acquisition made on or before March 27, 1967, if—

"(A) a registration statement (within the meaning of the Securities Act of 1933) [section 77a et seq. of Title 15] was in effect with respect to the stock or debt obligation acquired at the time of its acquisition;

"(B) the registration statement was first filed with the Securities and Exchange Commission on January 25, 1967, or within 90 days before that date; and

"(C) no amendment was filed with the Securities and Exchange Commission after January 25, 1967, and before the acquisition which had the effect of increasing the number of shares of stock or the aggregate face amount of the debt obligations covered by the registration statement.

"(4) **Options, foreclosures, and conversions.**—Except as provided in section 4911(b)(2)(C)(iii) of the Internal Revenue Code of 1954 (as added by such amendments) [subsec. (b)(2)(C)(iii) of this section], such amendments shall not apply to an acquisition—

"(A) of stock pursuant to the exercise of an option or similar right (or a right to convert a debt obligation into stock), if such option or right was held on January 25, 1967, by the person making the acquisition or by a decedent from whom such person acquired the right to exercise such option or right by bequest or inheritance or by reason of such decedent's death, or

"(B) of stock or debt obligations as a result of a foreclosure by a creditor pursuant to the terms of an instrument held by such creditor on January 25, 1967.

"(d) **Returns.**—If, by reason of the enactment of this Act [Pub. L. 90–59], a person incurs additional liability for interest equalization tax with respect to acquisitions of stock or debt obligations made after January 25, 1967, for which a return has been filed under section 6011(d)(1) of the Internal Revenue Code of 1954 [section 6011(d)(1) of this title] before the date of the enactment of this Act [July 31, 1967], such person shall make an amended return showing such additional liability. If liability for interest equalization tax with respect to such acquisitions is initially created by reason of the enactment of this section, the person incurring such liability shall make a return. The returns required to be made by this paragraph shall be filed on or before the last day of the month following the close of the calendar quarter in which the date of the enactment of this Act [July 31, 1967] occurs or at such later time as the Secretary or his delegate may prescribe."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 3(c) of Pub. L. 89–243 provided that:

"(1) **General rule.**

"Except as provided by paragraphs (2), (3), and (4), the amendments made by subsections (a) and (b) [to this section and sections 4914 and 4920 of this title] shall apply with respect to acquisitions of debt obligations, and designations described in section 4914(e)(3)(D) or 4914(e)(3)(E)(ii) of the Internal Revenue Code of 1954, made after February 10, 1965.

"(2) **Preexisting commitments.**

"Such amendments shall not apply to an acquisition—

"(A) made pursuant to an obligation to acquire which on February 10, 1965—

"(i) was unconditional, or

"(ii) was subject only to conditions contained in a formal contract under which partial performance had occurred; or

"(B) as to which on or before February 10, 1965, the acquiring United States person (or, in a case where 2 or more United States persons are making acquisitions as part of a single transaction, a majority in interest of such persons) had taken every action to signify approval of the acquisition under the procedures ordinarily employed by such person (or persons) in similar transactions and had sent or deposited for delivery to the foreign person from whom the acquisition was made written evidence of such approval in the form of a commitment letter, memorandum of terms, draft purchase contract, or other document setting forth, or referring to a document sent by the foreign person from whom the acquisition was made which set forth, the principal terms of such acquisition, subject only to the execution of formal documents evidencing the acquisition and to customary closing conditions.

"(3) **Public offerings.**

"Such amendments shall not apply to an acquisition of debt obligations made on or before April 12, 1965, if—

"(A) a registration statement (within the meaning of the Securities Act of 1933 [section 78a et seq. of Title 15]) was in effect with respect to the debt obligation acquired at the time of its acquisition;

"(B) the registration statement was first filed with the Securities and Exchange Commission on February 10, 1965, or within 90 days before that date; and

"(C) no amendment was filed with the Securities and Exchange Commission after February 10, 1965, and before the acquisition which had the effect of increasing the aggregate face amount of the debt obligations covered by the registration statement.

"(4) **Foreclosures.**

"Such amendments shall not apply to an acquisition of debt obligations as a result of a foreclosure by a creditor pursuant to the terms of an instrument held by such creditor on February 10, 1965."

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, not affected by amendment of section by section 3 of Pub. L. 89–243, see section 3(e)(2) of Pub. L. 89–243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section 2(c) of Pub. L. 88–563, as amended Pub. L. 89–243, § 5(a), Oct. 9, 1965, 79 Stat. 965, provided that:

"(1) **General rule.**

"Except as provided by paragraphs (2), (3), (4), (5), (6), and (7), the amendments made by this section [adding this chapter] shall apply with respect to acquisitions of stock and debt obligations made after July 18, 1963.

"(2) **Preexisting commitments.**

"Such amendments shall not apply to an acquisition—

"(A) made pursuant to an obligation to acquire which on July 18, 1963—

"(i) was unconditional, or

"(ii) was subject only to conditions contained in a formal contract under which partial performance had occurred;

"(B) as to which on or before July 18, 1963, the acquiring United States person (or, in a case where 2 or more United States persons are making acquisitions as part of a single transaction, a majority in interest of such persons) had taken every action to signify approval of the acquisition under the procedures ordinarily employed by such person (or persons) in similar transactions, subject only to the execution of formal documents evidencing the acquisition and to customary closing conditions, and the acquiring United States person (or persons)—

"(i) had sent or deposited for delivery to the foreign person from whom the acquisition was made written evidence of such approval in the form of a commitment letter, memorandum of terms, draft purchase contract, or other document setting forth, or referring to a document sent by the foreign person from whom the acquisition was made which set forth, the principal terms of such acquisition, or

"(ii) had received from the foreign person from whom the acquisition was made a memorandum of terms, draft purchase contract, or other document setting forth, or referring to a document sent by the acquiring United States person (or persons) which set forth, the principal terms of such acquistion;

"(C) if, on or before July 18, 1963, the acquiring United States person—

"(i) had entered into a contract for the sale to the government of a less developed country or a political subdivision thereof, or an agency or instrumentality of such government (within the meaning of section 4916(a)), of property owned within such less developed country or political subdivision by such person or by a controlled foreign corporation (as defined in section 957) more than 50 percent of the total combined voting power of all classes of stock entitled to vote of which was owned (within the meaning of section 958) by such person, or of stock or debt obligations of such a controlled foreign corporation which was actively engaged in the conduct of a trade or business within such less developed country; or had entered into a contract of indemnification with respect to the nationalization, expropriation, or seizure of such property or of such stock or debt obligations by the government of a less developed country or political subdivision thereof, or an agency or instrumentality of such government (within the meaning of section 4916(a)), or

"(ii) had sent or deposited for delivery to the government of a less developed country or political subdivision thereof, or an agency or instrumentality of such government (within the meaning of section 4916(a), a commitment letter, memorandum of terms, or other document setting forth the principal terms of a contract described in clause (i),

to the extent such acquisition is required by the terms of the contract as a reinvestment within such less developed country of amounts equal to part or all of the consideration received under the contract;

"(D) which would be excluded from tax under section 4915 of the Internal Revenue Code of 1954 but for the provisions of subsection (c) thereof, if (i) on or before July 18, 1963, the acquiring United States person applied for and received from a foreign government (or an agency or instrumentality thereof) authorization to make such acquisition and approval of the amount thereof, and (ii) such authorization was required in order for such acquisition to be made; or

"(E) of stock in the initial capitalization of a foreign corporation which would be excluded from tax under section 4915 of the Internal Revenue Code of 1954 but for the provisions of subsection (c) thereof, if at least 75 percent in interest of the United States persons who acquired stock in such initial capitalization had signified on or before July 18, 1963, to the person coordinating the organization of such corporation the intention to invest a specified amount of money through the purchase of such stock, which amount was equal to or greater than the amount ultimately so invested.

"(3) **Public offering.**

"Such amendments shall not apply to an acquisition made on or before September 16, 1963, if—

"(A) a registration statement (within the meaning of the Securities Act of 1933 [section 78a et seq. of Title 15]) was in effect with respect to the stock or debt obligation acquired at the time of its acquisition;

"(B) the registration statement was first filed with the Securities and Exchange Commission on July 18, 1963, or within 90 days before that date; and

"(C) no amendment was filed with the Securities and Exchange Commission after July 18, 1963, and before the acquisition which had the effect of increasing the number of shares of stock or the aggregate face amount of the debt obligations covered by the registration statement.

"(4) **Investment of proceeds of subscription offering.**

"Such amendments shall not apply to an acquisition of stock or debt obligations of a foreign issuer or obligor by a corporation electing under section 4920(a)(3)(B) of the Internal Revenue Code of 1954 to be treated as a foreign issuer or obligor for purposes of chapter 41 of such Code [this chapter], to the extent that the amount of consideration paid for all such stock and debt obligations does not exceed the proceeds received by such corporation from a subscription offering (completed on or before September 16, 1963) as to which a registration statement was filed with the Securities and Exchange Commission on July 18, 1963, or within 90 days before that date.

"(5) **Listed securities.**

"Such amendments shall not apply to an acquisition made on or before August 16, 1963, if the stock or debt obligation involved was acquired on a national securities exchange registered with the Securities and Exchange Commission.

"(6) **Options, foreclosures, and conversions.**

"Such amendments shall not apply to an acquisition—

"(A) of stock pursuant to the exercise of an option or similar right (or a right to convert a debt obligation into stock), if such option or right was held on July 18, 1963, by the person making the acquisition or by a decedent from whom such person acquired the right to exercise such option or right by bequest or inheritance or by reason of such decedent's death, or

"(B) of stock or debt obligations as a result of a foreclosure by a creditor pursuant to the terms of an instrument held by such creditor on July 18, 1963.

"(7) **Domestication.**

"Such amendments shall not apply to the acquisition by a domestic corporation of the assets of a foreign corporation pursuant to a reorganization described in subparagraph (C), (D), or (F) of section 368(a)(1) of the Internal Revenue Code of 1954 if the acquisition occurs on or before the 180th day after the date of the enactment of this Act [Sept. 21, 1964] and the foreign corporation was a management company registered under the Investment Company Act of 1940 [section 80a–1 et seq. of Title 15] from July 18, 1963, until the time of the acquisition.

"(8) **Meaning of terms.**

"Terms used in this subsection (except as specifically otherwise provided) shall have the same meaning as when used in chapter 41 of the Internal Revenue Code of 1954.

SHORT TITLE OF 1969 AMENDMENT

Section 1(a) of Pub. L. 91–128 provided that: "This Act [amending sections 4182, 4911, 4912, 4914, 4915, 4919, 4920, 6011, and 6680 of this title and enacting provisions set out as notes under this section and sections 4912, 4914, 4915, 5919, 4920, and 6680 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1969'."

SHORT TITLE OF 1967 AMENDMENT

Section 1(a) of Pub. L. 90–59 provided that: "This Act [amending this section and sections 4912, 4914—4920, 4931, 6011, 6076, 6681 and 7241 of this title, and enacting provisions set out as notes under this section and sections 4912, 4914 and 4916—4919 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1967'."

SHORT TITLE OF 1965 AMENDMENT

Section 1(a) of Pub. L. 89–243 provided that: "This Act [amending this section and sections 263, 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title, and enacting provisions set out as notes under this section and sections 4914, 4920, 4931, 6011, and 6076 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1965'."

SHORT TITLE

Section 1(a) of Pub. L. 88–563 provided that: "This Act [enacting this chapter and sections 6076, 6680, 6681, and 7241 of this title, amending sections 263, 1232, 6011, and 6103 of this title, and enacting provisions set out as notes under this section and section 6011 of this title] may be cited as the 'Interest Equalization Tax Act'."

CERTAIN DEBT OBLIGATIONS OF FORMER LESS DEVELOPED COUNTRIES

Section 5(b) of Pub. L. 89–243 provided that:

"The tax imposed by section 4911 of the Internal Revenue Code of 1954 [this section] shall not apply to the acquisition by a United States person of a debt obligation issued by the government of a foreign country which has been designated as an economically less developed country under an Executive order of the President in effect for purposes of the tax imposed by section 4911, but with respect to which such designation has been terminated

before the enactment of this Act [Oct. 9, 1965], if, prior to such acquisition, the Secretary of State has certified to the Secretary of the Treasury or his delegate that—

"(1) the government of such foreign country had, on or before April 6, 1965, communicated to the United States Department of State its intention to issue such debt obligation;

"(2) the government of such foreign country had, on or before April 6, 1965, commenced negotiations with United States persons relative to the issuance of such debt obligation; and

"(3) exemption from the tax imposed by section 4911 of the Internal Revenue Code of 1954 [this section] on the acquisition of such debt obligation by a United States person is in the best interests of the United States."

USE OF FOREIGN CURRENCIES OWNED BY THE UNITED STATES

Section 6 of Pub. L. 89-243 provided that:

"(a) Under the direction of the President, the Secretary of the Treasury shall periodically ascertain, by country, the amount of funds required by the United States Government to pay its obligations in foreign countries, including obligations payable in foreign currencies.

"(b) Every international agreement (other than an agreement entered into pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480, 83d Congress) [sections 1701—1704 and 1705—1709 of Title 7, Agriculture]) hereafter entered into, or hereafter amended or extended, between the United States and any foreign country under which currency of such country accrues or will accrue for the use of the United States shall include provisions that such currency may be used for paying United States obligations in such country which may be paid in such currency, and if not needed for such purpose may be used, or converted to other foreign currencies or to dollars for use, in paying United States obligations in any foreign country, in such amounts as the Secretary of the Treasury considers necessary for the requirements of the United States.

"(c) The Secretary of the Treasury shall submit a report annually to the Senate Committee on Finance and the House Committee on Ways and Means which shows, by executive agencies and by countries, (1) the expenditures in dollars and in foreign currencies made during the preceding fiscal year in paying the obligations of the United States in foreign countries, (2) the amounts of foreign currencies available for the use of the United States at the close of such year, and (3) the amounts of foreign currencies convertible to other foreign currencies or to dollars at the close of such year.

"(d) This section shall terminate at the time when the tax imposed by section 4911 of the Internal Revenue Code of 1954 terminates [July 31, 1967]."

EX. ORD. NO. 11368. MODIFICATION OF RATES

Ex. Ord. No. 11368, Aug. 28, 1967, 32 F.R. 12549, as amended by Ex. Ord. No. 11464, Apr. 3, 1969, 34 F.R. 6233; provided:

WHEREAS section 4911(b)(3) of the Internal Revenue Code of 1954 [subsec. (b)(3) of this section] fixes the rates of the interest equalization tax generally applicable in the case of acquisitions of stock and debt obligations made after January 25, 1967 and before August 30, 1967 at approximately 150 percent of the rates set forth in section 4911(b)(1) of the Code [subsec. (b)(1) of this section]; and

WHEREAS the rates set forth in section 4911(b)(1) of the Internal Revenue Code of 1954 [subsec. (b)(1) of this section] would, in the absence of a determination made by the President under section 4911(b)(2) [subsec. (b)(2) of this section], be generally applicable in the case of acquisitions made on or after August 30, 1967; and

WHEREAS I have determined that the rates of tax prescribed in section 4911(b)(1) of the Internal Revenue Code of 1954 [subsec. (b)(1) of this section] are lower than the rates of tax necessary to limit the total acquisitions by United States persons of stock of foreign issuers and debt obligations of foreign obligors within a range consistent with the balance-of-payments objectives of the United States; and

WHEREAS it is now appropriate that Executive Order No. 11211,[1] dated April 2, 1965 (effective April 5, 1965) [set out as a note under section 4917 of this title], relating to the exclusion from the interest equalization tax for original or new Japanese issues as required for international monetary stability, be modified;

NOW, THEREFORE, by virtue of the authority vested in me by sections 4911(b)(2) and 4917(a) of the Internal Revenue Code of 1954 [subsec. (b)(2) of this section and section 4917(a) of this title], by section 301 of title 3 of the United States Code [section 301 of title 3, the Presi- of acquisitions made on or after August 30, 1967; and dent], and as President of the United States, it is hereby ordered as follows:

SECTION 1. *Rates of Tax.*

(a) *Rates applicable to acquisitions of stock.* The tax imposed by section 4911 of the Internal Revenue Code of 1954 on the acquisition of stock shall be equal to 11.25 percent of the actual value of the stock.

(b) *Rates applicable to acquisitions of debt obligations.* The tax imposed by section 4911 of the Internal Revenue Code of 1954 on the acquisition of a debt obligation shall be equal to a percentage of the actual value of the debt obligation measured by the period remaining to its maturity and determined in accordance with the following table:

If the period remaining to maturity is:	The tax as a percentage of actual value, is:
At least 1 year, but less than 1¼ years	0.79 percent
At least 1¼ years, but less than 1½ years	0.98 percent
At least 1½ years, but less than 1¾ years	1.13 percent
At least 1¾ years, but less than 2¼ years	1.39 percent
At least 2¼ years, but less than 2¾ years	1.73 percent
At least 2¾ years, but less than 3½ years	2.06 percent
At least 3½ years, but less than 4½ years	2.66 percent
At least 4½ years, but less than 5½ years	3.26 percent
At least 5½ years, but less than 6½ years	3.83 percent
At least 6½ years, but less than 7½ years	4.35 percent
At least 7½ years, but less than 8½ years	4.88 percent
At least 8½ years, but less than 9½ years	5.33 percent
At least 9½ years, but less than 10½ years	5.78 percent
At least 10½ years, but less than 11½ years	6.23 percent
At least 11½ years, but less than 13½ years	6.83 percent
At least 13½ years, but less than 16½ years	7.73 percent
At least 16½ years, but less than 18½ years	8.51 percent
At least 18½ years, but less than 21½ years	9.19 percent
At least 21½ years, but less than 23½ years	9.79 percent
At least 23½ years, but less than 26½ years	10.31 percent
At least 26½ years, but less than 28½ years	10.76 percent
28½ years or more	11.25 percent

SEC. 2. *Authority of Secretary of Treasury.* The Secretary of the Treasury or his delegate is authorized to prescribe from time to time such regulations, rulings, directions, and instructions (not inconsistent with the provisions of section 4911 of the Internal Revenue Code of 1954 [this section]) as he shall deem necessary to carry out the purposes of section 1 of this order.

SEC. 3. *Amendment to Executive Order No. 11211.* Executive Order No. 11211 of April 2, 1965 [set out as a note under section 4917 of this title], is amended as follows:

(a) by striking out so much of the text of section 1 as precedes subsection (a) and inserting in lieu thereof, "The tax imposed by section 4911 of the Internal Revenue Code of 1954 [this section] shall not apply to an acquisition by a United States person of a debt obligation (as defined in section 4920(a)(1) of the Code [section 4920 (a)(1) of this title]) repayable exclusively in United States currency which is (i) issued or guaranteed as to payment of principal and interest by the Government of Japan, or (ii) issued, with the prior approval of the Government of Japan, by a corporation organized under the laws of Japan which is neither a company regulated under the Investment Company Act of 1940 (54 Stat. 847; 15 U.S.C. 80a-1 to 80a-52 [section 80a-1 of title 15, Commerce and Trade]) nor formed or availed of for the principal purpose of acquiring stock or debt obligations of a Japanese or other foreign issuer or obligor, other than stock or debt obligations described in section 4916(a) of the Code [section 4916(a) of this title], provided that—"

(b) by inserting after section 1 the following new section—

"Section 1A. The tax imposed by section 4911 of the Internal Revenue Code of 1954 [this section], shall not apply to an acquisition by a United States person of stock acquired pursuant to the exercise of a right (without the payment of additional consideration) to convert into stock, a debt obligation which was acquired under the exemption created by section 1, provided that—

"(a) such debt obligation had never been acquired by a person other than a United States person; and

"(b) such stock is acquired as all or part of an original or new issue as to which there is filed such notice of acquisition as the Secretary of the Treasury or his delegate may prescribe by regulation."

SEC. 4. *Effective Date.* Sections 1 and 2 of this order shall be effective with respect to acquisitions of stock of foreign issuers and debt obligations of foreign obligors made after August 29, 1967, other than acquisition described in paragraphs (2) and (4) of section 3(c) of the Interest Equalization Tax Extension Act of 1967 [set out as a note under this section]. Section 3 of this order shall be effective with respect to acquisitions made after November 1, 1967.

LYNDON B. JOHNSON

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1232, 4912, 4913, 4914, 4915, 4916, 4917, 4918, 4919, 4920, 4931, 6011, 6680, 6681 of this title; title 12 section 635.

§ 4912. Acquisitions.

(a) In general.

For purposes of this chapter, the term "acquisition" means any purchase, transfer, distribution, exchange, or other transaction by virtue of which ownership is obtained either directly or through a nominee, custodian, or agent. A United States person acting as a fiscal agent in connection with the redemption or purchase for retirement of stock or debt obligations (whether or not acting under a trust arrangement) shall not be considered to obtain ownership of such stock or debt obligations. The exercise of a right to convert a debt obligation (as defined in section 4920(a)(1)) into stock shall be deemed an acquisition of stock from the foreign issuer by the person exercising such right. Any extension or renewal of an existing debt obligation requiring affirmative action of the obligee shall be considered the acquisition of a new debt obligation.

(b) Special rules.

For purposes of this chapter—

(1) Certain transfers to foreign trusts.

(A) Extent of tax liability.

Any transfer (other than in a sale or exchange for full and adequate consideration) of money or other property to a foreign trust shall, if such trust acquires stock or debt obligations (of one or more foreign issuers or obligors) the direct acquisition of which by the transferor would be subject to the tax imposed by section 4911, be deemed an acqusition by the transferor (as of the time of such transfer) of stock of a foreign issuer in an amount equal to the actual value of the money or property transferred or, if less, the actual value of the stock or debt obligations so acquired by such trust. Contributions made by an employer to a foreign pension or profit-sharing trust established by such employer for the exclusive benefit of employees (who are not owner-employees as defined in section 401(c)(3)) who perform personal services for such employer on a full-time basis in a foreign country, and contributions to a foreign pension or profit-sharing trust established by an employer, made by an employee who performs personal services for such employer on a full-time basis in a foreign country (and is not an owner-employee as defined in section 401(c)(3)), shall not be considered under the preceding sentence as transfers which may be deemed acquisitions of stock of a foreign issuer.

(B) Presumption of acquisition of foreign securities.

Whenever money or other property is transferred to a foreign trust in the manner described in the first sentence of subparagraph (A), it shall be presumed, with respect to the calendar quarter in which the transfer took place and each succeeding calendar quarter beginning prior to the termination date specified in section 4911(d), that such trust subsequently acquired stock or debt obligations the direct acquisition of which by the transferor would be subject to the tax imposed by section 4911, in an amount equal to the actual value of the money or other property transferred. The transferor may rebut this presumption with respect to each such calendar quarter by submitting, on or before the 30th day following the close of such quarter, documents or other proof which will establish to the satisfaction of the Secretary or his delegate that, during such quarter, liability for such tax has not been incurred or any liability which has been incurred has been paid.

(2) Certain transfers.

(A) Transfers to foreign corporations and partnerships.

Any transfer of money or other property to a foreign corporation or a foreign partnership—

(i) as a contribution to the capital of such corporation or partnership, or

(ii) in exchange for one or more debt obligations of such corporation or partnership, if it is a foreign corporation or partnership which is formed or availed of by the transferor for the principal purpose of acquiring (in the manner described in section 4915(c)(1)) an interest in stock or debt obligations the direct acquisition of which by the transferor would be subject to the tax imposed by section 4911,

shall be deemed an acquisition by the transferor of stock of a foreign corporation or partnership in an amount equal to the actual value of the money or property transferred.

(B) Transfers to foreign branches.

If a domestic corporation or partnership transfers money or other property (including, in the case of a transfer to a branch office described in section 4920(a)(5A), a transfer made for consideration) to, or applies money or other property for the benefit of, a branch office of such corporation or partnership with respect to which there is in effect an election under paragraph (5) or (5A) of section 4920(a), or if funds are borrowed by such branch office from a bank (as defined in section 581), other than from a branch of such a bank located outside the United States lending such funds in the

ordinary course of its business, such domestic corporation or partnership shall be deemed to have acquired stock of a foreign corporation or partnership in an amount equal to the actual value of the money or property transferred or applied, or the funds borrowed. The preceding sentence shall not apply to a transfer of money or other property by a domestic corporation or partnership to a branch office with respect to which there is an election in effect under paragraph (5) of section 4920(a), to the extent that such transfer is in payment of a commission on a transaction initiated by such branch office and such commission is not in excess of the commission which such domestic corporation or partnership would pay to another domestic corporation or partnership in a similar transaction entered into at arm's length.

(3) Acquisitions from domestic corporation or partnership formed or availed of to obtain funds for foreign issuer or obligor.

The acquisition of stock or a debt obligation of a domestic corporation (other than a domestic corporation described in section 4920(a)(3)(B)), or a domestic partnership, formed or availed of for the principal purpose of obtaining funds (directly or indirectly) for a foreign issuer or obligor, shall be deemed an acquisition (from such foreign issuer or obligor) of stock or a debt obligation of such foreign issuer or obligor.

(4) Reorganization exchanges.

Any acquisition of stock or debt obligations of a foreign issuer or obligor in an exchange to which section 354, 355, or 356 applies (or would, but for section 367, apply) shall be deemed an acquisition from the foreign issuer or obligor in exchange for its stock or for its debt obligations. For purposes of this paragraph, in determining whether section 354, 355, or 356 applies, or would apply, to any transaction—

(A) such transaction shall, if it took place before the date of the enactment of this chapter, be treated as taking place on such date, and

(B) section 368(a)(1)(B) shall be treated as permitting the receipt by a United States person of money or other property in addition to voting stock.

(Added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 810, and amended Pub. L. 89–243, § 4(m)(3), Oct. 9, 1965, 79 Stat. 963; Pub. L. 90–59, § 5(a)(1), July 31, 1967, 81 Stat. 157; Pub. L. 91–128, § 4(a)(1), Nov. 26, 1969, 83 Stat. 262.)

AMENDMENTS

1969—Subsec. (b)(1). Pub. L. 91–128 designated existing provisions as subpar. (A) and added subpar. (B).

1967—Subsec. (b)(2)(B). Pub. L. 90–59 inserted sentence providing that the preceding sentence shall not apply to a transfer of money or other property by a domestic corporation or partnership to a branch office with respect to which there is an election in effect under paragraph (5) of section 4920(a), to the extent that such transfer is in payment of a commission on a transaction initiated by such branch office and such commission is not in excess of the commission which such domestic corporaton or partnerhip would pay to another domestic corporation or partnership in a similar transaction entered into at arm's length.

1965—Subsec. (b)(2)(B). Pub. L. 89–243 substituted "paragraph (5) or (5A) of section 4920(a)" for "section 4920(a)(5)(E)", and inserted "(including, in the case of a transfer to a branch office described in section 4920(a)(5A), a transfer made for consideration."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(a)(2) of Pub. L. 91–128 provided that: "The amendment made by paragraph (1) of this subsection [adding subsec. (b)(1)(B) to this section] shall apply with respect to transfers made after June 9, 1969."

Amendment of section by section 4 of Pub. L. 91–128 applicable with respect to acquisitions of debt obligations made after the date of enactment of Pub. L. 91–128, which was approved on Nov. 26, 1969, see section 4(i)(4) of Pub. L. 91–128, set out as a note under section 4920 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 5(a)(2) of Pub. L. 90–59 provided that: "The amendment made by paragraph (1) [to subsec. (b)(2)(B) of this section] shall apply with respect to transfers made on or after the date of the enactment of this Act [July 31, 1967]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 4 of Pub. L. 89–243 applicable with respect to acquisitions of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89–243 and in the amendments made by such section, see section 4(q) of Pub. L. 89–243, set out as a note under section 4914 of this title.

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89–243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(q) of Pub. L. 89–243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4913, 4920 of this title.

§ 4913. Limitation on tax on certain acquisitions.

(a) Certain surrenders, extensions, renewals, and exercises.

(1) General rule.

If stock or a debt obligation of a foreign issuer or obligor is acquired by a United States person as the result of—

(A) the surrender to the foreign obligor, for cancellation, of a debt obligation of such obligor;

(B) the extension or renewal of an existing debt obligation requiring affirmative action of the obligee; or

(C) the exercise of an option or similar right to acquire such stock or debt obligation (or of a right to convert a debt obligation into stock),

then the tax imposed on such acquisition shall not exceed the amount determined under paragraph (2) or (3).

(2) General limitation.

Except in cases to which paragraph (3) applies, the tax imposed upon an acquisition described in paragraph (1) shall be limited to—

(A) the amount of tax imposed by section 4911, less

(B) the amount of tax which would have been imposed under section 4911 if the debt obligation which was surrendered, extended, or re-

newed, or the option or right which was exercised, had been acquired in a transaction subject to such tax immediately before such surrender, extension, renewal, or exercise.

For purposes of this paragraph, a defaulted debt obligation of the government of a foreign country or a political subdivision thereof (or an agency or instrumentality of such a government) which has been in default as to principal for at least 10 years and which is surrendered in exchange for another debt obligation of that government (or agency or instrumentality) shall be deemed to have an actual value and period remaining to maturity equal to that of the debt obligation acquired.

(3) Special limitations.

(A) Conversions of debt obligations into stock.

The tax imposed upon an acquisition of stock pursuant to the exercise of a right to convert a debt obligation (as defined in section 4920(a)(1)) into stock shall be limited to—

(i) the amount of tax which would have been imposed by section 4911 if the debt obligation had been treated as stock at the time of its acquisition by the person exercising the right (or by a decedent from whom such person acquired the right by bequest or inheritance or by reason of such decedent's death), less

(ii) the amount of tax paid by the person exercising the right (or by such decedent) as a result of the acquisition of the convertible debt obligation or, if such acquisition was not subject to the tax imposed by section 4911 the amount of tax which would have been imposed as a result of such acquisition if such acquisition had been subject to such tax.

(B) Exercise of certain shareholders' rights.

The tax imposed upon an acquisition of stock or a debt obligation of a foreign corporation by a United States person, where—

(i) the stock or debt obligation is acquired pursuant to the exercise of an option or similar right to acquire such stock or debt obligation which was acquired by a shareholder of such corporation in a distribution with respect to its stock, and

(ii) such option or right is exercised within 90 days from the date of its distribution by such corporation,

shall be limited to the amount of tax which would have been imposed by section 4911 if the price paid under such option or right were the actual value of the stock or debt obligation acquired.

(C) Certain employee stock options.

The tax imposed upon an acquisition of stock of a foreign issuer by a United States person pursuant to the exercise of an option or similar right described in section 4914(a)(8) shall be limited to the amount of tax which would have been imposed under section 4911 if the price paid under such option or right were the actual value of the stock acquired.

(b) Certain transfers which are deemed acquisitions.

The tax imposed upon an acquisition which is deemed to have been made by reason of a transfer of money or other property to a foreign trust, or a foreign corporation or partnership, as described in section 4912 (b)(1) or (2)(A), shall be limited to—

(1) the amount of tax imposed by section 4911, less

(2) the amount of tax paid by the transferor as the result of the transfer being otherwise taxable as an acquisition under this chapter.

(c) Acquisitions by certain domestic corporations and partnerships.

If stock or a debt obligation of a foreign issuer or obligor is acquired by a domestic corporation or a domestic partnership with funds obtained as the result of an acquisition by a United States person of stock or a debt obligation of such corporation or partnership which under section 4912(b)(3) is deemed an acquisition by such person of stock or a debt obligation of a foreign issuer or obligor, the tax imposed upon the acquisition by the domestic corporation or the domestic partnership shall be limited to—

(1) the amount of tax imposed by section 4911, less

(2) the amount of tax paid by the United States person from whom the funds were obtained on the acquisition by such person which under section 4912(b)(3) is deemed an acquisition of stock or a debt obligation of a foreign issuer or obligor.

(Added Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 812.)

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88-563, see note under section 4911 of this title.

§ 4914. Exclusion for certain acquisitions.

(a) Transactions not considered acquisitions.

The term "acquisition" shall not include—

(1) any transfer between a person and his nominee, cutodian, or agent;

(2) any transfer described in section 4343(a) (relating to certain transfers by operation of law from decedents, minors, incompetents, financial institutions, bankrupts, successors, foreign governments and aliens, trustees, and survivors) as in effect on January 1, 1965;

(3) any transfer by legacy, bequest, or inheritance to a United States person, or by gift to a United States person who is an individual;

(4) any distribution by a corporation of its stock or debt obligations to a shareholder with respect to or in exchange for its stock;

(5) any distribution to a shareholder by a corporation of stock or debt obligations owned by such corporation on July 18, 1963, in complete or partial liquidation of such corporation, to the extent such shareholder acquired his stock ownership in such corporation in a transaction other than in an acquisition excluded from tax under subsection (b) of this section, or under section 4915, 4916, or 4917;

(6) any exchange to which section 361 applies (or would, but for section 367, apply), where the

transferor corporation was a domestic corporation and was engaged in the active conduct of a trade or business, other than as a dealer in securities, immediately before the date on which the assets involved are transferred to the acquiring corporation;

(7) any exercise of a right to convert indebtedness, pursuant to its terms, into stock, if such indebtedness is treated as stock pursuant to section 4920(a)(2)(D); or

(8) the grant of a stock option or similar right to a United States person who is an individual, for any reason connected with his employment by a corporation, if such option or right (A) is granted by the employer corporation, or its parent or subsidiary corporation, to purchase stock of any such corporations, and (B) by its terms is not transferable by such United States person otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

(b) Excluded acquisitions.

The tax imposed by section 4911 shall not apply to the acquisition—

(1) The United States.

Of stock or debt obligations by an agency or wholly owned instrumentality of the United States.

(2) Commercial bank loans.

(A) Of debt obligations by a commercial bank in making loans in the ordinary course of its commercial banking business.

(B) Of stock or debt obligations by a commercial bank through foreclosure, where such stock or debt obligations were held as security for loans made in the ordinary course of its commercial banking business.

Stock or debt obligations acquired by a foreign branch of a corporation, in connection with its banking business, shall be considered debt obligations described in subparagraph (A) of the preceding sentence if—

(i) such branch is engaged in the commercial banking business and is also a member of a foreign stock exchange all the members of which on June 29, 1965, were banks,

(ii) on July 18, 1963, such branch was so engaged and was such a member,

(iii) such stock or debt obligations would not (but for this sentence) be excludable under the preceding sentence, and

(iv) at the time of such acquisition, such branch does not hold stock and debt obligations described in clause (iii) which have an adjusted basis in excess of 3 percent of the deposits of the customers (other than deposits of United States persons engaged in the commercial banking business and members of an affiliated group (determined under section 48(c)(3)(C)) of which such a United States person is a member) of such branch payable in the currency of the country in which such branch is located.

(3) Acquisitions required under foreign law.

Of stock or debt obligations by a United States person doing business in a foreign country to the extent that such acquisitions are reasonably necessary to satisfy minimum requirements relating to holdings of stock or debt obligations of foreign issuers or obligors imposed by the laws of such foreign country; except that if any of such requirements relate to the holding of insurance reserves, the exclusion otherwise allowable under this paragraph with respect to acquisitions made by such United States person during any calendar year shall be reduced by the maximum amount of the exclusion which could be allowed under subsection (e) with respect to acquisitions made by such person during that year, or by the amount of the insurance reserves which must be held in order to satisfy such requirements, whichever is less.

(4) Acquisitions in lieu of payment of foreign tax.

Of stock or debt obligations by a United States person doing business in a foreign country, to the extent such acquisition is made, in conformity with the laws of such foreign country, as a substitute for the payment of tax to such foreign country.

(5) Acquisitions of stock in cooperative housing corporations.

Of stock of a foreign corporation which entitles the holder, solely by reason of his ownership of such stock, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation.

(6) Export credit, etc., transactions.

Of stock or debt obligations arising from the sale or lease of property or services by United States persons, to the extent provided in subsection (c).

(7) Loans to assure raw materials sources.

Of debt obligations by United States persons in connection with loans made to foreign corporations to assure raw materials sources, to the extent provided in subsection (d).

(8) Acquisitions by insurance companies doing business in foreign countries.

Of stock or debt obligations by insurance companies doing business in foreign countries, to the extent provided in subsection (e).

(9) Acquisitions by certain tax-exempt labor, fraternal, and similar organizations having foreign branches or chapters.

Of stock or debt obligations by certain tax-exempt United States persons operating in foreign countries through local organizations, to the extent provided in subsection (f).

(10) Acquisitions of debt obligations on sale or liquidation of wholly owned foreign subsidiaries. or sale of foreign branches.

Of debt obligations acquired in connection with the sale or liquidation of a wholly owned foreign corporation or the sale of a foreign branch, to the extent provided in subsection (g).

(11) Acquisitions of certain debt obligations secured by real property in the United States.

Of debt obligations secured by real property in the United States, to the extent provided in subsection (h).

(12) Acquisitions by United States persons residing in foreign countries of stock of certain foreign issuers investing exclusively in the United States.

Of stock of foreign issuers investing exclusively in the United States by United States persons residing in foreign countries, to the extent provided in subsection (i).

(13) Student loans.

Of debt obligations which arise out of loans to a foreign obligor registered as a full-time student at an educational institution (as defined in section 151(e)(4)) in the United States, to the extent that the acquisition by the acquiring person of such debt obligations with a period remaining to maturity of 1 year or more from such obligor in any calendar year does not exceed $2,500.

(14) Foreign property.

Of debt obligations arising out of the sale of—

(A) tangible property located outside the United States which was held by the person acquiring such obligation for his personal use, or

(B) real property (other than real property to which subparagraph (A) applies) located outside the United States and owned, on July 18, 1963, by—

(i) the person acquiring such obligation,

(ii) a decedent who was a United States person on the date of his death, if such real property was transferred to the person acquiring such obligation by reason of the death of the decedent, or

(iii) a United States person who after July 18, 1963, transferred such property (whether or not for consideration) to a trust created by him for the benefit of the members of his family (within the meaning of section 318(a)(1)), if such trust is the person acquiring such obligation.

(15) Certain acquisitions by residents not citizens.

Of stock or debt obligations by an individual who is a resident but not a citizen of the United States, during the 90-day period beginning on the date such individual first became a resident of the United States.

(c) Export credit, etc., transactions.

(1) In general.

The tax imposed by section 4911 shall not apply to the acquisition from a foreign obligor of a debt obligation arising out of the sale of tangible personal property or services (or both) by any United States person, if—

(A) payment of such debt obligation (or of any related debt obligation arising out of such sale) is guaranteed or insured, in whole or in part, by an agency or wholly owned instrumentality of the United States; or

(B) such sale is made to such foreign obligor and the United States person acquiring such debt obligation makes the sale in the ordinary course of his trade or business and not less than 85 percent of the purchase price is attributable to the sale of property manufactured, produced, grown, or extracted in the United States, or to the performance of services by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member), or to both.

The term "services", as used in this paragraph and paragraph (2), shall not be construed to include functions performed as an underwriter.

(2) Alternate rule for producing exporters.

The tax imposed by section 4911 shall not apply to the acquisition by a United States person from a foreign issuer or obligor of its stock in payment for, or of a debt obligation arising out of, the sale of tangible personal property or services (or both) to such issuer or obligor, if

(A) at least 30 percent of the purchase price, or 60 percent of the actual value of the stock or debt obligation acquired, is attributable to the sale of property manufactured, produced, grown, or extracted in the United States by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member), or to the performance of services by such United States person (or by one or more such corporations), or to both, and

(B) at least 50 percent of the purchase price, or 100 percent of the actual value of the stock or debt obligation acquired, is attributable to the sale of property manufactured, produced, grown, or extracted in the United States, or to the performance of services by United States persons, or to both.

(3) Certain interests in intangible personal property.

The tax imposed by section 4911 shall not apply to the acquisition by a United States person from a foreign issuer or obligor of its stock in payment for, or of a debt obligation arising out of, the sale or license to such issuer or obligor of—

(A) any interest in patents, inventions, models or designs (whether or not patented), copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, or other like property (or any combination thereof), or

(B) any such interest together with services to be performed in connection with any such interest sold or licensed by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member),

if not less than 85 percent of the purchase price, or license fee, is attributable to the sale or license of any interest in property described in subparagraph (A) which was produced, created, or developed in the United States by such United States person (or by one or more such includible corporations), or is attributable to the sale or license of any interest in such property so produced, created, or developed and to the performance of services described in subparagraph (B).

(4) Export-related loans.

The tax imposed by section 4911 shall not apply to the acquisition from a foreign obligor by a United States person of a debt obligation arising out of a loan made to the obligor to increase or

maintain sales of tangible personal property produced, grown, or extracted in the United States by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member), but only if the proceeds of the loan will be used by the obligor for the installation, maintenance, or improvement of facilities outside the United States which (during the period the loan is outstanding) will be used for the storage, handling, transportation, processing, packaging, or servicing of property a substantial portion of which is tangible personal property produced, grown, or extracted in the United States by such person (or one or more such corporations).

(5) Other loans related to certain sales by United States persons.

The tax imposed by section 4911 shall not apply to the acquisition from a foreign obligor by a United States person of a debt obligation of such obligor if such debt obligation—

(A) was received by such United States person as all or part of the purchase price provided in a contract under which the foreign obligor agrees to purchase for a period of 3 years or more ores or minerals (or derivatives thereof)—

(i) extracted outside the United States by such United States person or by one or more includible corporations in an affiliated group (as defined in section 48(c)(3)(C)) of which such United States person is a member,

(ii) extracted outside the United States by a corporation at least 10 percent of the total combined voting power of all classes of stock of which is owned, directly or indirectly, by such United States person, by one or more such includible corporations, or by domestic corporations which own, directly or indirectly, at least 50 percent of the total combined voting power of all classes of stock of such United States person,

(iii) obtained under a contract entered into on or before July 18, 1963, by such United States person, by one or more such includible corporations, or by such domestic corporations, or

(iv) extracted outside the United States and obtained by such United States person, by one or more such includible corporations, or by such domestic corporations in exchange for similar ores or minerals (or derivatives thereof) described in clause (i), (ii), or (iii); or

(B) arises out of a loan (made by such United States person to such foreign obligor) the proceeds of which will be used by such obligor (or by a person controlled by, or controlling, such obligor) for the installation, maintenance, or improvement of facilities outside the United States which (during the period the loan is outstanding) will be used for the storage, handling, transportation, processing, or servicing of ores or minerals (or derivatives thereof) a substantial portion of which is extracted outside the United States by such United States person or by a corporation referred to in clause (i) or (ii) of subparagraph (A), is obtained under a contract described in clause (iii) of subparagraph (A), or is obtained in an exchange described in clause (iv) of subparagraph (A). If the proceeds of the loan by such United States person constitute only a part of the cost of the installation, maintenance, or improvement of such facilities, the substantial portion requirement in the preceding sentence shall be satisfied if the percentage of the total capacity of such facilities which will be used in connection with ores or minerals (or derivatives thereof) extracted or obtained in the specified manner is more than one-half of the percentage of the cost of such facilities represented by the amount of such loan and in no event is less than 10 percent of such total capacity.

For purposes of clause (iii) of subparagraph (A) (and for purposes of determining whether a debt obligation arises out of a loan described in subparagraph (B) in a case where the ores, minerals, or derivatives involved are obtained under a contract described in such clause), a contract shall be deemed to have been entered into on or before July 18, 1963, if it is entered into after such date and before January 26, 1967, and is a substitute for a contract, which has been canceled or terminated, between the same parties which was entered into on or before July 18, 1963; except that the total amount of the acquisitions excluded by this paragraph on the basis of a contract entered into after July 18, 1963, which is deemed by this sentence to have been entered into on or before such date shall not exceed the total amount of the acquisitions which could have been excluded by this paragraph on the basis of the earlier contract for which such contract was substituted.

(6) Certain export leases.

The tax imposed by section 4911 shall not apply to the acquisition from a foreign obligor by a United States person of a debt obligation of such obligor arising out of a lease of tangible personal property to such obligor by such United States person if—

(A)(i) at least 30 percent of the value of the property subject to the lease, or 60 percent of the actual value of the debt obligation arising out of such lease, is attributable to the use of tangible personal property which was manufactured, produced, grown, or extracted in the United States by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member), or to the performance of services pursuant to the terms of the lease by such United States person (or by one or more such corporations) with respect to such personal property, or to both, and

(ii) at least 50 percent of the value of the property subject to lease, or 100 percent of the actual value of the debt obligation arising out of such lease, is attributable to the use of tangible personal property which was manufactured, produced, grown, or extracted in the United States, or to the performance of services pursuant to the terms of the lease by United States persons, or to both; or

(B) (i) payment of such debt obligation (or of any related debt obligation arising out of such lease) is guaranteed or insured, in whole or in part, by an agency or wholly owned instrumentality of the United States, or

(ii) the lease is entered into with such foreign obligor and the United States person acquiring such debt obligation enters into the lease in the ordinary course of his trade or business and not less than 85 percent of the value of the property subject to the lease is attributable to the use of tangible personal property which was manufactured, produced, grown, or extracted in the United States, or to the performance of services pursuant to the terms of the lease by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member) with respect to such personal property, or to both.

(7) Reacquisition of certain export debt obligations.

If paragraph (1), (2), or (6) of this subsection applied to the acquisition of a debt obligation by a United States person and such debt obligation is transferred by such United States person to a person other than a United States person (and subsection (j)(1)(A)(iv) would have applied if such transfer had been to a United States person), the tax imposed by section 4911 shall not apply to the reacquisition of such debt obligation by such United States person from such person.

(8) Cross reference.

For loss of exclusion otherwise allowable under this subsection in case of certain subsequent transfers, see subsection (j).

(d) Loans to assure raw materials sources.

(1) General rule.

The tax imposed by section 4911 shall not apply to the acquisition by a United States person of a debt obligation arising out of a loan made by such person to a foreign corporation, if—

(A) such foreign corporation extracts or processes ores or minerals the available deposits of which in the United States are inadequate to satisfy the needs of domestic producers;

(B) United States persons own at the time of such acquisition at least 50 percent of the total combined voting power of all classes of stock of such foreign corporation; and

(C) such loan will be amortized under a contract or contracts in which persons owning stock of such corporation (including at least one of the United States persons referred to in subparagraph (B)) agree to pay during the period remaining to maturity of such obligation, by purchasing a part of the production of such corporation or otherwise, a portion of such corporation's costs of operation and costs of amortizing outstanding loans.

(2) Limitation.

The exclusion from tax provided by paragraph (1) shall apply to the acquisition of any debt obligation of a foreign corporation only to the extent that—

(A) the applicable percentage of (i) the actual value of the debt obligation acquired, plus (ii) the actual value (determined as of the time of such acquisition) of all other debt obligations representing loans which were theretofore made to the foreign corporation during the same calendar year and which are amortizable under contracts of the type described in paragraph (1)(C), exceeds

(B) the actual value of the debt obligations described in subparagraph (A)(ii) representing loans made by United States persons, to the extent that the acquisition of such obligations was excluded from tax under this subsection.

As used in this paragraph with respect to the acquisition of a debt obligation, the term "applicable percentage" means the lesser of (i) the percentage of the total combined voting power of all classes of stock of the foreign corporation which is owned by United States persons at the time of such acquisition, or (ii) the percentage of the corporation's operating and amortization costs for the calendar year which all such United States persons have agreed to pay (as of the time of such acquisition) under contracts of the type described in paragraph (1)(C).

(3) Exception.

The exclusion from tax provided by paragraph (1) shall not apply in any case where the acquisition of the debt obligation of the foreign corporation is made with an intent to sell, or to offer to sell, any part of such debt obligation to United States persons.

(e) Acquisitions by insurance companies doing business in foreign countries.

(1) In general.

The tax imposed by section 4911 shall not apply to the acquisition of stock or a debt obligation by a United States person which is an insurance company subject to taxation under section 802, 821, or 831, if such stock or debt obligation is designated (in accordance with paragraph (3)) as part of a fund of assets established and maintained by such insurance company (in accordance with paragraph (2)) with respect to foreign risks insured or reinsured by such company under contracts (including annuity contracts) the proceeds of which are payable only in the currency of a foreign country. As used in this subsection, the term "foreign risks" means risks in connection with property outside, or liability arising out of activity outside, or in connection with the lives or health of residents of countries other than, the United States.

(2) Establishment and maintenance of fund of assets.

Each insurance company which desires to obtain the benefit of exclusions under this subsection shall (as a condition of entitlement to any such exclusion) establish and maintain a fund (or funds) of assets in accordance with this paragraph and paragraph (3). A life insurance company (as defined in section 801(a)) shall establish such a fund of assets separately for each foreign currency (other than the currency of a country which qualifies as a less developed country) in which the proceeds of its insurance contracts are payable and for which insurance reserves are

maintained by such company, and with respect to which it desires to obtain the benefits of exclusions under this subsection; and the preceding sentence shall be applied separately to each such fund in determining the company's entitlement to exclude acquisitions of stock and debt obligations designated as a part thereof. An insurance company other than a life insurance company (as so defined) shall establish a single fund of assets for all foreign currencies (other than currencies of counties which qualify as less developed countries) in which the proceeds of its insurance contracts are payable and for which insurance reserves are maintained by such company.

(3) Designation of assets.

(A) Initial designation.

(i) Requirement of initial designation.

Except as provided in clause (iii), an insurance company desiring to establish a fund (or funds) of assets under paragraph (2) shall initially designate, as part or all of such fund (or funds) stock and debt obligations owned by it on July 18, 1963, as follows: First, stock of foreign issuers, and debt obligations of foreign obligors having a period remaining to maturity (on July 18, 1963) of 3 years or more and payable in foreign currency; second, if the company so elects, debt obligations of foreign obligors having a period remaining to maturity (on July 18, 1963) of less than 3 years and payable in foreign currency; and third, debt obligations of foreign obligors having a period remaining to maturity (on July 18, 1963) of 3 years or more and payable solely in United States currency. The designation under the preceding sentence with respect to any fund shall be made, in the order set forth, to the extent that the adjusted basis (within the meaning of section 1011) of the designated stock and debt obligations was (on July 18, 1963) not in excess of 110 percent of the allowable reserve applicable to such fund (determined in accordance with paragraph (4)(B)(ii)), and shall in no case include any stock or debt obligation described in section 4916(a).

(ii) Time and manner of initial designation.

Any initial designation which an insurance company is required to make under clause (i) shall be made on or before the 30th day after the date of the enactment of this chapter (or at such later time as the Secretary or his delegate may by regulations prescribe) by the segregation on the books of such company of the stock or debt obligations (or both) designated.

(iii) Initial designation after October 2, 1964.

An insurance company which was not in existence on October 2, 1964, or was otherwise ineligible to establish a fund (or funds) of assets described in paragraph (2) by making an initial designation under clause (i) on or before such date, may establish (and thereafter currently maintain) such fund (or funds) of assets at any time after the enactment of this clause by designating stock of a foreign issuer or a debt obligation of a foreign obligor as a part of such fund in accordance with the provisions of clause (iv) (if applicable) and subparagraph (B)(i).

(iv) Funds involving currencies of former less developed countries.

An insurance company desiring to establish a fund under clause (iii) with respect to insurance contracts payable in the currency of a country designated as a less developed country on October 2, 1964, which thereafter has such designation terminated by an Executive order issued under section 4916(b), shall designate as assets of such fund, to the extent permitted by subparagraph (E), the stock of foreign issuers or debt obligations of foreign obligors as follows: First, stock and debt obligations having a period remaining to maturity of at least 1 year (other than stock or a debt obligation described in section 4916(a)) acquired before July 19, 1963, and owned by the company on the date which the President, in accordance with section 4916(b), communicates to Congress his intention to terminate the status of such country as a less developed country; second, stock and debt obligations having a period remaining to maturity of at least 1 year described in section 4916(a) (and owned by the company on the date of such termination) which, at the time of acquisition, qualified for the exclusion provided in such section because of the status of such country as a less developed country; and third, such stock or debt obligations as the company may elect to designate under subparagraph (B)(i). The period remaining to maturity referred to in the preceding sentence shall be determined as of the date of the President's communication to Congress.

(B) Current designations.

(i) In general.

To the extent permitted by subparagraph (E), stock of a foreign issuer of a debt obligation of a foreign obligor acquired by an insurance company after July 18, 1963, may be designated as part of a fund of assets described in paragraph (2), if such designation is made before the expiration of 30 days after the date of such acquisition and the company continues to own the stock or debt obligation until the time the designation is made; except that any such stock or debt obligation acquired before the initial designation of assets to the fund is actually made under subparagraphs (A)(i) and (ii) may be designated under this clause at the time of such initial designation without regard to such 30-day and continued ownership requirements.

(ii) Certain debt obligations having maturity of less than 3 years.

A debt obligation having a period remaining to maturity (on the date of acquisition) of at least 1 year but less than 3 years, which

is acquired during the period beginning February 11, 1965, and ending on the date of the enactment of the Interest Equalization Tax Extension Act of 1965, may be designated as part of a fund of assets described in paragraph (2) on or before the 30th day after the date of such enactment (or at such later time as the Secretary or his delegate may by regulations prescribe) without regard to the 30-day and continued ownership requirements provided in clause (i).

(C) Additional designations after close of year.

If the adjusted basis of the assets held in a fund of assets described in paragraph (2) at the close of a calendar year after 1963 is less than 110 percent of the allowable reserve applicable to such fund at the close of such year, the insurance company may, to the extent permitted by subparagraph (E), designate additional stock or debt obligations (or both) which were acquired during such calendar year as part of such fund, so long as the company still owns such stock or debt obligations at the time of designation; except that, with respect to a fund established under subparagraph (A)(iii), stock or debt obligations acquired before the establishment of such fund may not be designated as part of such fund under this subparagraph. Any designation under this subparagraph shall be made on or before January 31 following the close of the calendar year. Any tax paid by such company under section 4911 on the acquisition of the additional stock or debt obligations so designated shall constitute an overpayment of tax; and, under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made with respect to such overpayment.

(D) Supplemental required designations after close of year.

If during any calendar year an insurance company acquires stock or debt obligations which are excluded from the tax imposed by section 4911 under an Executive order described in section 4917, and if at the close of the calendar year (and after the designation of additional assets under subparagraph (C)) the adjusted basis of all assets in a fund described in paragraph (2) is less than 110 percent of the allowable reserve applicable to such fund, such company shall, to the extent permitted by subparagraph (E), designate as part of such fund stock and debt obligations acquired by it during the calendar year and owned by it at the close of the calendar year, as follows: First, stock, and debt obligations having a period remaining to maturity (on the date of acquisition) of 1 year or more and payable in foreign currency, which were excluded from the tax imposed by section 4911 under such Executive order; second, if the company so elects, debt obligations of foreign obligors having a period remaining to maturity (on the date of acquisition) of less than 1 year and payable in foreign currency; and third, debt obligations having a period remaining to maturity (on the date of acquisition) of 1 year or more and payable solely in United States currency, which were excluded from the tax imposed by section 4911 under such Executive order. The designations under this subparagraph shall be made on or before January 31 following the close of the calendar year.

(E) Limitations.

(i) In general.

Stock or a debt obligation may be designated under subparagraph (A)(iv), (B), (C), or (D) as part of a fund of assets described in paragraph (2) only to the extent that, immediately after such designation, the adjusted basis of all the assets held in such fund does not exceed 110 percent of the applicable allowable reserve (determined in accordance with paragraph (4)(B)(i)). To the extent any designation of stock or a debt obligation exceeds the amount permitted by the preceding sentence, such designation shall be ineffective and the provisions of this chapter shall apply with respect to the acquisition of such stock or debt obligation as if such designation had not been made.

(ii) Short-term obligations.

No designation may be made under subparagraph (B) or (C) of any debt obligation which has a period remaining to maturity (on the date of acquisition) of less than 1 year.

(4) Determination of reserves.

(A) General rule.

For purposes of this subsection, the term "allowable reserve" means—

(i) in the case of a life insurance company (as defined in section 801(a)), the items taken into account under section 810(c) arising out of contracts of insurance and reinsurance (including annuity contracts) which relate to foreign risks and the proceeds of which are payable in a single foreign currency (other than the currency of a less developed country); and

(ii) in the case of an insurance company other than a life insurance company (as so defined), the amount of its unearned premiums (under section 832(b)(4)) and unpaid losses (under section 832(b)(5)) which relate to foreign risks insured or reinsured under contracts providing for payment in foreign currencies (other than currencies of less developed countries) and which are taken into account in computing taxable income under section 832 (for such purpose treating underwriting income of an insurance company subject to taxation under section 821 as taxable income under section 832).

(B) Time of determination.

(i) In general.

For purposes of paragraph (3) (other than subparagraph (A)(i) of such paragraph), the determination of an allowable reserve for any calendar year shall be made as of the close of such year.

(ii) **Initial designation.**

For purposes of paragraph (3)(A)(i), the determination of an allowable reserve shall be made as of July 18, 1963. If the insurance company so elects, the determination under this clause may be made by computing the mean of the allowable reserve at the beginning and at the close of the calendar year 1963.

(C) **Special rule.**

For purposes of subparagraph (A), if a country designated as a less developed country on September 2, 1964, thereafter has such designation terminated by an Executive order issued under section 4916(b), all insurance contracts payable in the currency of such country which were entered into before such designation was terminated shall be treated as insurance contracts payable in the currency of a country other than a less developed country.

(5) **Nonrecognition of artificial increases in allowable reserve.**

An insurance or reinsurance contract which is entered into or acquired by an insurance company for the principal purpose of artifically increasing the amount determined as an allowable reserve as provided in paragraph (4) shall not be recognized in computing whether an acquisition of stock or a debt obligation of a foreign issuer or obligor can be excluded under this subsection.

(f) **Acquisitions by certain tax-exempt labor, fraternal, and similar organizations having foreign branches or chapters.**

The tax imposed by section 4911 shall not apply to the acquisition of stock or debt obligations by a United States person which is described in section 501(c) and exempt from taxation under subtitle A, and which operates in a foreign country through a local organization or organizations, to the extent that—

(1) such acquisition results from the investment or reinvestment of contributions or membership fees paid in the currency of such country by individuals who are members of the local organization or organizations, and

(2) the stock or debt obligations acquired are held exclusively for the benefit of the members of any of such local organizations.

For purposes of this subsection, stock or debt obligations acquired as a result of the investment or reinvestment of such contributions or fees which consist of insurance premiums (other than premiums paid to a mutual insurance company or association described in section 501(c)(15)) paid by the members of such local organizations shall be treated as held exclusively for the benefit of such members if primarily so held, notwithstanding that such stock or debt obligations may, under certain contingencies, be used for the benefit of other members of such United States person.

(g) **Sale or liquidation of wholly owned foreign subsidiary or sale of foreign branch.**

(1) **In general.**

The tax imposed by section 4911 shall not apply to the acquisition by a United States person of a debt obligation of a foreign obligor if the debt obligation is acquired—

(A) in connection with the sale by such United States person (or by one or more includible corporations in an affiliated group, as defined in section 48(c)(3)(C), of which such United States person is a member) of all of the outstanding stock, except for qualifying shares, of a foreign corporation;

(B) in connection with the liquidation by such United States person (or by one or more such includible corporations) of a foreign corporation all of the outstanding stock of which, except for qualifying shares, is owned by such United States person (or by one or more such includible corporations), but only if such debt obligation had been received by such foreign corporation as part or all of the purchase price in a sale of substantially all of its assets; or

(C) as part or all of the purchase price in a sale by such United States person of substantially all of the assets of a branch of such United States person located outside the United States.

(2) **Limitations.**

Subparagraphs (A) and (B) of paragraph (1) shall not apply to the acquisition of a debt obligation if any of the stock sold or surrendered in connection with its acquisition was originally acquired with the intent to sell or surrender. Subparagraph (C) of paragraph (1) shall not apply to the acquisition of a debt obligation if any of the assets sold had been transferred to the branch for the purpose of sale (other than sale in the ordinary course of its trade or business).

(h) **Certain debt obligations secured by United States mortgages, etc.**

(1) **In general.**

The tax imposed by section 4911 shall not apply to the acquisition from a foreign obligor by a United States person of—

(A) a debt obligation of such foreign obligor which is secured by real property located in the United States, to the extent that such debt obligation—

(i) is a part of the purchase price of such real property (or of such real property and related personal property), or

(ii) arises out of a loan made by such United States person to the foreign obligor the proceeds of which are concurrently used as part of the purchase price of such real property (or of such real property and related personal property); or

(B) a debt obligation of such foreign obligor which is secured by real property located in the United States on which improvements are under construction by the obligor, if such debt obligation arises out of a loan made by such United States person all the proceeds of which are used—

(i) to finance the construction of such improvements, or

(ii) to repay all or any part of a loan made to finance such construction, if the construction loan has qualified (or would have qualified) under paragraph (2)(B) and such re-

payment occurs within 5 years after such construction loan is made.

(2) Limitations.

Paragraph (1) shall apply to the acquisition of a debt obligation only if—

(A) in the case of the sale of property referred to in paragraph (1)(A)—

(i) the seller is a United States person, and

(ii) at least 25 percent of the purchase price of the property sold is, at the time of such sale, paid in United States currency to such United States person by the foreign obligor from funds not obtained from United States persons for the purpose of purchasing such property; or

(B) in the case of the construction of improvements referred to in paragraph (1)(B)—

(i) at the time any proceeds of the loan out of which such debt obligation arises are advanced, an amount equal to at least one-third of the amount of such advance, plus one-third of the amount of any previous advances of such proceeds, has been expended for such construction by the foreign obligor in United States currency from funds not obtained from United States persons for the purpose of financing such construction, and

(ii) not less than 85 percent of the cost of such construction attributable to property or services is attributable to property grown, extracted, manufactured, or produced in the United States, or to services performed by United States persons, or to both.

(3) Related personal property.

For purposes of paragraph (1)(A), the term "related personal property" means personal property which is sold in connection with the sale of real property for use in the operation of such real property.

(i) Acquisitions of stock of foreign issuers investing exclusively in the United States.

(1) In general.

The tax imposed by section 4911 shall not apply to the acquisition from a foreign issuer of its stock by a United States person who is a bona fide resident of a foreign country within the meaning of section 911(a)(1), or who at the time of such acquisition is regularly performing personal services on a full-time basis in a foreign country, if at the close of each calendar quarter ending on or after June 30, 1963, preceding such acquisition, during any part of which such foreign issuer is in existence—

(A) the assets of such foreign issuer, exclusive of money or deposits with persons carrying on the banking business, consist solely of:

(i) stock or debt obligations of domestic corporations (other than a corporation which has elected under section 4920(a)(3)(B) to be treated as a foreign issuer or obligor for purposes of this chapter);

(ii) debt obligations of the United States, or of any State or possession of the United States, or any political subdivision of any State or possession; or

(iii) debt obligations of citizens or residents of the United States;

(B) money and deposits with persons carrying on the banking business (other than banks as defined in section 581) constitute less than 5 percent of the value of the assets of such foreign issuer; and

(C) less than 25 percent of each class of issued and outstanding stock of such foreign issuer is held of record by United States persons.

(2) Acquisitions through unit investment trusts.

For purposes of paragraph (1), an acquisition of an interest in a unit investment trust (within the meaning of section 4(2) of the Investment Company Act of 1940), or in an entity performing similar custodial functions, shall be deemed a direct acquisition from the foreign issuer of the stock held by such trust or entity with respect to such interest and shall not be treated as an acquisition of stock issued by such trust or entity.

(3) Limitations.

(A) Paragraph (1) shall apply only to that portion of the total acquisitions of stock of foreign issuers described in such paragraph (determined in the order acquired) by a United States person in any one calendar year that does not exceed $5,000.

(B) If, after July 30, 1964, a United States person sells or otherwise disposes of stock the acquisition of which was excluded under paragraph (1) from the tax imposed by section 4911, such person shall not, with respect to such stock, be considered a United States person.

(j) Loss of entitlement to exclusion in case of certain subsequent transfers.

(1) In general.

(A) Where an exclusion provided by paragraph (1)(B), (2), (3), (4), (5), (6)(A), or (6)(B)(ii) of subsection (c) has applied with respect to the acquisition of a debt obligation by any person, but such debt obligation is subsequently transferred by such person (before the termination date specified in section 4911 (d)) to a United States person otherwise than—

(i) to any agency or wholly-owned instrumentality of the United States;

(ii) to a commercial bank acquiring the obligation in the ordinary course of its commercial banking business;

(iii) to an includible corporation in an affiliated group (as defined in section 48(c)(3)(C)) of which such person is a member;

(iv) in the case of an exclusion provided by paragraph (1)(B), (2), (3), (6)(A), or (6)(B)(ii) of subsection (c), to any transferee where the extension of credit by such person and the acquisition of the debt obligation related thereto were reasonably necessary to accomplish the sale or lease of property or services out of which the debt obligation arose, and the terms of the debt obligation are not unreasonable in light of credit practices in the business in which such person is engaged; or

(v) in a transaction described in subsection (a) (1) or (2), or a transaction (other than a transfer by gift) described in subsection (a) (3).

then liability for the tax imposed by section 4911 (in an amount determined under subparagraph (D) of this paragraph) shall be incurred by the transferor (with respect to such debt obligation) at the time of such subsequent transfer.

(B) Where the exclusion provided by paragraph (2) or (3) of subsection (c) has applied with respect to the acquisition of stock by any person, but such stock is subsequently transferred by such person (before the termination date specified in section 4911(d)) to a United States person otherwise than in a transaction described in subsection (a) (1) or (2), or a transaction (other than a transfer by gift) described in subsection (a) (3), then liability for the tax imposed by section 4911 (in an amount determined under subparagraph (D) of this paragraph) shall be incurred by the transferor (with respect to such stock) at the time of such subsequent transfer.

(C) Where the exclusion provided by subsection (f) has applied with respect to the acquisition of stock or a debt obligation by any person, but such stock or debt obligation is subsequently transferred by such person (before the termination date specified in section 4911 (d)) to any United States person, then liability for the tax imposed by section 4911 (in an amount determined under subparagraph (D) of this paragraph) shall be incurred by the transferor (with respect to such stock or debt obligation) at the time of such subsequent transfer.

(D) In any case where an exclusion provided by paragraph (1) (B), (2), (3), (4), (5), (b) (A), or (b) (B) (ii) of subsection (c) or by subsection (f) has applied, but a subsequent transfer described in subparagraph (A), (B), or (C) of this paragraph occurs and liability for the tax imposed by section 4911 is incurred by the transferor as a result thereof, the amount of such tax shall be equal to the amount of tax for which the transferor would have been liable under such section upon his acquisition of the stock or debt obligation involved if such exclusion had not applied with respect to such acquisition.

(2) United States person treated as foreign person on disposition of certain securities.

For purposes of this chapter, if, after December 10, 1963, a United States person sells or otherwise disposes of stock or a debt obligation which it—

(A) acquired to satisfy minimum requirements imposed by foreign law and with respect to which it claimed an exclusion under subsection (b) (3), or

(B) designated (or was required to designate) as part of a fund of assets under subsection (e),

such person shall not, with respect to that stock or debt obligation, be considered a United States person. For purposes of this chapter, if, after July 18, 1963, a United States person sells or otherwise disposes of stock or a debt obligation to the acquisition of which the last sentence of subsection (b) (2) applied, such person shall not, with respect to that stock or debt obligation, be considered a United States person. For purposes of this chapter, if, after February 27, 1967, a United States person sells or otherwise disposes of stock or a debt obligation to the acquisition of which subsection (b) (15) applied, such person shall not, with respect to that stock or debt obligation, be considered a United States person.

(Added Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 813, and amended Pub. L. 89-44, title IV, § 405(d), June 21, 1965, 79 Stat. 149; Pub. L. 89-243, §§ 3(a) (2), (3), 4(a) (1)—(3), (b)—(f) (2), (g), (h) (1), Oct. 9, 1965, 79 Stat. 954, 956-960; Pub. L. 89-809, title II, §§ 213(a), (b) (1), 214(a), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90-59, § 5 (b) (1), (c) (1), (2), (d) (1), (e) (1), (f) (1), July 31, 1967, 81 Stat. 157, 158; Pub. L. 91-128, § 4(b) (1), (c) (1), (2), (i) (1), (2), Nov. 26, 1969, 83 Stat. 263, 264, 268.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (e) (3) (A) (ii), is the date of enactment of Pub. L. 88-563, which was approved on Sept. 2, 1964.

The date of the enactment of the Interest Equalization Tax Extension Act of 1965, referred to in subsec. (e) (3) (B) (ii) of this section, means October 9, 1965, the date on which Pub. L. 89-243 was enacted.

AMENDMENTS

1969—Subsec. (c) (5) (B). Pub. L. 91-128, § 4(b) (1), provided that in determining whether the substantial test is satisfied, where the proceeds of a loan made by a United States person constitute only part of the cost of installing, maintaining, or improving a foreign mineral facility, only that part of the total capacity of the facility which is attributable to the United States person's loan is to be considered, and specified one-half of the percentage of the cost of such facilities represented by the amount of such loan and in no event less than 10 percent of the total capacity as the limiting percentages.

Subsec. (c) (6). Pub. L. 91-128, § 4(i) (1), added provisions creating an exemption from the interest equalization tax where a U.S. person acquires a debt obligation of a foreign person which arises out of a lease of tangible personal property to such foreign person, if either such debt obligation (or any related obligation arising out of the lease) is guaranteed or insured by a U.S. agency or instrumentality, or at least 85 percent of the value of the property is attributable to the use of tangible personal property which was manufactured or produced in the United States or to the performance of services with respect to the leased property under the terms of the lease by the U.S. person (or an affiliated corporation) or to both.

Subsec. (c) (7). Pub. L. 91-128, § 4(c) (2), substituted "subsection (j) (1) (A) (iv)" for "subsection (j) (1) (A) (iii)."

Subsec. (j) (1) (A). Pub. L. 91-128, §§ 4(c) (1), (i) (2), redesignated clauses (iii) and (iv) as clauses (iv) and (v), respectively, inserted clause (iii), and, in the material preceeding clause (i) and in clause (iv) as redesignated, substituted "(6) (A), or (6) (B) (ii)" for "or (6)" wherever appearing.

Subsec. (j) (1) (D). Pub. L. 91-128, § 4(i) (2), substituted "(6) (A), or (6) (B) (ii)" for "or (6)".

1967—Subsec. (b) (14). Pub. L. 90-59, § 5(b) (1), inserted provisions relating to real property (other than real property to which subparagraph (A) applies) located outside the United States and owned, on July 18, 1963, by the listed persons.

Subsec. (b) (15). Pub. L. 90-59, § 5(c) (1), added subsec. (b) (15).

Subsec. (c) (1). Pub. L. 90-59, § 5(d) (1), eliminated words "to such obligor" which preceded "by any United States person" in the opening provisions, and inserted "such sale is made to such foreign obligor and" in subpar. (B).

Subsec. (c)(5). Pub. L. 90–59, § 5(e)(1), inserted sentence relating to contracts entered into after July 18, 1963, and before January 26, 1967, and are substitutes for contracts which have been cancelled or terminated, between the same parties which were entered into on or before July 18, 1963.

Subsec. (c)(7). Pub. L. 90–59, § 5(f)(1), added subsec. (c)(7), and redesignated former subsec. (c)(7) as (c)(8).

Subsec. (c)(8). Pub. L. 90–59, § 5(f)(1), redesignated former subsec. (c)(7) as (c)(8).

Subsec. (j)(2). Pub. L. 90–59, § 5(c)(2), inserted sentence providing that for purposes of this chapter, if, after February 27, 1967, a United States person sells or otherwise disposes of stock or a debt obligation to the acquisition of which subsection (b)(15) applied, such person shall not, with respect to that stock or debt obligation, be considered a United States person.

1966—Subsec. (d). Pub. L. 89–809, § 213(a), added par. (3).

Subsec. (e)(2). Pub. L. 89–809, § 214(a)(1), substituted "(other than currencies of countries which qualify as less developed countries)" for "(other than currencies of countries which qualify as less developed countries at the time of the initial designation)".

Subsec. (e)(3)(A). Pub. L. 89–809, § 214(a)(2)—(4), inserted reference in clause (i) to an exception provided in clause (iii), substituted "under clause (i)" for "under this subparagraph" in clause (ii), and added clauses (iii) and (iv).

Subsec. (e)(3)(B). Pub. L. 89–809, § 214(a)(5), (6), struck out "to maintain fund" following "Current designations" in the subpar. heading and substituted "under subparagraphs (A)(i) and (ii)" for "as provided in subparagraph (A)(ii)" in clause (i).

Subsec. (e)(3)(C). Pub. L. 89–809, § 214(a)(7), inserted exception that, with respect to a fund established under subparagraph (A)(iii), stock or debt obligations may not be designated as part of such fund under this subparagraph.

Subsec. (e)(3)(E)(i). Pub. L. 89–809, § 214(a)(8), substituted "subparagraph (A)(iv), (B)," for "subparagraph (B),".

Subsec. (e)(4)(B)(i). Pub. L. 89–809, § 214(a)(9), substituted "subparagraph (A)(i)" for "subparagraph (A)".

Subsec. (e)(4)(B)(ii). Pub. L. 89–809, § 214(a)(10), substituted "paragraph (3)(A)(i)" for "paragraph (3)(A)".

Subsec. (e)(4)(C). Pub. L. 89–809, § 214(a)(11), added subsec. (e)(4)(C).

Subsec. (j)(1)(A). Pub. L. 89–809, § 213(b)(1)(A), struck out ", or the exclusion provided by subsection (d)," following "Where an exclusion provided by paragraph (1)(B), (2), (3), (4), or (5) of subsection (c)" in the material preceding clause (i).

Subsec. (j)(1)(D). Pub. L. 89–809, § 213(b)(1)(B), struck out reference to an exclusion provided by subsection (d).

1965—Subsec. (a)(2). Pub. L. 89–44 inserted "as in effect on January 1, 1965".

Subsec. (b)(2). Pub. L. 89–243, § 4(f)(1), added the sentence prescribing the conditions under which stock or debt obligations acquired by a foreign branch of a corporation, in connection with its banking business, shall be considered debt obligations described in subpar. (A).

Subsec. (b)(6). Pub. L. 89–243, § 4(a)(2), inserted "or lease."

Subsec. (b)(10). Pub. L. 89–243, § 4(b)(4), inserted "or sale of foreign branches" in the catchline and "or the sale of a foreign branch" in the text, and substituted "sale or liquidation" for "sales or liquidation."

Subsec. (b)(11). Pub. L. 89–243, § 4(c)(2), substituted "Acquisition of certain debt obligations secured by real property in the United States" for "Acquisition of debt obligations arising out of purchase of real property located in the United States" in the catchline, and deleted "and arising out of the purchase of such property from United States persons" following "in the United States" in the text.

Subsec. (b)(13). Pub. L. 89–243, § 4(d), added par. (13).

Subsec. (b)(14). Pub. L. 89–243, § 4(e), added par. (14).

Subsec. (c)(6). Pub. L. 89–243, § 4(a)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 89–243, § 4(a)(1), redesignated former par. (6) as (7).

Subsec. (e)(3)(B). Pub. L. 89–243, § 4(g), designated existing provisions as cl. (i), substituted "this clause" for "this subparagraph", and added cl. (ii).

Subsec. (e)(3)(D). Pub. L. 89–243, § 3(a)(2), substituted "1 year" for "3 years" wherever appearing.

Subsec. (e)(3)(E)(ii). Pub. L. 89–243, § 3(a)(3), substituted "1 year" for "3 years."

Subsec. (f). Pub. L. 89–243, § 4(h)(1), added the sentence requiring stock or debt obligations acquired as a result of the investment or reinvestment of such contributions or fees which consist of insurance premiums paid by the members of such local organizations to be treated as held exclusively for the benefit of such members if primarily so held, notwithstanding that such stock or debt obligations may, under certain contingencies, be used for the benefit of other members of such United States person.

Subsec. (g). Pub. L. 89–243, § 4(b)(3), inserted "or sale of foreign branch" in the catchline.

Subsec. (g)(1)(C). Pub. L. 89–243, § 4(b)(1)(C), added subpar. (C).

Subsec. (g)(2). Pub. L. 89–243, § 4(b)(2), substituted "Limitations" for "Limitation" in the catchline and "Subparagraphs (A) and (B) of paragraph (1)" for "Paragraph (1)" in the text, and added the sentence making subpar. (C) of par. (1) inapplicable to the acquisition of a debt obligation if any of the assets sold had been transferred to the branch for the purpose of sale.

Subsec. (h)(1). Pub. L. 89–243, § 4(c)(1), generally amended par. (1) and, among other changes, added the provisions making the tax imposed by section 4911 inapplicable to the acquisition from a foreign obligor by a United States person of a debt obligation of such foreign obligor which is secured by real property located in the United States on which improvements are under construction by the obligor, if such debt obligation arises out of a loan made by such United States person all the proceeds of which are used to finance the construction of such improvements, or to repay all or any part of a loan made to finance such construction, if the construction loan has qualified under par. (2)(B) and such repayment occurs within 5 years after such construction loan is made.

Subsec. (h)(2). Pub. L. 89–243, § 4(c)(1), generally amended par. (2) and, among other changes, added the provisions making par. (1) applicable to the acquisition of a debt obligation only if, in the case of the construction of improvements referred to in par. (1)(B), at the time any proceeds of the loan out of which such debt obligation arises are advanced, an amount equal to at least one-third of the amount of such advance, plus one-third of the amount of any previous advances of such proceeds, has been expended for such construction by the foreign obligor in United States currency from funds not obtained from United States persons for the purpose of financing such construction, and not less than 85 percent of the cost of such construction attributable to property or services is attributable to propery grown, extracted, manufactured, or produced in the United States, or to services performed by United States persons, or to both.

Subsec. (h)(3). Pub. L. 89–243, § 4(c)(1), substituted "paragraph (1)(A)" for "paragraph (1)."

Subsec. (j)(1). Pub. L. 89–243, § 4(a)(3), inserted references to par. (6) of subsection (c) wherever appearing and "or lease" in cl. (iii) of subparagraph (A).

Subsec. (j)(2). Pub. L. 89–243, § 4(f)(2), added the sentence providing that if, after July 18, 1963, a United States person sells or otherwise disposes of stock or a debt obligation to the acquisition of which the last sentence of subsec. (b)(2) applied, such person shall not, with respect to that stock or debt obligation, be considered a United States person.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(b)(2) of Pub. L. 91–128 provided that: "The amendment made by paragraph (1) of this subsection

[amending subsec. (c)(5)(B) of this section] shall apply with respect to acquisitions made after the date of the enactment of this Act [Nov. 26, 1969]."

Section 4(c)(3) of Pub. L. 91–128 provided that: "The amendments made by this subsection [amending subsecs. (c)(7) and (j)(1)(A) of this section] shall apply with respect to subsequent transfers (within the meaning of section 4914(j)(1)(A) of the Internal Revenue Code of 1954) [subsec. (j)(1)(A) of this section] occurring after the date of the enactment of this Act [Nov. 26, 1969]."

Amendment of section by section 4 of Pub. L. 91–128 applicable with respect to acquisitions of debt obligations made after the date of enactment of Pub. L. 91–128, which was approved on Nov. 26, 1969, see section 4(i)(4) of Pub. L. 91–128, set out as a note under section 4920 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 5(b)(2) of Pub. L. 90–59 provided that: "The amendment made by paragraph (1) [to subsec. (b)(14) of this section] shall apply only with respect to acquisitions made on or after the date of the enactment of this Act [July 31, 1967]."

Section 5(c)(3) of Pub. L. 90–59 provided that: "The amendment made by paragraph (1) [adding subsec. (b)(15) of this section] shall apply with respect to acquisitions made after July 18, 1963."

Section 5(d)(2) of Pub. L. 90–59 provided that: "The amendment made by paragraph (1) [to subsec. (c)(1) of this section] shall apply with respect to acquisitions made on or after the date of the enactment of this Act [July 31, 1967]."

Section 5(e)(2) of Pub. L. 90–59 provided that: "The amendments made by paragraph (1) [which inserted sentence in subsec. (c)(5) of this section] shall apply with respect to acquisitions made on or after the date of the enactment of this Act [July 31, 1967]."

Section 5(f)(2) of Pub. L. 90–59 provided that: "The amendment made by paragraph (1) [adding subsec. (c)(7) of this section] shall apply with respect to reacquisitions made on or after the date of the enactment of this Act [July 31, 1967]."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 213(c) of Pub. L. 89–809 provided that: "The amendments made by subsections (a) and (b) [amending subsecs. (d) and (j) of this section and section 4918 of this title] shall apply with respect to acquisitions of debt obligations made after the date of the enactment of this Act [Nov. 13, 1966]."

Section 214(b) of Pub. L. 89–809 provided that: "The amendments made by subsection (a) [amending subsec. (e) of this section] shall take effect on the day after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment of subsec. (a)(2) by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as a note under section 4461 of this title.

Amendment of section by section 3(a) of Pub. L. 89–243 applicable with respect to acquisitions of debt obligations, and designations described in subsec. (e)(3)(D), (E)(ii) of this section, made after Feb. 10, 1965, except as provided by pars. (2)—(4) of section 3(c) of Pub. L. 89–243, see section 3(c) of Pub. L. 89–243, set out as a note under section 4911 of this title.

Section 4(f)(3) of Pub. L. 89–243 provided that: "The amendments made by this subsection [to subsecs. (b)(2) and (j)(2) of this section] shall apply to acquisitions made after July 18, 1963."

Section 4(h)(2) of Pub. L. 89–243 provided that: "The amendment made by paragraph (1) [to subsec. (f) of this section] shall apply with respect to acquisitions of stock and debt obligations made after July 18, 1963."

Section 4(q) of Pub. L. 89–243 provided in part that: "Except as otherwise specifically provided in this section and in the amendments made by this section [to this section and sections 263, 4912, 4916, 4917, 4919, 4920 and 4931 of this title], such amendments shall apply with respect to acquisitions of stock and debt obligations made after February 10, 1965."

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, not affected by amendment of section by section 3 of Pub. L. 89–243, see section 3(e)(2) of Pub. L. 89–243, set out as a note under section 4931 of this title.

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89–243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(q) of Pub. L. 89–243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4913, 4918, 4919, 4920, 4931 of this title.

§ 4915. Exclusion for direct investments.

(a) In general.

(1) Excluded acquisitions.

Except as provided in subsections (c) and (d) of this section, the tax imposed by section 4911 shall not apply to the acquisition by a United States person (A) of stock or a debt obligation of a foreign corporation, or of a debt obligation from a foreign corporation which received such obligation in the ordinary course of its trade or business as a result of the sale or rental of products manufactured or assembled by it or of the performance of services by it, if immediately after the acquisition such person (or one or more includible corporations in an affiliated group, as defined in section 1504, of which such person is a member) owns (directly or indirectly) 10 percent or more of the total combined voting power of all classes of stock of such foreign corporation, or (B) of stock or a debt obligation of a foreign partnership if immediately after the acquisition such person owns (directly or indirectly) 10 percent or more of the profits interest in such foreign partnership. For purposes of the preceding sentence, stock owned (directly or indirectly) by or for a foreign corporation shall be considered as being owned proportionately by its shareholders, and stock owned (directly or indirectly) by or for a foreign partnership shall be considered as being owned proportionately by its partners.

(2) Overpayment with respect to certain taxable acquisitions.

The tax paid under section 4911 on the acquisition by a United States person of stock or a debt obligation of a foreign corporation or foreign partnership, or a debt obligation from a foreign corporation which received such obligation in the ordinary course of its trade or business as a result of the sale or rental of products manufactured or assembled by it or the performance of services by it, shall (unless this subsection is inapplicable by reason of subsection (c) or (d)) constitute an overpayment of tax if such person—

(A) meets the ownership requirement of paragraph (1) with respect to such corporation or partnership at any time within 12 months after the date of such acquisition, and

(B) holds the stock or debt obligation continuously from the date of such acquisition to the last day of the calendar year in which such ownership requirement is first met.

Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made with respect to such overpayment.

(b) Special rule for government-controlled enterprises.

A United States person shall be considered to meet the ownership requirement of subsection (a)(1) with respect to a foreign corporation or a foreign partnership if—

(1) the government of a foreign country or any political subdivision thereof, or an agency or instrumentality of such a government, directly or indirectly through such corporation or partnership or otherwise, restricts to less than 10 percent the percentage of the total combined voting power of all classes of stock of such corporation, or the percentage of the profits interest in such partnership, which may be owned by such United States person;

(2) such person owns at least 5 percent of the total combined voting power of so much of such stock, or at least 5 percent of so much of such profits interest, as is not owned by any such government, agency, or instrumentality;

(3) a trade or business actively conducted in one or more foreign countries by such United States person (or by one or more corporations in an affiliated group, as defined in section 48(c)(3)(C), of which such person is a member) is directly related to the business carried on by such foreign corporation or foreign partnership; and

(4) such person, and one or more other United States persons each of which satisfies the conditions set forth in paragraphs (2) and (3), together meet the ownership requirement of subsection (a)(1).

(c) Exception for foreign corporations or partnerships formed or availed of for tax avoidance.

(1) In general.

The provisions of subsections (a) and (b) shall be inapplicable in any case where the foreign corporation or foreign partnership is formed or availed of by the United States person for the principal purpose of acquiring, through such corporation or partnership, an interest in stock or debt obligations (of one or more other foreign issuers or obligors) the direct acquisition of which by the United States person would be subject to the tax imposed by section 4911.

(2) Commercial banks, underwriters, and required holdings.

For purposes of this subsection, the acquisition by a United States person of stock or debt obligations of a foreign corporation or foreign partnership which acquires stock or debt obligations of foreign issuers or obligors—

(A) in making loans in the ordinary course of its business as a commercial bank,

(B) in the ordinary course of its business of underwriting and distributing securities issued by other persons, or

(C) to satisfy minimum requirements relating to holdings of stock or debt obligations of foreign issuers or obligors imposed by the laws of foreign countries where such foreign corporation or foreign partnership is doing business,

shall not, by reason of such acquisitions by the foreign corporation or foreign partnership, be considered an acquisition by the United States person of an interest in stock or debt obligations of foreign issuers or obligors. For purposes of subparagraph (A), any foreign corporation or foreign partnership which is regularly engaged in the business of accepting deposits from customers and receiving other borrowed funds in foreign currencies and making loans in such currencies shall be treated as a commercial bank.

(3) Foreign financing company.

A foreign corporation—

(A) 50 percent or more of the voting power of all classes of stock of which is owned directly or indirectly (within the meaning of subsection (a)) by a domestic corporation (or by one or more includible corporations in an affiliated group, as defined in section 48(c)(3)(C), of which such domestic corporation is a member),

(B) which, if it were a domestic corporation, would be eligible to make an election under section 4920(d), and

(C) gives notice to the Secretary or his delegate within the period for making an election under such section,

shall, during the period after the date of such notice during which it would, if it were a domestic corporation, meet the requirements of paragraphs (1), (2), (3), (4), and (5) of section 4920(d), be treated as not formed or availed of for the principal purpose described in paragraph (1) of this subsection. If such corporation ceases to meet such requirements, such corporation shall be treated as having been availed of for the principal purpose described in paragraph (1) of this subsection at the time of such cessation.

(4) Loss of entitlement to exclusion or refund where foreign corporation or partnership is availed of for tax avoidance.

In any case where—

(A) the exclusion provided by subsection (a)(1) has applied with respect to the acquisition of stock or a debt obligation by a United States person, or

(B) a credit or refund of tax under subsection (a)(2) has been received by a United States person with respect to acquisitions of stock made during a calendar year,

but the foreign corporation or partnership is availed of by such person (after the acquisition described in subparagraph (A) is made or the calendar year described in subparagraph (B) has ended, but before the termination date specified in section 4911(d)) for the principal purpose described in paragraph (1) of this subsection, then liability for the tax imposed by section 4911 shall be incurred by such person (with respect to such stock or debt obligation) at the time the foreign corporation or partnership is so availed of; and

the amount of such tax shall be equal (in a case described in subparagraph (A)) to the amount of tax for which such person would have been liable under such section upon his acquisition of the stock or debt obligations involved if such exclusion had not applied to such acquisition, or (in a case described in subparagraph (B)) to the aggregate amount of tax for which such person was liable under such section upon his acquisitions of the stock involved.

(d) Exception for acquisitions made with intent to sell to United States persons.

The provisions of subsections (a) and (b) shall be inapplicable in any case where the acquisition of stock or debt obligations of the foreign corporation or to offer to sell, any part of the stock or debt obligations acquired to United States persons. (Added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 824, and amended Pub. L. 90–59, § 5(k)(3), July 31, 1967, 81 Stat. 163; Pub. L. 91–128, § 4(e)(3), Nov. 26, 1969, 83 Stat. 267.)

AMENDMENTS

1969—Subsec. (c)(3). Pub. L. 91–128 substituted "section 4920(d)" for "section 4920(a)(3B)" in subpar. (B) and, in the material following subpar. (C), made conforming amendments to reflect the transfer from section 4920(a)(3B) of this title to section 4920(d) of this title of the requirements necessary in order for a foreign corporation to be accorded finance company treatment.

1967—Subsec. (c)(3). Pub. L. 90–59 added subsec. (c)(3), and redesignated former subsec. (c)(3) as (c)(4).

Subsec. (c)(4). Pub. L. 90–59 redesignated former subsec. (c)(3) as (c)(4).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(e)(4) of Pub. L. 91–128 provided that: "The amendments made by this subsection [amending subsec. (c)(3) of this section and section 4920(a)(3B) of this title and adding section 4920(d) of this title] shall take effect on the date of the enactment of this Act [Nov. 26, 1969]."

Amendment of section by section 4 of Pub. L. 91–128 applicable with respect to acquisitions of debt obligations made after the date of enactment of Pub. L. 91–128, which was approved on Nov. 26, 1969, see section 4(i)(4) of Pub. L. 91–128, set out as a note under section 4920 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4912, 4914, 4920, 4931 of this title.

§ 4916. Exclusion for investments in less developed countries.

(a) General rule.

The tax imposed by section 4911 shall not apply to the acquisition by a United States person of—

(1) a debt obligation issued or guaranteed by the government of a less developed country or a political subdivision thereof, or by an agency or instrumentality of such a government;

(2) stock or a debt obligation of a less developed country corporation;

(3) a debt obligation issued by an individual or partnership resident in a less developed country in return for money or other property which is used, consumed, or disposed of wholly within one or more less developed countries; or

(4) stock or a debt obligation of a foreign issuer or obligor, to the extent that such acquisition is required as a reinvestment within a less developed country by the terms of a contract of sale to, or of a contract of indemnification with respect to the nationalization, expropriation, or seizure by, the government of such less developed country or a political subdivision thereof, or an agency or instrumentality of such government, of property owned within such less developed country or such political subdivision by such United States person, or by a controlled foreign corporation (as defined in section 957) more than 50 percent of the total combined voting power of all classes of stock entitled to vote of which is owned (within the meaning of section 958) by such United States person, but only if such contract was entered into because the government of such less developed country or political subdivision, or such agency or instrumentality—

(A) has nationalized or has expropriated or seized, or has threatened to nationalize or to expropriate or seize, a substantial portion of the property owned within such less developed country or such political subdivision by such United States person or such controlled foreign corporation; or

(B) has taken action which has the effect of nationalizing or of expropriating or seizing, or of threatening to nationalize or to expropriate or seize, a substantial portion of the property so owned.

For purposes of this subsection, an instrumentality of the government of a less developed country or a political subdivision thereof includes a corporation or other entity with respect to which such government, or any agency of such government, owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote or, in the case of a corporation or other entity not issuing shares of stock, has the authority to elect or appoint a majority of the board of directors or equivalent body of such corporation or other entity.

(b) Less developed country defined.

For purposes of this section, the term "less developed country" means any foreign country (other than an area within the Sino-Soviet bloc) or any possession of the United States with respect to which, as of the date of an acquisition referred to in subsection (a), there is in effect an Executive order by the President of the United States designating such country as an economically less developed country for purposes of the tax imposed by section 4911. For purposes of the preceding sentence, Executive Order Numbered 11071, dated December 27, 1962 (designating certain areas as economically less developed countries for purposes of subparts A and F of part III of subchapter N, and section 1248 of part IV of subchapter P, of chapter 1), shall be deemed to have been issued and in effect, for purposes of the tax imposed by section 4911, on July 18, 1963, and continuously thereafter until there is in effect the Executive order referred to in the preceding sentence. An overseas territory, department, province, or possession of any foreign country

may be designated as a separate country. No designation shall be made under this subsection with respect to any of the following:

Australia	Luxembourg
Austria	Monaco
Belgium	Netherlands
Canada	New Zealand
Denmark	Norway
France	Republic of South Africa
Germany (Federal Republic)	San Marino
Hong Kong	Spain
Italy	Sweden
Japan	Switzerland
Liechtenstein	United Kingdom

After the President (under the first sentence of this subsection) has designated any foreign country as an economically less developed country for purposes of the tax imposed by section 4911, he shall not terminate such designation (either by issuing an Executive order for that purpose or by issuing an Executive order which has the effect of terminating such designation) unless, at least 30 days before such termination, he has notified the Senate and the House of Representatives of his intention to terminate such designation.

(c) Less developed country corporation defined.

(1) In general.

For purposes of this section, the term "less developed country corporation" means a foreign corporation which for the applicable periods set forth in paragraph (3)—

(A) meets the requirements of section 955 (c)(1);

(B)(i) meets the requirements of section 955 (c)(2), and

(ii) on each day of such applicable periods, is owned (as determined under section 958(a)), to the extent of at least 80 percent of each class of its stock, by United States persons or residents of one or more less developed countries; or

(C) derives 80 percent or more of its gross income, if any, from sources within less developed countries, or from deposits in the United States with persons carrying on the banking business, or both, and has assets 80 percent or more in value of which consists of—

(i) money, and deposits in the United States with persons carrying on the banking business,

(ii) stock or debt obligations of any other less developed country corporation,

(iii) debt obligations of a less developed country,

(iv) investments which are required because of restrictions imposed by a less developed country,

(v) debt obligations described in paragraph (3) of subsection (a) of this section, and

(vi) obligations of the United States.

In applying this paragraph the determination of whether a foreign country is a less developed country shall be made in accordance with subsection (b) of this section. A foreign partnership, as defined in section 7701(a) (2) and (5), the assets, gross income, and ownership of which, for the applicable periods set forth in paragraph (3), satisfy the requirements of subparagraph (A), (B), or (C) of the first sentence of this paragraph, shall be treated as a less developed country corporation for purposes of this section.

(2) Special rules.

(A) For purposes of subparagraphs (A), (B), and (C) of paragraph (1), property described in section 956(b)(1) (regardless of when acquired), other than deposits with persons carrying on the banking business, and income derived from such property, shall not be taken into account.

(B) For purposes of subparagraph (A) of paragraph (1), obligations of any other less developed country corporation shall be taken into account under section 955(c)(1)(B)(iii) without regard to the period remaining to maturity at the time of their acquisition.

(C) For purposes of subparagraph (C) of paragraph (1), deposits outside the United States (other than deposits in a less developed country) with persons carrying on the banking business, and income from such deposits, shall not be taken into account.

(3) Applicable periods.

The determinations required by subparagraphs (A), (B), and (C) of paragraph (1) shall be made (A) for the annual accounting period (if any) of the foreign corporation immediately preceding its accounting period in which the acquisition involved is made, (B) for the annual accounting period of the foreign corporation in which such acquisition is made, and (C) for the next succeeding annual accounting period of the foreign corporation.

(4) Special rules for treatment of corporations as less developed country corporations.

A foreign corporation shall be treated as satisfying the definition in paragraph (1) with respect to the acquisition by a United States person of stock or a debt obligation if—

(A) before the acquisition occurs (or, in the case of an acquisition occurring before or within 60 days after the date of the enactment of this chapter, pursuant to application made within such period following such date as may be prescribed by the Secretary or his delegate in regulations), it is established to the satisfaction of the Secretary or his delegate that such foreign corporation—

(i) has met the applicable requirements of paragraph (1) for the period (if any) referred to in paragraph (3)(A), and

(ii) may reasonably be expected to satisfy such requirements for the periods referred to in paragraphs (3) (B) and (C); or

(B) in the case of an acquisition occurring on or before December 10, 1963, the applicable requirements of paragraph (1) are met for the annual accounting period of the foreign corporation immediately preceding its accounting period in which the acquisition occurred.

(5) Treatment of corporations as less developed country corporations in other cases.

A foreign corporation may also be treated as satisfying the definition in paragraph (1) with

respect to the acquisition by a United States person of stock or a debt obligation (but subject to possible subsequent liability for tax under subsection (d)(1)), if—

(A) such corporation has met the applicable requirements of paragraph (1) for the period (if any) referred to in paragraph (3)(A), and

(B) such person reasonably believes that such corporation will satisfy such requirements for the periods referred to in paragraphs (3) (B) and (C).

(d) Subsequent liability for tax in certain cases.

(1) Stock and debt obligations of certain corporations.

Where a foreign corporation is treated under subsection (c)(5) as satisfying the definition in subsection (c)(1) and the exclusion provided by subsection (a)(2) has applied with respect to the acquisition of stock or a debt obligation of such corporation by any person, but such corporation fails to satisfy the definition contained in subsection (c)(1) for either of the applicable accounting periods referred to in clauses (B) and (C) of subsection (c)(3) (and it is not treated under subsection (c)(4) as satisfying such definition), then liability for the tax imposed by section 4911 shall be incurred by such person (with respect to such stock or debt obligation) as of the close of the earliest such applicable accounting period (ending on or before the termination date specified in section 4911(d)) with respect to which the corporation fails to satisfy such definition; and the amount of such tax shall be equal to the amount of tax for which such person would have been liable under such section upon the acquisition of the stock or debt obligation involved if such exclusion had not applied with respect to such acquisition.

(2) Debt obligations issued in return for certain property.

Where the exclusion provided by subsection (a)(3) has applied with respect to the acquisition by a United States person of a debt obligation issued in return for money or other property as provided in such subsection, but part or all of such money or property is used, consumed, or disposed of (before the termination date specified in section 4911(d)) otherwise than wholly within one or more less developed countries, then liability for the tax imposed by section 4911 shall be incurred by such person (with respect to such debt obligation) as of the time such money or property is first so used, consumed, or disposed of; and the amount of such tax shall be equal to the amount of tax for which such person would have been liable under such section upon the acquisition of the debt obligation involved if such exclusion had not applied with respect to such acquisition.

(Added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 827, and amended Pub. L. 89–243, § 4(i), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90–59, § 5(g)(1), July 31, 1967, 81 Stat. 159.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (c)(4), means the date of enactment of Pub. L. 88–563, which was approved on September 2, 1964.

AMENDMENTS

1967—Subsec. (c)(1). Pub. L. 90–59, § 5(g)(1)(A)—(C), eliminated the reference to section 955(c)(2) from subpar. (A), added subpar. (B), redesignated former subpar. (B) as (C), and, in the last sentence, substituted "the assets, gross income, and ownership" for "the assets and gross income", and "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)."

Subsec. (c)(2). Pub. L. 90–59, § 5(g)(1) (D), (E), inserted a reference to subparagraph (C) of paragraph (1) in subpar. (A), and substituted "subparagraph (C)" for "subparagraph (B)" in subpar. (C).

Subsec. (c)(3). Pub. L. 90–59, § 5(g)(1)(D), inserted a reference to subparagraph (C) of paragraph (1).

1965—Subsec. (c)(1). Pub. L. 89–243 added the sentence treating a foreign partnership, as defined in section 7701(a) (2) and (5), the assets and gross income of which, for the applicable periods set forth in par. (3), satisfy the requirements of subpar. (A) or (B) of the first sentence of this par., as a less developed country corporation for purposes of this section.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 5(g)(2) of Pub. L. 90–59 provided that: "The amendments made by paragraph (1) [to subsec. (c)(1)—(3) of this section] shall apply with respect to acquisitions made after the date of the enactment of this Act [July 31, 1967]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 4 of Pub. L. 89–243 applicable with respect to acquisitions of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89–243 and in the amendments made by such section, see section 4(q) of Pub. L. 89–243, set out as a note under section 4914 of this title.

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89–243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(q) of Pub. L. 89–243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

EXECUTIVE ORDER NO. 11224

Ex. Ord, No. 11224, May 13, 1965, 30 F.R. 6679, formerly set out as a note under this section, which related to the designation of economically less developed countries, was superseded by Ex. Ord. No. 11285, June 10, 1966, 31 F.R. 8211, set out as a note under this section.

Ex. Ord. No. 11285. DESIGNATION OF ECONOMICALLY LESS DEVELOPED COUNTRIES

Ex. Ord. No. 11285, June 10, 1966, 31 F.R. 8211, provided:

WHEREAS notice was given on December 7, 1965, that I intended to notify the Senate and House of Representatives of my intention to terminate the designation of Abu Dhabi, Bahrain, Iran, Iraq, Kuwait–Saudi Arabia Neutral Zone, Libya, Qatar, and Saudi Arabia as economically less developed countries for purposes of the tax imposed by section 4911 of the Internal Revenue Code [section 4911 of this title]; and

WHEREAS the Senate and House of Representatives have been duly notified of my intention to terminate the designation of these countries as economically less developed countries for such purposes;

NOW, THEREFORE, by virtue of the authority vested in me by section 4916(b) of the Internal Revenue Code of 1954, as added by section 2 of the Interest Equalization Tax Act, approved September 2, 1964 (Public Law 88–563) [subsec. (b) of this section], by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *Economically less developed countries.* For purposes of the tax imposed by section 4911 of the In-

ternal Revenue Code [section 4911 of this title], the following areas are designated as economically less developed countries:

(a) All foreign countries (including Trust Territories) in existence on or after the effective date of this order, other than Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, France, Iran, Iraq, Ireland, Italy, Japan, Kuwait, Kuwait-Saudi Arabia Neutral Zone, Libya, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Saudi Arabia, Spain, Sweden, Switzerland, Union of South Africa, United Kingdom, and any foreign country within the Sino-Soviet bloc, as defined in section 2;

(b) Each territory, department, province, and possession (other than Abu Dhabi, the Bahamas, Bahrain, Bermuda, Hong Kong, and Qatar), of any foreign country in existence on or after the effective date of this order, other than a foreign country within the Sino-Soviet bloc, as defined in section 2, if the territory, department, province, or possession is overseas from the foreign country of which it is a territory, department, province, or possession; and

(c) The Commonwealth of Puerto Rico and all possessions of the United States.

SEC. 2. *Definition of the term "foreign country within the Sino-Soviet bloc."* For purposes of this order, the term "foreign country within the Sino-Soviet bloc" shall mean Albania, Bulgaria, any part of China which is dominated or controlled by International Communism, Cuba, Czechoslovakia, Estonia, Hungary, any part of Korea which is dominated or controlled by International Communism, Latvia, Lithuania, Outer Mongolia, Poland (including any area under its provisional administration), Rumania, Soviet Zone of Germany and the Soviet Sector of Berlin, Tibet, Union of Soviet Socialist Republics and the Kurile Islands, Southern Sakhalin, and areas in East Prussia which are under the provisional administration of the Union of Soviet Socialist Republics, and any part of Viet Nam which is dominated or controlled by International Communism.

SEC. 3. *Prior commitments to acquire.* Notwithstanding the provisions of sections 1 and 2 of this order, any area which had the status of an economically less developed country under Executive Order No. 11224 prior to the effective date of this order shall be deemed to be an economically less developed country for purposes of section 4916 [this section] with respect to an acquisition of stock or a debt obligation—

(a) If such acquisition is made pursuant to an obligation to acquire which, prior to December 7, 1965, was unconditional or was subject only to conditions contained in a formal contract under which partial performance had occurred; or

(b) If, with respect to such acquisition, the acquiring United States person (or, in a case where two or more United States persons are making acquisitions as part of a single transaction, majority in interest of such persons), had taken every action prior to December 7, 1965, to signify approval of the acquisition under the procedures ordinarily employed by such person (or persons) in similar transactions and had sent or deposited for delivery to the foreign person from whom the acquisition was made written evidence of such approval in the form of a commitment letter, memorandum of terms, draft purchase contract, or other document setting forth, or referring to a document sent by the foreign person from whom the acquisition was made which set forth, the principal terms of such acquisition, subject only to the execution of formal documents evidencing the acquisition and to customary closing conditions.

SEC. 4. *Rules and regulations.* The Secretary of the Treasury or his delegate is authorized to prescribe from time to time regulations, rulings, directions, and instructions to carry out the purposes of this order.

SEC. 5. *Effective date.* This order shall become effective upon its filing for publication in the FEDERAL REGISTER.

SEC. 6. *Supersedure of Executive Order No. 11224.* The Executive Order No. 11224, dated May 13, 1965, is hereby superseded.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4914, 4920 of this title; title 12 section 635.

§ 4917. Exclusion for original or new issues where required for international monetary stability.

(a) In general.

If the President of the United States shall at any time determine that the application of the tax imposed by section 4911 will have such consequences for a foreign country as to imperil or threaten to imperil the stability of the international monetary system, he may by Executive order specify that such tax shall not apply to the acquisition by a United States person of stock or a debt obligation of the government of such foreign country or a political subdivision thereof, any agency or instrumentality of any such government, any corporation, partnership, or trust (other than a company registered under the Investment Company Act of 1940) organized under the laws of such country or any such subdivision, or any individual resident therein, to the extent that such stock or debt obligation is acquired as all or part of an original or new issue as to which there is filed such notice of acquisition as the Secretary or his delegate may prescribe by regulations. In the case of acquisitions made during the period beginning July 19, 1963, and ending with the date of the enactment of this chapter, the notice of acquisition may be filed within such period following the date of such enactment as the Secretary or his delegate may be filed within such period following the date of such enactment as the Secretary or his delegate may prescribe by regulations. In the case of acquisitions of debt obligations having a period remaining to maturity of 1 year or more but less than 3 years made during the period beginning February 11, 1965, and ending with the date of the enactment of the Interest Equalization Tax Extension Act of 1965, the notice of acquisition may be filed within such period following the date of such enactment as the Secretary or his delegate may prescribe by regulations.

(b) Applicability of Executive order.

An Executive order described in subsection (a) may be applicable to all such original or new issues or to any aggregate amount or classification thereof which shall be stated in such order and shall apply to acquisitions occurring during such period of time as shall be stated therein. If the order is applicable to a limited aggregate amount of such issues it shall apply (under regulations prescribed by the Secretary or his delegate) to those acquisitions as to which notice of acquisition was first filed, provided that in the case of any such notice the acquisition described in the notice is made before or within 90 days after the date of filing or within such longer period after such date as may be specified in such order.

(c) Original or new issue.

For purposes of this section—

(1) stock shall be treated as part of an original or new issue only when it is acquired from the issuer by the United States person claiming the exclusion; and

(2) a debt obligation shall be treated as part of an original or new issue only if acquired not

later than 90 days after the date on which interest begins to accrue on such obligation, except that a debt obligation secured by a lien on improvements on real property which are under construction or are to be constructed at the time such obligation is issued (or if such obligation is one of a series, at the time the first obligation in such series is issued) shall be treated as part of an original or new issue if—

(A) such obligation is acquired not later than 90 days after the date on which interest begins to accrue on the total amount of such obligation (or if such obliagtion is one of a series, on the last issued of the obligations in such series); and

(B) the United States person claiming the exclusion became committed to the acquisition of such obligation not later than 90 days after the date on which interest began to accrue on any part of such obligation (or, if such obligation is one of a series, on the first obligation issued in such series).

(d) Reduction of exclusion in case of late filing of certain notices of acquisition.

If, with respect to an acquisition of stock or a debt obligation which is all or part of an original or new issue to which an Executive order issued under subsection (a) is applicable (other than an Executive order which is applicable to a limited aggregate amount of such issues), the notice of acquisition required by subsection (a) is not filed on or before the last day (including extensions of time) specified in the regulations prescribed by the Secretary or his delegate under such subsection, the exclusion provided by such Executive order shall not apply to 1 percent of such acquisition for each 30-day period or fraction thereof after such last day during which such failure continues, except that in no event shall such exclusion be reduced under this subsection by more than 5 percent of such acquisition.

(e) Fufillment of treaty obligations.

In determining whether to issue an Executive order under subsection (a) with respect to a foreign country, and in determining whether to revoke or modify an Executive order issued under subsection (a) with respect to a foreign country (whether issued before or after the enactment of this subsection), the President may take into account whether such foreign country is according privileges to United States persons in conformity with treaties of friendship, commerce, and navigation between the United States and such foreign country. (Added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 830, and amended Pub. L. 89–243, § 4 (j), (k), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90–59, § 5(h)(1), July 31, 1967, 81 Stat. 159.)

REFERENCES IN TEXT

The date of the enactment of the Interest Equalization Tax Extension Act of 1965, referred to in subsec. (a) of this section, means October 9, 1965, the date on which Pub. L. 89–243 was enacted.

The Investment Company Act of 1940, referred to in subsec. (a), is classified to section 80a–1 et seq. of Title 15, Commerce and Trade.

The date of enactment of this chapter, referred to in subsec. (a), means the date of enactment of Pub. L. 88–563, which was approved September 2, 1964.

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–59 eliminated words "after the date of the enactment of the Interest Equalization Tax Extension Act of 1965" which followed "with respect to an acquisition", and substituted "1 percent" for "5 percent" and "5 percent" for "25 percent."

1965—Subsec. (a). Pub. L. 89–243, § 4(j)(1), added the sentence permitting, in the case of acquisitions of debt obligations having a period remaining to maturity of 1 year or more but less than 3 years made during the period beginning Feb. 11, 1965, and ending with the date of the enactment of the Interest Equalization Tax Extension Act of 1965, the notice of acquisition to be filed within such period following the date of such enactment as the Secretary or his delegate may prescribe by regulations.

Subsec. (d). Pub. L. 89–243, § 4(j)(2), added subsec. (d).

Subsec. (e). Pub. L. 89–243, § 4(k), added subsec. (e).

EFFECTIVE DATE OF 1967 AMENDMENT

Section 5(h)(2) of Pub. L. 90–59 provided that: "The amendments made by paragraph (1) [to subsec. (d) of this section] shall apply with respect to acquisitions made after July 18, 1963."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 4 of Pub. L. 89–243 applicable with respect to acquisition of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89–243 and in the amendments made by such section, see section 4(q) of Pub. L. 89–243, set out as a note under section 4914 of this title.

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89–243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(q) of Pub. L. 89–243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

NOTICE OF ACQUISITION WITH RESPECT TO ACQUISITIONS AFTER JULY 18, 1963, AND BEFORE JULY 31, 1967

Section 5(h)(3) of Pub. L. 90–59 provided that: "If, with respect to an acquisition after July 18, 1963, and before the date of enactment of this Act [July 31, 1967], by a State or political subdivision, or by any agency or instrumentality thereof, of stock or a debt obligation which is all or part of an original or new issue to which an Executive order issued under section 4917(a) [subsec. (a) of this section] is applicable (other than an Executive order which is applicable to a limited aggregate amount of such issues), the notice of acquisition required by section 4917(a) [subsec. (a) of this section] is filed on or before the 60th day after the date of enactment of this Act [July 31, 1967], such notice shall be considered as filed on or before the last day specified in the regulations prescribed by the Secretary or his delegate under section 4917(a) [subsec. (a) of this section]."

INTEREST ON CREDITS OR REFUNDS

Section 5(h)(4) of Pub. L. 90–59 provided that: "No interest shall be paid with respect to any credit or refund allowed or made by reason of the application of this subsection [amending subsec. (d) of this section and enacting provisions set out as a note under this section]."

EX. ORD. NO. 11175. EXCLUSION FOR ORIGINAL OR NEW CANADIAN ISSUES

Ex. Ord. No. 11175, Sept. 2, 1964, 29 F.R. 12605, as amended by Ex. Ord. No. 11304, Sept. 12, 1966, 31 F.R. 12005, provided:

SECTION 1. Except as provided in section 2, the tax imposed by section 4911 of the Internal Revenue Code of 1954 shall not apply to the acquisition by a United States person of stock or a debt obligation of Canada or a politi-

cal subdivision thereof, any agency or instrumentality of Canada, any corporation, partnership, or trust organized under the laws of Canada or a political subdivision thereof, or any individual resident in Canada, if such stock or debt obligation is acquired as all or part of an original or new issue as to which there is filed the notice of acquisition prescribed by the Secretary of the Treasury or his delegate.

SEC. 2. The exclusion from tax provided in section 1 shall not apply to the following:

(a) Any acquisition of stock or a debt obligation of a company registered under the Investment Company Act of 1940 (54 Stat. 847; 15 U.S.C. 80a–1 to 80a–52); and

(b) Any acquisition of stock or a debt obligation of a Canadian corporation, partnership, or trust formed or availed of for the principal purpose of acquiring stock or debt obligations of a Canadian or other foreign issuer or obligor, other than stock or debt obligations described in section 1 or in section 4916(a) of the Internal Revenue Code of 1954.

SEC. 3. The provisions of sections 1 and 2 shall be applicable to any acquisition by a commercial bank of a debt obligation described in such sections, and section 3 of Executive Order No. 11198, dated February 10, 1965, [set out as a note under section 4931 of this title], is hereby superseded.

SEC. 4. The Secretary of the Treasury or his delegate is authorized to prescribe from time to time regulations, rulings, directions, and instructions to carry out the purpose of this order.

SEC. 5. This order shall be effective upon its filing for publication in the FEDERAL REGISTER and shall apply to all acquisitions made during the period this order is in effect.

LYNDON B. JOHNSON

EX. ORD. NO. 11211. EXCLUSION FOR ORIGINAL OR NEW JAPANESE ISSUES

Ex. Ord. No. 11211, Apr. 2, 1965, 30 F.R. 4385, as amended by Ex. Ord. No. 11368, Aug. 28, 1967, 32 F.R. 12549 provided:

By virtue of the authority vested in me by section 4917 (a) of the Internal Revenue Code of 1954, as added by section 2 of the Interest Equalization Tax Act, approved September 2, 1964 (Public Law 88–563, 78 Stat. 809), by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby determined that the full application of the tax imposed by section 4911 of the Internal Revenue Code of 1954, as added by section 2 of the Interest Equalization Tax Act, will have such consequences for Japan as to imperil or threaten to imperil the stability of the international monetary system and it is hereby ordered as follows:

SECTION 1. The tax imposed by section 4911 of the Internal Revenue Code of 1954 [section 4911 of this title] shall not apply to an acquisition by a United States person of a debt obligation (as defined in section 4920(a)(1) of the Code [section 4920(a)(1) of this title]) repayable exclusively in United States currency which is (i) issued or guaranteed as to payment of principal and interest by the Government of Japan, or (ii) issued, with the prior approval of the Government of Japan, by a corporation organized under the laws of Japan which is neither a company regulated under the Investment Company Act of 1940 (54 Stat. 847; 15 U.S.C. 80a–1 to 80a–52) nor formed or availed of for the principal purpose of acquiring stock or debt obligations of a Japanese or other foreign issuer or obligor, other than stock or debt obligations described in section 4916(a) of the Code [section 4916(a) of this title], provided that—

(a) Such debt obligation is acquired as all or part of an original or new issue as to which there is filed such notice of acquisition as the Secretary of the Treasury or his delegate may prescribe by regulations;

(b) The Government of Japan determines and certifies to the acquiring United States person that his acquisition of such debt obligation complies with the criteria set forth in this section; and

(c) Before or as a result of such acquisition, the aggregate amount of all acquisitions by United States persons excluded from interest equalization tax by reason of this order during the calendar year in which the acquisition is made (or, in the case of acquisitions made during the period beginning on the effective date of this order and ending December 31, 1965, during such period) does not exceed $100,000,000.

SECTION 1A. The tax imposed by section 4911 of the Internal Revenue Code of 1954 [section 4911 of this title] shall not apply to an aquisition by a United States person of stock acquired pursuant to the exercise of a right (without the payment of additional consideration) to convert into stock, a debt obligation which was acquired under the exemption created by section 1, provided that—

(a) such debt obligation had never been acquired by a person other than a United States person; and

(b) such stock is acquired as all or part of an original or new issue as to which there is filed such notice of acquisition as the Secretary of the Treasury or his delegate may prescribe by regulation.

SEC. 2. The Secretary of the Treasury or his delegate is authorized to prescribe from time to time regulations, rulings, directions, and instructions to carry out the purpose of this order.

SEC. 3. This order shall be effective upon its filing for publication in the FEDERAL REGISTER with respect to acquisitions made during the period beginning on the effective date of this order and ending on the date specified in section 4911(d) of the Internal Revenue Code of 1954.

LYNDON B. JOHNSON.

EX. ORD. NO. 11506, EXCLUSION FOR ORIGINAL OR NEW JAPANESE ISSUES ACQUIRED ON OR AFTER FEB. 3, 1970

Ex. Ord. No. 11506, Feb. 2, 1970, 35 F.R. 2501, provided:

By virtue of the authority vested in me by section 4917(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section], and as President of the United States, it is hereby ordered as follows:

SECTION 1. *Exclusion.* Executive Order No. 1121 of April 2, 1965, as amended by section 3 of Executive Order No. 11368 of August 28, 1967 [set out as a note under this section], providing for an exclusion from the tax imposed by section 4911 of the Internal Revenue Code of 1954 [section 4911 of this title] with respect to acquisitions of certain original or new Japanese issues of stock or debt obligations—

(a) shall not apply to any acquisition of such debt obligations made on or after the effective date of this order;

(b) shall continue to apply to an acquisition of such stock made on or after the effective date of this order pursuant to the exercise of a right to convert (without payment of additional consideration) contained in a debt obligation issued prior to the effective date of this order.

SEC. 2. *Rules and regulations.* The Secretary of the Treasury or his delegate is authorized to prescribe from time to time regulations, rulings, directions, and instructions to carry out the purpose of this order.

SEC. 3. *Effective date.* This order shall be effective upon its filing for publication in the FEDERAL REGISTER.

RICHARD NIXON

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4911, 4914, 4920 of this title.

§ 4918. Exemption for prior American ownership and compliance.

(a) General rule.

The tax imposed by section 4911 shall not apply to an acquisition of stock of a foreign issuer or of a debt obligation of a foreign obligor if it is established in the manner provided in this section that—

(1) the person from whom such stock or debt obligation was acquired was a United States person throughout the period of his ownership or continuously since July 18, 1963, and was not ineligible, under the provisions of this chapter, to dispose of such stock or debt obligation as a United States person; and

(2) such person—

(A) had paid the tax imposed by section 4911 with respect to the acquisition of such stock or debt obligation by such person; or

(B) acquired such stock or debt obligation without liability for payment of such tax.

(b) Establishing exemption for prior American ownership and compliance.

(1) Conclusive proof.

For purposes of the exemption for prior American ownership and compliance provided in subsection (a)—

(A) a validation certificate, evidencing that the person from whom stock of a foreign issuer or a debt obligation of a foreign obligor was acquired was a person described in subsection (a), issued by the Secretary or his delegate (or by any officer or employee of the United States designated by the Secretary or his delegate) and filed in accordance with the requirements prescribed by the Secretary or his delegate; or

(B) a written confirmation (referred to as an IET clean confirmation) received by the person acquiring such stock or debt obligation from a participating firm acting as a broker in effecting the acquisition (or acting for its own account) which contains no reference to liability for the tax imposed by section 4911,

shall be conclusive proof that such exemption applies with respect to the acquisition of the stock or debt obligation described in such certificate or confirmation, if the person making the acquisition relies in good faith on the validity of such certificate or confirmation.

(2) Other proof.

If the person making an acquisition of stock or a debt obligation shows reasonable cause for his inability to establish such exemption under paragraph (1) he may furnish other evidence to establish to the satisfaction of the Secretary or his delegate that such exemption is applicable to such acquisition.

(3) Certain acquisitions by dealers.

For purposes of paragraph (1), if the person acquiring the stock or debt obligation is a participating firm acting for its own account and if such participating firm would be entitled to issue a written confirmation referred to in paragraph (1)(B) if it were acting as a broker in effecting such acquisition for the account of a customer, such participating firm shall be treated as having received a written confirmation referred to in paragraph (1)(B) with respect to such acquisition.

(c) Participating firm.

(1) Definition.

For purposes of this section, a participating firm is a member or member organization of a national securities exchange or association registered with the Securities and Exchange Commission which satisfies the eligibility requirements set forth in paragraph (2).

(2) Eligibility requirements.

(A) In general.

A member or member organization of a national securities exchange or association registered with the Securities and Exchange Commission shall qualify as a participating firm if such member or member organization notifies the Secretary or his delegate that it—

(i) agrees to comply with the provisions of this chapter and with the documentation, recordkeeping, reporting, and auditing requirements prescribed by the Secretary or his delegate to implement such provisions; and

(ii) if such notification is made after August 14, 1967, is complying with such provisions and requirements.

(B) Participating firms during interim period.

During the period commencing July 15, 1967, and ending on August 14, 1967, the following are deemed to be participating firms which satisfy the eligibility requirements of subparagraph (A):

(i) all members and member organizations of the New York Stock Exchange;

(ii) all members and member organizations of the American Stock Exchange; and

(iii) members or member organizations of the National Association of Securities Dealers, Inc., which reported net capital (as defined in rule 15c 3–1 under the Securities Exchange Act of 1934) of $750,000 in the latest financial statement filed with the Securities and Exchange Commission on form X–17A–5 prior to July 13, 1967, or which effected at least 300 transactions with respect to the sale or acquisition of stock of foreign issuers or debt obligations of foreign obligors during either the week commencing on July 2, 1967, or the week commencing on July 9, 1967.

(C) Termination of status.

The status of a member or member organization of a national securities exchange or association registered with the Securities and Exchange Commission qualifying as a participating firm shall be terminated if—

(i) such member or member organization qualifies as a participating firm during the interim period described in subparagraph (B) and does not submit to the Secretary or his delegate, on or before August 15, 1967, the notification described in subparagraph (A);

(ii) such member or member organization files a written request with the Secretary or his delegate to terminate such status; or

(iii) the Secretary or his delegate has reasonable cause to believe a participating firm is failing to comply with the statutory provisions and procedural requirements described in subparagraph (A), and notifies the participating firm of such noncompliance.

Any termination of the status of a participating firm in accordance with this subparagraph shall be effective as of the date specified in a notice to such participating firm issued by the Secretary or his delegate which date shall be subsequent to the date on which information regarding the termination of such status is published for the purpose of informing the remaining participating firms and participating custodians.

For purposes of this paragraph, an associate member or member organization of the New York Stock Exchange, the American Stock Exchange, or a national securities association registered with the Securities and Exchange Commission shall be deemed a member or member organization of such exchange or association.

(d) Issuance of IET clean confirmation by participating firm.

A participating firm may issue an IET clean confirmation (referred to in subsection (b)(1)(B)) in connection with an acquisition of stock of a foreign issuer or a debt obligation of a foreign obligor by a United States person—

(1) if such participating firm—

(A) acted as a broker in effecting such acquisition and received from another participating firm a written comparison or broker-dealer confirmation under subsection (e) which indicates that the exemption for prior American ownership and compliance provided in subsection (a) applies to such acquisition;

(B) acted as a broker in effecting both the sale and acquisition on the same day of such stock or debt obligation and would have been entitled to issue a written comparison or broker-dealer confirmation under paragraph (e) which indicates that the exemption for prior American ownership and compliance provided in subsection (a) applies to such acquisition if such acquisition had been effected by another participating firm; or

(C) sold such stock or debt obligation for its own account and is a person described in subsection (a) with respect to such acquisition; or

(2) if such acquisition was effected by such participating firm in a sale by, or effected by, another participating firm on a national securities exchange registered with the Securities and Exchange Commission, or in a transaction in which such participating firm and the participating firm effecting the sale were members of a national association of securities dealers registered with the Securities and Exchange Commission, and if such acquisition was effected in accordance with rules of such exchange or such association which the Secretary or his delegate determines require acquisitions exempt from tax under this section to be effected in such a manner that the requirements of subsection (e) are satisfied.

Any IET clean confirmation issued under this subsection shall be clearly distinguishable from any other confirmation issued with respect to an acquisition of stock of a foreign issuer or a debt obligation of a foreign obligor by a participating firm.

(e) Sales effected by participating firms in connection with exempt acquisitions.

A participating firm selling, or effecting the sale of, stock of a foreign issuer or a debt obligation of a foreign obligor may issue a written comparison or broker-dealer confirmation, which indicates the exemption for prior American ownership and compliance provided in subsection (a) applies to the acquisition of such stock or debt obligation, only if such participating firm (or another participating firm for which the sale is being effected) has in its possession (except in the case of a sale by a participating firm selling for its own account and in the case of a sale for another participating firm or a participating custodian to which paragraph (4) applies) a statement, upon which such participating firm (or such other participating firm) relies in good faith, executed under penalty of perjury by the person making the sale, establishing that such person is a United States person and is the owner of all stock of foreign issuers and debt obligations of foreign obligors carried in the records of such participating firm (or such other participating firm) for the account of such person; and such participating firm (or such other participating firm) either—

(1)(A) at the close of business on July 14, 1967, carried such stock or debt obligation in its records (on a trade-date basis) for the account of the seller; and

(B) included such stock or debt obligation in the transition inventory referred to in subsection (g) filed or to be filed on or before the due date by such participating firm with the Secretary or his delegate in accordance with the provisions of such subsection;

(2) after July 14, 1967, acquired such stock or debt obligation for its own account, if the exemption for prior American ownership and compliance provided in subsection (a) applied to such acquisition by reason of subsection (b)(3), or

(A) sold for its own account such stock or debt obligation to the seller, or acting as broker effected the acquisition of such stock or debt obligation by the seller, if the exemption for prior American ownership and compliance provided in subsection (a) applied to such acquisition by reason of subsection (b)(1)(B); and

(B) continuously carried in its records on a trade-date basis for the account of the seller such stock or debt obligation;

(3)(A) sold for its own account such stock or debt obligation to the seller, or acting as a broker effected the acquisition of such stock or debt obligation by the seller, if, by reason of subsection (b)(1)(B) (or by reason of subsections (c) or (d) as in effect with respect to acquisitions before July 15, 1967), the exemption for prior American ownership and compliance provided by subsection (a) (or the exemption for prior American ownership provided by subsection (a) as in effect with respect to acquisitions before July 15, 1967) applied to such acquisition; and

(B) after July 14, 1967, received from the seller the identical stock certificates or evidences of indebtedness which it had previously delivered to the seller with respect to such acquisition by the seller;

(4) receives possession of such stock or debt obligation from another participating firm or from a participating custodian, together with a transfer of custody certificate, as provided in subsection (h);

(5) receives from the seller stock which was registered before July 19, 1963, in the name of the

seller by a participating custodian which acted as transfer agent or registrar in registering such stock;

(6) receives a validation certificate issued by the Secretary or his delegate evidencing that the seller is a person described in subsection (a) with respect to such stock or debt obligation and files such certificate with the Secretary or his delegate in accordance with the requirements prescribed by the Secretary or his delegate;

(7) withholds from the proceeds of such sale (with the consent of the seller) an amount equal to the tax which would be imposed under section 4911 on the acquisition of such stock or debt obligation by the purchaser if such acquisition were not exempt from such tax under this section; or

(8) conditions set forth in regulations prescribed by the Secretary or his delegate are met.

The withholding under paragraph (7) shall be treated as the collection of the tax imposed under section 4911 on the acquisition by the seller of such stock or debt obligation and shall be paid over to the Secretary or his delegate or released to the seller at such time and in such manner as provided in regulations prescribed by the Secretary or his delegate. For purposes of paragraphs (2), (3), (5), and (7), the term "seller" does not include a participating firm selling for its own account.

(f) Participating custodian.

(1) Definition.

For purposes of this section, a participating custodian is a bank or trust company insured by the Federal Deposit Insurance Corporation which satisfies the eligibility requirements set forth in paragraph (2).

(2) Eligibility requirements.

(A) In general.

A bank or trust company insured by the Federal Deposit Insurance Corporation may become a participating custodian if such bank or trust company notifies the Secretary or his delegate that it—

(i) agrees to comply with the provisions of this chapter and the documentation, recordkeeping, reporting, and auditing requirements prescribed by the Secretary or his delegate to implement such provisions, and

(ii) if such notification is made after August 14, 1967, is complying with such provisions and requirements.

(B) Participating custodians during interim period.

During the period commencing July 15, 1967, and ending on August 14, 1967, Federal Reserve member banks which are classified as reserve city banks are deemed to be participating custodians which satisfy the eligibility requirements of subparagraph (A).

(C) Termination of status.

The status of a bank or trust company insured by the Federal Deposit Insurance Corporation as a participating custodian shall be terminated, if—

(i) such bank or trust company qualifies as a participating firm during the interim period described in subparagraph (B) and does not submit to the Secretary or his delegate, on or before August 15, 1967, the notification described in subparagraph (A);

(ii) such bank or trust company files a written request with the Secretary or his delegate to terminate such status; or

(iii) the Secretary or his delegate has reasonable cause to believe a participating custodian is failing to comply with the statutory provisions and procedural requirements described in subparagraph (A), and notifies the participating custodian of such noncompliance.

Any termination of the status of a participating custodian in accordance with this subparagraph shall be effective as of the date specified in a notice to such participating custodian issued by the Secretary or his delegate which date shall be subsequent to the date on which information regarding the termination of such status is published for the purpose of informing the remaining participating custodians and participating firms.

(g) Filing of transition inventory.

A participating firm and participating custodian which qualifies before August 15, 1967, shall, on or before August 15, 1967, file an inventory (designated as a transition inventory) with the Secretary or his delegate which shall include all stock of foreign issuers and debt obligations of foreign obligors carried in its records (on a trade-date basis) by such participating firm or participating custodian as of the close of business on July 14, 1967 (excluding, in the case of a member or member organization which becomes a participating firm after July 15, 1967, and in the case of a bank or trust company which becomes a participating custodian after July 15, 1967, stock and debt obligations not also carried in its records (on a trade-date basis) as of the close of business on the day prior to the day on which it became a participating firm or participating custodian), together with such information as may be required by the Secretary or his delegate.

(h) Transfer of custody certificate.

(1) Nature of certificate.

A certificate (designated as a transfer of custody certificate) may be issued in accordance with paragraph (2) by a participating firm or participating custodian in connection with a delivery of stock of foreign issuers or debt obligations of foreign obligors which are carried in its records for the account of a United States person to another participating firm or participating custodian.

(2) Authorized transfers of custody.

A participating firm or participating custodian shall issue a transfer of custody certificate only if, with respect to the stock or debt obligations described in such certificate, such participating firm or participating custodian (or another participating firm or participating custodian for which the delivery is being effected) has in its possession a statement upon which such participating firm or participating custodian (or such other participating firm or participating custodian) relies in

good faith, executed under penalty of perjury, by the person for whose account the delivery is being made, establishing that such person is a United States person and is the owner of all stock of foreign issuers and debt obligations of foreign obligors carried in its records for the account of such person, and if either—

(A) such participating firm or participating custodian—

(i) carried in its records (on a trade-date basis) at the close of business on July 14, 1967, for the account of a United States person the stock or debt obligation described in the transfer of custody certificate; and

(ii) includes such stock or debt obligation in the transition inventory referred to in subsection (g) filed or to be filed on or before the due date by such participating firm with the Secretary or his delegate in accordance with the provisions of such subsection;

(B) such participating firm or participating custodian received a like amount of stock or debt obligations described in the transfer of custody certificate from another participating firm or participating custodian accompanied by a transfer of custody certificate with respect to such stock or debt obligation;

(C) such participating firm—

(i) effected as broker (or for its own account) the acquisition of the stock or debt obligation described in the transfer of custody certificate, and the exemption for prior American ownership and compliance provided in subsection (a) applied to such acquisition by reason of subsection (b)(1)(B); and

(ii) continuously carried in its records for the account of the person who acquired such stock or debt obligation, or received from such person, the identical stock certificates or evidences of indebtedness which it had previously delivered to such person in connection with such acquisition;

(D) such participating custodian received an IET clean confirmation in connection with the acquisition of the stock or debt obligation described in the transfer of custody certificate for the person for whose account such stock or debt obligation is carried in its records; or

(E) conditions set forth in regulations prescribed by the Secretary or his delegate are met.

(i) Certain debt obligations arising out of loans to assure raw material sources.

Under regulations prescribed by the Secretary or his delegate, subsection (a) shall not apply to the acquisition by a United States person of any debt obligation to which section 4914(d) applied where the acquisition of the debt obligation by such person is made with an intent to sell, or to offer to sell, any part of such debt obligation to United States persons. The preceding sentence shall not apply if the tax imposed by section 4911 has applied to any prior acquisition of such debt obligation.

(j) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section. (Added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 831, and amended Pub. L. 89–809, title II, § 213(b)(2), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90–59, § 4(a), July 31, 1967, 81 Stat. 148; Pub. L. 90–73, § 2(a)—(c), Aug. 29, 1967, 81 Stat. 175, 176.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (c)(2)(B)(iii), is classified to section 78a et seq. of Title 15, Commerce and Trade.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–59 substituted "acquisition of stock of a foreign issuer or a debt obligation of a foreign obligor" for "acquisition of stock or a debt obligation of a foreign issuer or obligor," and "was not ineligible, under the provisions of this chapter, to dispose of such stock or debt obligations as a United States person" for "was a United States person eligible to execute a certificate of American ownership with respect to such acquisition," and inserted provisions making the tax inapplicable if it is established that the person had paid the tax with respect to the acquisition of such stock or debt obligation by such person, or acquired such stock or debt obligation without liability for payment of such tax.

Subsec. (b). Pub. L. 90–59 amended subsec. (b) generally. Prior to such amendment, subsec. (b) provided: "For purposes of subsection (a), a certificate of American ownership received in connection with an acquisition shall be conclusive proof for purposes of this exemption of prior American ownership unless the person making such acquisition has actual knowledge that the certificate is false in any material respect."

Subsec. (b)(3). Pub. L. 90–73, § 2(a), added par. (3).

Subsec. (c). Pub. L. 90–59 amended subsec. (c) generally. Prior to such amendment, subsec. (c) related to proof for purposes of the exemption by written confirmation received from a member or member organization of a national securities exchange registered with the Securities and Exchange Commission.

Subsec. (d). Pub. L. 90–59 amended subsec. (d) generally. Prior to such amendment, subsec. (d) related to proof for purposes of the exemption by written confirmation from a member or member organization of a national securities association registered with the Securities and Exchange Commission.

Subsec. (e). Pub. L. 90–73, § 2(b)(1), inserted in the text preceding par. (1) the following phrases: "of such stock or debt obligation", "(or another participating firm for which the sale is being effected)", "by a participating firm selling for its own account and", "(or such other participating firm)" in two instances, and "such participating firm (or such other participating firm)".

Pub. L. 90–59 amended subsec. (e) generally. Prior to such amendment, subsec. (e) provided: "A certificate of American ownership or blanket certificate of American ownership under this section must be executed and filed in such manner and set forth such information as the Secretary or his delegate shall prescribe by regulations."

Subsec. (e)(2). Pub. L. 90–73, § 2(b)(2), inserted ", acquired such stock or debt obligation for its own account, if the exemption for prior American ownership and compliance provided in subsection (a) applied to such acquisition by reason of subsection (b)(3), or" following "July 14, 1967".

Subsec. (e)(8). Pub. L. 90–73, § 2(b)(3), added par. (8).

Subsec. (e). Pub. L. 90–73, § 2(b)(4), provided for exclusion from term "seller", for purposes of pars. (2), (3), (5), and (7), a participating firm selling for its own account.

Subsec. (f). Pub. L. 90–59 amended subsec. (f) generally. Prior to such amendment, subsec. (f) provided: "For purposes of subsection (a), if a person establishes, with respect to an acquisition, that there is reasonable cause for his inability to establish prior American ownership under subsection (b), (c), or (d), he may establish prior American ownership for purposes of this exemption by other evidence that the person from whom such acquisition was made was a United States person eligible to execute a certificate of American ownership with respect to such acquisition." See subsec. (b)(2) of this section.

Subsec. (g). Pub. L. 90–59 added subsec. (g), and redesignated former subsec. (g) as (i).

Subsec. (h)(2). Pub. L. 90–73, § 2(c), substituted in the text, preceding subpar. (A) "such participating firm or participating custodian (or another participating firm or participating custodian for which the delivery is being effected) has in its possession a statement upon which such participating firm or participating custodian (or such other participating firm or participating custodian) relies" for "it has in its possession a statement, upon which it relies".

Subsec. (h). Pub. L. 90–59 added subsec. (h).

Subsec. (i). Pub. L. 90–59 redesignated former subsec. (g) as (i).

Subsec. (j). Pub. L. 90–59 added subsec. (j).

1966—Subsec. (g). Pub. L. 89–809 added subsec. (g).

EFFECTIVE DATE OF 1967 AMENDMENTS

Section 2(f) of Pub. L. 90–73 provided that: "The amendments made by this section [to subsecs. (b), (e) and (h) of this section] (other than by subsections (d) and (e) [amending sections 6681(a) and 7241(b) of this title]) shall apply with respect to acquisitions of stock and debt obligations made after July 14, 1967. The amendments made by subsections (d) and (e) [amending sections 6681(a) and 7241(b) of this title] shall take effect on the date of the enactment of this Act [Aug. 29, 1967]."

Section 4(h) of Pub. L. 90–59 provided that: "The amendments made by this section [to this section and sections 4920(a)(5), 6011(d)(1) 6076 of this title] (other than by subsections (d) and (e)) shall apply with respect to acquisitions of stock and debt obligations made after July 14, 1967. The amendments made by subsections (d) and (e) [to sections 6681 and 7241 of this title] shall take effect on the date of the enactment of this Act [July 31, 1967]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by section 213(b)(2) of Pub. L. 89–809 applicable with respect to acquisitions of debt obligations made after Nov. 13, 1966, see section 213(c) of Pub. L. 89–809, set out as a note under section 4914 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

MARKET PROCEDURES FOR PERIOD JULY 15, 1967 TO AUGUST 14, 1967

Section (4)(i) of Pub. L. 90–59 provided that: "The Secretary of the Treasury or his delegate may establish such procedures and require the filing of such information and the maintenance of such records as may be necessary in order to permit an orderly transition in respect to market procedures for the period beginning on July 15, 1967, and ending on August 14, 1967, pursuant to which participating firms and participating custodians may issue IET clean confirmations, written comparisons, broker-dealer confirmations, and transfer of custody certificates without satisfying the specific procedural requirements provided in section 4918 of the Internal Revenue Code of 1954 as amended by subsection (a) of this section [this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4920, 6011, 6680, 6681, 7241 of this title.

§ 4919. Sales by underwriters and dealers to foreign persons.

(a) Credit or refund.

The tax paid under section 4911 on the acquisition of stock or debt obligations of a foreign issuer or obligor shall constitute an overpayment of tax to the extent that such stock or debt obligations—

(1) Private placements and public offerings.

Are acquired by an underwriter in connection with a private placement or a public offering by a foreign issuer or obligor (or a person or persons directly or indirectly controlling, controlled by, or under common control with such issuer or obligor) and are sold as part of such private placement or public offering by the underwriter (including sales by other underwriters who are United States persons participating in the placement or distribution of the stock or debt obligations acquired by the underwriter) to persons other than United States persons;

(2) Certain debt obligations.

Consist of debt obligations—

(A) acquired by a dealer in the ordinary course of his business and sold by him, within 90 days after their purchase, to—

(i) persons other than United States persons, or

(ii) another dealer who resells them within 30 days after the day of purchase to persons other than United States persons; or

(B) acquired by a dealer in the ordinary course of his business to cover short sales made by him, within 90 days before their purchase, to—

(i) persons other than United States persons, or

(ii) another dealer who resold them within 30 days after the day of purchase to persons other than United States persons; or

(3) Certain stock.

Consist of stock—

(A) acquired by a dealer in the ordinary course of his business and sold by him on the day of purchase or on either of the two succeeding business days to—

(i) persons other than United States persons, or

(ii) another dealer who resells it on the same or the next business day to persons other than United States persons; or

(B) acquired by a dealer in the ordinary course of his business to cover short sales made by him on the day of purchase or on either of the two preceding business days to—

(i) persons other than United States persons, or

(ii) another dealer who resold it on the same or the next business day to persons other than United States persons.

Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made with respect to such overpayment. For purposes of paragraphs (2) and (3) of this subsection and for purposes of paragraph (3) of subsection (b), the day of purchase or sale of any stock or debt obligation is the day on which an order to purchase or to sell, as the case may be, is executed.

(b) Evidence to support credit or refund

(1) In general.

Credit or refund shall be allowed to an underwriter or dealer under subsection (a) with respect to any stock or debt obligation sold by him only if the underwriter or dealer—

(A) files with the return required by section 6011(d) on which credit is claimed, or with the

claim for refund, such information as the Secretary or his delegate may prescribe by regulations, and

(B) establishes that such stock or debt obligation was sold to a person other than a United States person.

In any case where two or more underwriters form a group for the purpose of purchasing and distributing (through resale) stock or debt obligations of a single foreign issuer or obligor, any one of such underwriters may, to the extent provided by regulations prescribed by the Secretary or his delegate, satisfy the requirements of this paragraph on behalf of all such underwriters.

(2) Certain sales by underwriters.

For purposes of paragraph (1)(B), in the case of a claim for credit or refund under subsection (a)(1) with respect to stock or a debt obligation acquired by an underwriter and not sold by him directly to a person other than a United States person, a certificate of sale to a foreign person (setting forth such information, and filed in such manner, as the Secretary of his delegate may prescribe by regulations), executed by the underwriter who made such sale, shall be conclusive proof that such stock or debt obligation was sold to a person other than a United States person, unless the underwriter relying upon the certificate has actual knowledge that the certificate is false in any material respect.

(3) Certain sales by dealers.

(A) Sales on national securities exchanges.

For purposes of paragraph (1)(B), in the case of a claim for credit or refund under subsection (a)(2), the sale by a dealer of a debt obligation on a national securities exchange registered with the Securities and Exchange Commission subject to a special contract (and not in the regular market) shall be conclusive proof that such debt obligation was sold to a person other than a United States person, if such exchange has in effect at the time of the sale rules providing that—

(i) a member or member organization of such exchange selling a debt obligation as a dealer, or effecting the sale as broker of a debt obligation on behalf of a dealer, on such exchange subject to a special contract (and not in the regular market) shall furnish to the member or member organization purchasing such debt obligation as a dealer, or effecting the purchase as broker of such debt obligation on behalf of a dealer, a written confirmation or comparison stating that such sale is being made as a dealer, or on behalf of a dealer; and

(ii) if the purchaser of such debt obligation is a dealer (whether or not a member or member organization of such exchange), the terms of the contract applicable to such sale shall require the purchasing dealer to undertake to resell such debt obligation within 30 days after the day of purchase to a person other than a United States person.

A dealer who acquires a debt obligation in a transaction in which a written confirmation or comparison described in clause (i) is furnished shall not be entitled to a credit or refund under subsection (a)(2) with respect to his acquisition of such debt obligation unless he establishes that such debt obligation was sold by him within 30 days after the day of purchase to a person other than a United States person.

(B) Over-the-counter sales.

For purposes of paragraph (1)(B), in the case of a claim for credit or refund under subsection (a)(2) or (a)(3) with respect to a sale not on a national securities exchange, a written confirmation furnished by a member or member organization of a national securities association registered with the Securities and Exchange Commission stating that such member or member organization—

(i) effected the purchase as broker of stock or a debt obligation on behalf of a person other than a United States person,

(ii) purchased a stock which he resold on the day of purchase or the next business day to a person other than a United States person, or

(iii) purchased a debt obligation which he resold within 30 days after the day of purchase to a person other than a United States person,

shall be conclusive proof that such stock or debt obligation was sold to a person other than a United States person (unless the dealer relying upon the confirmation has actual knowledge that the confirmation is false in any material respect), if such association has in effect at the time of the purchase rules providing that a member or member organization who effects a purchase of, or purchases, a stock or a debt obligation from a dealer who notifies such member or member organization that such stock or debt obligation is being sold by such dealer and that such dealer intends to claim a credit or refund under subsection (a)(2) or (a)(3), shall furnish to such dealer a written confirmation stating that the purchase of such stock or debt obligation was (or was not) effected by such member or member organization on behalf of a person other than a United States person, or that such stock or debt obligation was (or was not) sold by such member or member organization to a person other than a United States person on the day of the purchase or the next business day in the case of stock, or within 30 days after the day of purchase in the case of a debt obligation.

(4) Sales of stock by dealers.

For purposes of paragraph (1)(B), in the case of a claim for credit or refund under subsection (a)(3), the sale by a dealer of stock on a national securities exchange registered with the Securities and Exchange Commission subject to a special contract (and not in the regular market) shall be conclusive proof that such stock was sold to a person other than a United States person, unless such dealer has actual knowledge at the time of

such sale that the purchaser of such stock is a dealer (whether or not a member or member organization of such exchange).

(c) Definitions.

For purposes of this section—

(1) the term "underwriter" means any person who has purchased stock or debt obligations from the issuer or obligor (or from a person controlling, controlled by, or under common control with such issuer or obligor), or from another underwriter, with a view to the distribution through resale of such stock or debt obligations;

(2) the term "dealer" means any person who is a member of a national securities association registered with the Securities and Exchange Commission and who is regularly engaged, as a merchant, in purchasing stock or debt obligations and selling them to customers with a view to the gains and profits which may be derived therefrom, and

(3) the term "persons other than United States persons" includes any foreign branch whose acquisition of stock or a debt obligation of a foreign issuer or obligor from an underwriter or dealer is excluded from the tax imposed by section 4911 by reason of the last sentence of section 4914(b)(2)(B), but only with respect to the acquisition of stock or debt obligations to which such exclusion applies.

(Added Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 833, and amended Pub. L. 89-243, § 4(*l*), Oct. 9, 1965, 79 Stat. 961; Pub. L. 90-59, § 5(i)(1), (2), July 31, 1967, 81 Stat. 159, 160; Pub. L. 91-128, § 4(d)(1), Nov. 26, 1969, 83 Stat. 264.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-128 added par. (3).

1967—Subsec. (a)(2). Pub. L. 90-59, § 5(i)(1), substituted "within 30 days after the day of purchase" for "on the same or the next business day" in subpars. (A)(ii) and (B)(ii).

Subsec. (b)(3). Pub. L. 90-59, § 5(i)(2), substituted "within 30 days after the day of purchase" for "on the day of purchase or the next business day" in subpar. (A)(ii), and for "on the day on which it was purchased or the next business day" in the sentence following subpar. (A)(ii), eliminated words "or a debt obligation" which followed "purchased stock" in subpar. (B)(ii), added subpar. (B)(iii), and in the provisions following subpar. (B)(ii) substituted "to a person other than a United States person on the day of the purchase or the next business day in the case of stock, or within 30 days after the day of purchase in the case of a debt obligation" for "on the day of purchase or the next business day to a person other than a United States person."

1965—Subsec. (a)(3)(A). Pub. L. 89-243, § 4(*l*)(1), inserted "(i)" preceding "persons", and added cl. (ii).

Subsec. (a)(3)(B). Pub. L. 89-243, § 4(*l*)(1), inserted "(1)" preceding "persons", and added cl. (ii).

Subsec. (b)(3). Pub. L. 89-243, § 4(*l*)(2), substituted "Certain sales by dealers" for "Sales of debt obligations by dealers" in the catchline.

Subsec. (b)(3)(B). Pub. L. 89-243, § 4(*l*)(3), substituted "with respect to a sale" for "with respect to a debt obligation sold in a transaction", and "stock or a debt obligation" for "a debt obligation" and "such stock or debt obligation" for "such debt obligation" wherever appearing, and inserted reference to subsec. (a)(3) in two instances.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(d)(2) of Pub. L. 91-128 provided that: "The amendments made by paragraph (1) of this subsection [adding subsec. (c)(3) of this section] shall apply with respect to acquisitions made by foreign branches after the date of the enactment of this Act [Nov. 26, 1969]."

Amendment of section by section 4 of Pub. L. 91-128 applicable with respect to acquisitions of debt obligations made after the date of enactment of Pub. L. 91-128, which was approved on Nov. 26, 1969, see section 4(i)(4) of Pub. L. 91-128, set out as a note under section 4920 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 5(i)(3) of Pub. L. 90-59 provided that: "The amendments made by this subsection [to subsecs. (a)(2) and (b)(3) of this section] shall apply only with respect to an acquisition by a dealer of a debt obligation which is resold by such dealer to another dealer (whether such acquisition by the former dealer occurs before or after such resale) after January 25, 1967."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 4 of Pub. L. 89-243 applicable with respect to acquisitions of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89-243 and in the amendments made by such section, see section 4(q) of Pub. L. 89-243, set out as note under section 4914 of this title.

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No.11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89-243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(q) of Pub. L. 89-243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88-563, see note under section 4911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4920, 6011, 6681, 7241 of this title.

§ 4920. Definitions and special rules.

(a) In general.

For purposes of this chapter—

(1) Debt obligation.

(A) In general.

Except as provided in subparagraph (B), the term "debt obligation" means—

(i) any indebtedness, whether or not represented by a bond, debenture, note, certificate, or other writing, whether or not secured by a mortgage, and whether or not bearing interest; and

(ii) any interest in, or any option or similar right to acquire, a debt obligation referred to in this subparagraph, whether or not such interest, option, or right is in writing.

For purposes of the preceding sentence, the term "indebtedness" includes obligations arising under a lease which is entered into principally as a financing transaction.

(B) Exceptions.

The term "debt obligation" shall not include any obligation which—

(i) is convertible by its terms into stock of the obligor, if it is so convertible only within a period of 5 years or less from the date on which interest begins to accrue thereon; or

(ii) arises out of the divorce, separate maintenance, or support of an individual who is a United States person.

(2) Stock.

The term "stock" means—

(A) any stock, share, or other capital interest in a corporation;

(B) any interest of a partner in a partnership;

(C) any interest in an investment trust;

(D) any indebtedness which is convertible by its terms into stock of the obligor, if it is so convertible only within a period of 5 years or less from the date on which interest begins to accrue thereon; and

(E) any interest in, or option or similar right to acquire, any stock described in this paragraph.

(3) Foreign issuer or obligor.

The terms "foreign issuer", "foreign obligor", and "foreign issuer or obligor" mean any issuer of stock or obligor of a debt obligation, as the case may be, which is—

(A) (i) an international organization of which the United States is not a member,

(ii) the government of a foreign country or any political subdivision thereof, or an agency or instrumentality of such a government,

(iii) a corporation, partnership, or estate or trust which is not a United States person as defined in paragraph (4); or

(iv) a nonresident alien individual;

(B) a domestic corporation which, as of July 18, 1963, was a management company registered under the Investment Company Act of 1940 if—

(i) at least 80 percent of the value of the stock and debt obligations owned by such corporation on July 18, 1963, and at least 80 percent of the value of the stock and debt obligations owned by such corporation at the end of every calendar quarter thereafter (through the quarter preceding the quarter in which the acquisition involved is made), consists of stock or debt obligations of foreign issuers or obligors and other debt obligations having an original maturity of 90 days or less;

(ii) such corporation elects to be treated as a foreign issuer or obligor for purposes of this chapter; and

(iii) such corporation does not materially increase its assets during the period from July 18, 1963, to the date on which such election is made through borrowing or through issuance or sale of its stock (other than stock issued or sold on or before September 16, 1963, as part of a public offering with respect to which a registration statement was first filed with the Securities and Exchange Commission on July 18, 1963, or within 90 days before that date).

The election under clause (ii) shall be made on or before the 60th day after the date of the enactment of this chapter under regulations prescribed by the Secretary or his delegate. Such election shall be effective as of the date specified by the corporation, but not later than the date on which such election is made, and shall remain in effect until revoked. If, at the close of any succeeding calendar quarter, the company ceases to meet the requirement of clause (i), the election shall thereupon (with respect to quarters after such calendar quarter) be deemed revoked. When an election is revoked no further election may be made. If the assets of a foreign corporation are acquired by a domestic corporation in a reorganization described in subparagraph (D) or (F) of section 368(a)(1), the two corporations shall be considered a single domestic corporation for purposes of this subparagraph; or

(C) a domestic corporation which together with its subsidiaries (if any)—

(i) is primarily engaged in the lending or finance business through offices located outside the United States, and

(ii) holds itself out, in the course of such business outside the United States, as lending money to the public generally,

and which elects to be treated as a foreign issuer or obligor for purposes of this chapter. The election under the preceding sentence shall be made on or before the 60th day after the date of the enactment of this subparagraph or the 60th day after the organization of the corporation, whichever is later, under regulations prescribed by the Secretary or his delegate. Any such exection shall be effective as of January 26, 1967, or the date of the organization of the corporation. Whenever is later, and shall remain in effect until revoked. If, at the close of any succeeding calendar quarter, the corporation ceases to meet the requirement of clause (i) or clause (ii) the election shall thereupon (with respect to quarters after such calendar quarter) be deemed revoked. When an election is revoked no further election may be made.

(3A) For purposes of paragraph (3)(C)—

(A) the term "lending or finance business" has the meaning given it by section 542(d)(1), except that for such purposes the term "60 months" appearing in subparagraph (B)(i) of such section shall be deemed to read "48 months" and the subsequent portion of such subparagraph (B)(i) shall be disregarded;

(B) a corporation shall be considered a "subsidiary" of another corporation only if stock possessing at least 50 percent of the voting power of all classes of its stock is directly or indirectly owned by such other corporation and the two corporations are affiliated with each other; and

(C) a corporation primarily engaged in lending money to one or more other corporations each of which is affiliated with it and satisfies the requirements of clauses (i) and (ii) of paragraph (3)(C) shall itself be deemed to satisfy such requirements.

For purposes of this paragraph, two corporations are "affiliated" with each other if they are members (or would be members if they were both domestic corporations) of the same affiliated group (within the meaning of section 1504).

(3B) Certain domestic financing companies.

The terms "foreign issuer", "foreign obligor", and "foreign issuer or obligor" also mean a

domestic corporation to the extent provided in subsection (d).

(4) United States person.

The term "United States person" means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation, other than a corporation described in subparagraph (B) or (C) of paragraph (3) or in paragraph (3B),

(D) an agency or wholly-owned instrumentality of the United States,

(E) a State or political subdivision, or any agency or instrumentality thereof, and

(F) any estate or trust—

(i) the income of which from sources without the United States is includible in gross income under subtitle A (or would be so includible if not exempt from tax under section 501(a), section 521(a), or section 584(b)), or

(ii) which is situated in the Commonwealth of Puerto Rico or a possession of the United States.

(5) Domestic corporation; domestic partnership.

The terms "domestic corporation" and "domestic partnership" mean, respectively, a corporation or partnership created or organized in the United States or under the laws of the United States or of any State, except that such terms do not include a branch office of such a corporation or partnership located outside the United States if—

(A) such corporation or partnership (without regard to the activities of such office) is a dealer (as defined in section 4919(c)(2));

(B) such office (which is operated by employees or partners of such corporation or partnership) was located outside the United States on July 18, 1963, and was regularly engaged, as a merchant, in purchasing and selling stock or debt obligations of foreign issuers or obligors with a view to the gains and profits which may be derived therefrom, for a period of not less than 12 consecutive calendar months prior to July 18, 1963;

(C) all acquisitions by such branch office of stock of foreign issuers and debt obligations of foreign obligors are made in the ordinary course of its business as such a merchant or as an underwriter (as defined in section 4919(c)(1));

(D) such office maintains separate books and records reasonably reflecting the assets and liabilities properly attributable to such office; and

(E) there is in effect an election that such branch office be treated as a foreign corporation or foreign partnership for purposes of this chapter.

The election under subparagraph (E) shall be made by such corporation or partnership on or before the 60th day after the date of the enactment of this chapter under regulations prescribed by the Secretary or his delegate. A separate election may be made with respect to each branch office of such corporation or partnership. Such election shall be effective as of July 18, 1963, and shall remain in effect until revoked in accordance with such regulations. If, at any time, a branch office ceases to meet the requirements of subparagraph (A), (C), or (D), the election with respect to such office shall thereupon be deemed revoked. When an election is revoked, a new election under subparagraph (E) may be made subject to such conditions and limitations as may be prescribed by the Secretary or his delegate. A corporation or partnership making an election under this paragraph or paragraph (5A) with respect to a branch office located outside the United States shall not, at any time, be considered a United States person either with respect to stock or a debt obligation of a foreign issuer or obligor held by such branch office at the time the election is made with respect to such branch office or with respect to stock or a debt obligation of a foreign issuer or obligor acquired by such branch office while the election with respect to such branch office is in effect.

(5A) Certain commercial financing branches not treated as domestic corporations.

The term "domestic corporation" does not include a branch office of such a corporation located outside the United States if—

(A) such corporation is primarily engaged in the trade or business of acquiring debt obligations (i) arising out of the sale of tangible personal property produced, manufactured, or assembled by one or more includible corporations in an affiliated group (determined under section 48(c)(3)(C) except that clause (i) of such section shall not apply) of which such acquiring corporation is a member and (ii) arising out of the sale of tangible personal property received as part or all of the consideration in sales of tangible personal property described in clause (i);

(B) such office is primarily engaged in the trade or business of acquiring debt obligations described in subparagraph (A) which are repayable exclusively in one or more currencies other than United States currency;

(C) such office was located outside the United States on February 10, 1965, and was regularly engaged in the trade or business of acquiring debt obligations described in subparagraph (B) for a period of not less than 12 consecutive months before February 10, 1965;

(D) such office maintains separate books and records reasonably reflecting the assets and liabilities properly attributable to such office; and

(E) there is in effect an election that such branch office be treated as a foreign corporation for purposes of this chapter.

For purposes of this paragraph, a corporation or a branch office shall be treated as primarily engaged in the trade or business described in subparagraph (A) during the taxable year if at least 90 percent of the face amount of the debt obligations acquired by such corporation or branch office during such taxable year consists of debt obligations described in subparagraph (A) and if throughout such taxable year such corporation or branch office is exclusively engaged in the trade or business of acquiring debt obligations (whether or not described in subparagraph (A)) and servic-

ing debt obligations arising out of sales of tangible personal property described in subparagraph (A). The election under this paragraph shall be made by such corporation in accordance with regulations prescribed by the Secretary or his delegate. A separate election may be made with respect to each branch office of such corporation except that, for purposes of this paragraph, all branch offices of such corporation located in a country shall be treated as a single branch office. Such election shall be effective as of February 10, 1965, and shall remain in effect until revoked in accordance with such regulations. If, at any time, such corporation ceases to meet the requirements of subparagraph (A), all elections made by such corporation under this paragraph shall be deemed revoked. If, at any time, a branch office (within the meaning of this paragraph) ceases to meet the requirements of subparagraph (B) or (D), the election with respect to such office shall thereupon be deemed revoked. When an election is revoked, a new election under subparagraph (E) may be made subject to such conditions and limitations as may be prescribed by the Secretary or his delegate.

(6) United States; State.

The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(7) Period remaining to maturity.

(A) In general.

Subject to the modifications set forth in subparagraph (B), the period remaining to maturity of a debt obligation shall be that period beginning on the date of its acquisition and ending on the fixed or determinable date when, according to its terms, the payment of principal becomes due.

(B) Modifications.

The period remaining to maturity—

(i) of any interest in, or any option or similar right to acquire, any debt obligation shall be the period remaining to maturity of that debt obligation at the time of the acquisition of such interest, option, or right;

(ii) of any debt obligation which is renewable without affirmative action by the obligee, or of any interest in or option or similar right to acquire such a debt obligation, shall end on the last day of the final renewal period;

(iii) of any debt obligation which has no fixed or determinable date when the payment of principal becomes due shall be considered to be 28½ years;

(iv) of any debt obligation which is payable on demand (including any bank deposit) shall be considered to be less than 1 year; and

(v) of a debt obligation which is subject to retirement before its maturity through operation of a mandatory sinking fund shall be determined under regulations prescribed by the Secretary or his delegate.

(b) Foreign stock issues treated as domestic.—

(1) In general.

For purposes of this chapter, a foreign corporation (other than a company registered under the Investment Company Act of 1940) shall not be considered a foreign issuer with respect to any class of its stock if—

(A) as of the corporation's latest record date before July 19, 1963, more than 65 percent of such class of stock was held of record by United States persons, or

(B) the class of stock had its principal market during the calendar year 1962 on one or more national securities exchanges registered with the Securities and Exchange Commission, and, as of the corporation's latest record date before July 19, 1963, more than 50 percent of such class of stock was held of record by United States persons.

(2) Class of stock defined.

For purposes of this subsection, the term "class of stock" means all shares of stock of a corporation issued and outstanding as of the corporation's latest record date before July 19, 1963, which are identical with respect to the rights and interest such shares represent in the control, profits, and assets of the corporation. Such term also includes additional shares possessing rights and interests identical with the rights and interests of shares described in the preceding sentence if such additional shares shall have been—

(A) issued on or before November 10, 1964;

(B) issued after November 10, 1964, pursuant to a written commitment made by such corporation on or before such date;

(C) issued after November 10, 1964, to a shareholder with respect to or in exchange solely for shares described in this paragraph; or

(D) issued after November 10, 1964, and if—

(i) such corporation was actively engaged in a trade or business on July 19, 1963;

(ii) shares of such class were held of record by more than 250 shareholders on the corporation's latest record date before July 19, 1963;

(iii) the percentage of shares of such class held of record by United States persons as of the corporation's latest record date before the issuance of such additional shares is not less than the percentage required to be held by United States persons as of the latest record date before July 19, 1963, in order for the class of stock to qualify under paragraph (1);

(iv) all such additional shares are shares which, if acquired by United States persons at the time of original issuance, would have been excluded from the tax imposed by section 4911 by reason of section 4914(a)(6), 4916, or 4917, or are shares exchanged in a reorganization described in section 368(a)(1)(B) for shares of a domestic corporation which was engaged in the active conduct of a trade

or business (other than as a dealer in securities) immediately before the date of such exchange; and

(v) at least 15 days before the date such additional shares are issued (or, in the case of an issue occurring on or before the 60th day after the date of the enactment of this sentence, within such period as may be prescribed by the Secretary or his delegate by regulations), the issuing corporation files (in accordance with regulations prescribed by the Secretary or his delegate) a notice of intent to issue such shares.

For purposes of subparagraph (D), the issuance of an option or similar right to acquire stock, or of any debt obligation convertible into stock, shall be treated as the issuance of the stock which may be obtained on the exercise of such option or similar right or the conversion of such debt obligation.

(c) Special rule for foreign underwriters.

A partnership or corporation which is not a United States person and which participates, as an underwriter in an underwriting group that includes one or more United States persons, in a public offering of stock or debt obligations of a foreign issuer or obligor shall, if such partnership or corporation so elects and subject to such terms and conditions as the Secretary or his delegate may prescribe by regulations, be treated as a United States person for purposes of this chapter with respect to its participation in such public offering.

(d) Certain domestic financing companies.

For purposes of this chapter, the terms "foreign issuer", "foreign obligor", and "foreign issuer or obligor" include a domestic corporation if—

(1) such corporation is exclusively engaged in the trade or business of—

(A) acquiring, servicing, or acquiring and servicing—

(i) debt obligations arising out of the sale of tangible personal property produced, manufactured, assembled, or extracted by one or more includible corporations in an affiliated group (as defined in section 48(c)(3)(C)) of which such corporation is a member,

(ii) debt obligations arising out of the sale of tangible personal property received as part or all of the consideration in sales of property described in clause (i),

(iii) debt obligations arising out of the sale of tangible personal property received as part or all of the consideration in sales of property described in clause (ii),

(iv) debt obligations arising out of the sale or lease of tangible personal property or the performance of services (or both), if not less than 85 percent of the purchase price is attributable to the sale (or not less than 85 percent of the value of the property subject to the lease is attributable to the use) of property manufactured, produced, grown, or extracted in the United States or the performance of services by any United States person (or both),

(v) debt obligations arising out of loans to dealers or distributors primarily engaged in the business of selling property described in clauses (i), (ii), and (iii), the proceeds of which are used by such dealers or distributors in such business,

(vi) debt obligations arising out of loans to an includible corporation in an affiliated group (as defined in section 48(c)(3)(C)) of which such corporation is a member, if such obligations are secured by debt obligations described in clauses (i) through (v), or

(vii) any combination of the foregoing,

(B) acquiring, servicing, or acquiring and servicing debt obligations otherwise arising out of sales of tangible personal property,

(C) carrying on other incidental activities in connection with its sales finance business, or

(D) any combination of the foregoing,

(2) except for debt obligations arising out of deposits in commercial banks having at the time of the deposit a period remaining to maturity of less than one year, and debt obligations of one or more includible corporations in an affiliated group (as defined in section 48(c)(3)(C)) of which such corporation is a member acquired as payment for stock, or as a contribution to the capital, of such corporation—

(A) at least 90 percent of the face value of the debt obligations owned by such corporation at all times during the taxable year consists of debt obligations described in paragraph (1)(A), and

(B) all debt obligations owned by such corporation at all times during the taxable year are debt obligations described in paragraph (1)(A) or (1)(B), or are debt obligations acquired in carrying on the trade or business described in paragraph (1),

(3) all debt obligations acquired by such corporation (whether or not described in paragraph (1)) are acquired solely out of—

(A) the proceeds of the sale (including a sale in a transaction described in section 4919(a)(1)) by such corporation (or by a domestic corporation described in section 4912(b)(3) which owns all of the stock of such corporation) of debt obligations of such corporation (or such other domestic corporation) to persons other than—

(i) a United States person (not including a foreign branch of a domestic corporation or of a domestic partnership, if such branch is engaged in the commercial banking business and acquires such debt obligations in the ordinary course of such commercial banking business),

(ii) a foreign partnership in which such corporation (or one or more includible corporations in an affiliated group, as defined in section 1504, of which such corporation is a member) owns directly or indirectly (within the meaning of section 4915(a)(1)) 10 percent or more of the profits interest, or

(iii) a foreign corporation, if such corporation (or one or more includible corporations

in an affiliated group, as defined in section 1504, of which such corporation is a member) owns directly or indirectly (within the meaning of section 4915(a)(1)) 10 percent or more of the total combined voting power of all classes of stock of such foreign corporation, except to the extent such foreign corporation has, after having given advance notice to the Secretary or his delegate, sold its debt obligations to persons other than persons described in clauses (i) and (ii) and this clause and is using the proceeds of the sale of such debt obligations to acquire the debt obligations of such corporation (or such other domestic corporation),

(B) the proceeds of payment for stock, or a contribution to the capital of such corporation, if the payment or contribution was derived from the sale of debt obligations by one or more includible corporations in an affiliated group (as defined in section 48(c)(3)(C)) of which such corporation is a member to persons other than persons described in clauses (i), (ii), and (iii) of subparagraph (A) and such debt obligations, if acquired by United States persons, would be subject to the tax imposed by section 4911,

(C) retained earnings and reserves of such corporation, or

(D) trade accounts and accrued liabilities which are payable by such corporation within 1 year (3 years in the case of tax liabilities) from the date they were incurred or accrued, and which arise in the ordinary course of the trade or business of the corporation otherwise than from borrowing,

(4) such corporation does not acquire any stock of foreign issuers or of domestic corporations or domestic partnerships other than stock of one or more includible corporations in an affiliated group (as defined in section 48(c)(3)(C)) of which such corporation is a member acquired as payment for stock, or as a contribution to capital, of such corporation,

(5) such corporation, in a manner satisfactory to the Secretary or his delegate, identifies the certificates representing its stock and debt obligations, and maintains such records and accounts and submits such reports and other documents as may be necessary to establish that the requirements of the foregoing paragraphs have been met, and

(6) such corporation elects to be treated as a foreign issuer or obligor for purposes of this chapter.

The election under paragraph (6) shall be made, under regulations prescribed by the Secretary or his delegate, on or before the 60th day after the organization of the corporation or the 60th day after the date of the enactment of the Interest Equalization Tax Extension Act of 1969, whichever day is the later. Any such election shall be effective as of the date thereof and shall remain in effect until revoked. If, at any time, the corporation ceases to meet any requirement of paragraph (1), (2), (3), (4), or (5), the election shall thereupon be deemed revoked. When an election is revoked, no further election may be made. If an election is revoked, the corporation shall incur liability at the time of such revocation for the tax imposed by section 4911 with respect to all stock or debt obligations which were acquired by it during the period for which the election was in effect and which are held by it at the time of such revocation; and the amount of such tax shall be equal to the amount of tax for which the corporation would be liable under such section if it had acquired such stock or debt obligations immediately after such revocation. For purposes of sections 4912 and 4915, a corporation which has made an election under paragraph (6) shall, during the period for which such election is in effect, be treated with respect to acquisitions from such corporation as a foreign corporation which is not formed or availed of for the principal purpose described in section 4915(c)(1).

(e) Cross reference.

For definition of "acquisition", see section 4912.

(Added Pub. L. 88–563, § 2(a), Sept. 2, 1964, 78 Stat. 835, and amended Pub. L. 89–243, §§ 3(a)(4), 4(m)(1), (2)(A), (n), Oct. 9, 1965, 79 Stat. 954, 961—963; Pub. L. 90–59, §§ 4(f), 5(j), (k)(1), (2), July 31, 1967, 81 Stat. 156, 160—163; Pub. L. 91–128, § 4(e)(1), (2), (i)(3), Nov. 26, 1969, 83 Stat. 264, 269.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(3)(B), (b)(1), is classified to section 80a–1 et seq. of Title 15, Commerce and Trade.

The date of the enactment of this chapter, referred to in subsec. (a)(3)(B), (5), means the date of enactment of Pub. L. 88–563, which was approved on September 2, 1964.

The date of the enactment of this subparagraph, referred to in subsec. (a)(3)(C), is July 31, 1967.

The date of the enactment of this sentence, referred to in subsec. (b)(2)(D)(v) of this section, means October 9, 1965, the date such sentence was enacted by Pub. L. 89–243.

The date of enactment of the Interest Equalization Tax Extension Act of 1969, referred to in subsec. (d), is the date of enactment of Pub. L. 91–128, which was approved on Nov. 26, 1969.

AMENDMENTS

1969—Subsec. (a)(1)(A). Pub. L. 91–128, § 4(i)(3), added provision that, for purposes of the preceding sentence, the term "indebtedness" includes obligations arising under a lease which is entered principally as a financial transaction.

Subsec. (a)(3B). Pub. L. 91–128, § 4(e)(1), struck out all the enumerated conditions under which the terms foreign issuer, foreign obligor, and foreign issuer or obligor could also mean a domestic corporation and substituted for such enumeration of conditions a simple direction to consult the provisions of subsec. (d) of this section for the enumeration of such conditions.

Subsec. (d). Pub. L. 91–128, § 4(e)(2), added subsec. (d) consisting of a less restrictive set of conditions than those formerly set out in subsec. (a)(3B) to be met if a domestic corporation engaged in the business of financing the sale of products manufactured by affiliated companies in the United States or abroad elects to be exempt from the tax on the foreign debt obligations it acquires as a result of its financing activities.

1967—Subsec. (a)(3)(C). Pub. L. 90–59, § 5(j)(1), added subsec. (a)(3)(C).

Subsec. (a)(3A). Pub L. 90–59, § 5(j)(2), added subsec. (a)(3A).

Subsec. (a)(3B). Pub. L. 90–59, § 5(k)(1), added subsec. (a)(3B).

Subsec. (a)(4)(C). Pub. L 90–59, § 5(j)(3), (k)(2), substituted "subparagraph (B) or (C) of paragraph (3) or in paragraph (3B)" for "paragraph (3)(B)."

Subsec. (a)(5). Pub. L. 90–59, § 4(f), substituted "be considered a United States person either with respect to" for "execute a certificate of American ownership (within the meaning of section 4918) either with respect to."

1965—Subsec. (a)(5). Pub. L. 89–243, § 4(m)(2)(A), added the sentence prohibiting a corporation or partnership making an election under this par. or par. (5A) with respect to a branch office located outside the United States to execute a certificate of American ownership either with respect to stock or a debt obligation of a foreign issuer or obligor held by such branch office at the time the election is made with respect to such branch office or with respect to stock or a debt obligation of a foreign issuer or obligor acquired by such branch office while the election with respect to such.

Subsec. (a)(5A). Pub. L. 89–243, § 4(m)(1), added par. (5A).

Subsec. (a)(7)(B)(iv). Pub. L. 89–243, § 3(a), substituted "1 year" for "3 years."

Subsec. (a)(8). Pub. L. 89–243, § 4(n)(1), deleted former par. (8) which related to the treatment of foreign stock issues as domestic. Similar provisions are now covered by subsec. (b) of this section.

Subsec. (b). Pub. L. 89–243, § 4(n)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 89–243, § 4(n)(2), redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(i)(4) of Pub. L. 91–128 provided that: "The amendments made by this section [amending subsecs. (a)(1)(A), (a)(3)(B), and (d) of this section and sections 4912(b)(1), 4914(c)(5)(B), (c)(6), (c)(7), (j)(1), (j)(1)(A)(iii), 4915(c)(3), 4919(c)(3), 6011(d)(1)(B), 6011(d)(3), and 6680 of this title] shall apply with respect to acquisitions of debt obligations made after the date of the enactment of this Act [Nov. 26, 1969]."

Amendment of this section by section 4(e)(1), (2) of Pub. L. 91–128, to take effect on Nov. 26, 1969, see section 4(e)(4) of Pub. L. 91–128, set out as a note under section 4915 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (a)(5) of this section by Pub. L. 90–59 applicable with respect to acquisitions of stock and debt obligations made after July 14, 1967, see section 4(h) of Pub. L. 90–59, set out as a note under section 4918 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 3(a) of Pub. L. 89–243 applicable with respect to acquisitions of debt obligations, and designations described in section 4914(e)(3)(D), (E)(ii) of this title made after Feb. 10, 1965, except as provided by pars. (2)—(4) of Pub. L. 89–243, see section 3(c) of Pub. L. 89–243, set out as a note under section 4911 of this title.

Section 4(m)(2)(B) of Pub. L. 89–243 provided that: "The amendment made by subparagraph (A) [to subsec. (a)(5) of this section]—

"(i) insofar as it relates to elections made under section 4920(a)(5), shall apply to dispositions made after June 28, 1965; and

"(ii) insofar as it relates to elections made under section 4920(a)(5A), shall apply to dispositions made after February 10, 1965."

Amendment of section by section 4 of Pub. L. 89–243 applicable with respect to acquisitions of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89–243 and in the amendments made by such section, see section 4(q) of Pub. L. 89–243 set out as a note under section 4914 of this title.

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, not affected by amendment of section by section 3 of Pub. L. 89–243, see section 3(e)(2) of Pub. L. 89–243, set out as a note under section 4931 of this title.

Ex. Ord. No. 11198, set out as a note under section 4931 of this title, deemed modified by the amendment made by section 4 of Pub. L. 89–243 to this section to the extent such Ex. Ord. is inconsistent with such amendment, see section 4(q) of Pub. L. 89–243, set out as a note under section 4931 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88–563, see note under section 4911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4911, 4912, 4913, 4914, 4915, 6011 of this title.

Subchapter B—Acquisitions by Commercial Banks

Sec.
4931. Commercial bank loans.

§ 4931. Commercial bank loans.

(a) Standby authority.

The provisions of this section shall apply only if the President of the United States—

(1) determines that the acquisition of debt obligations of foreign obligors by commercial banks in making loans in the ordinary course of the commercial banking business has materially impaired the effectiveness of the tax imposed by section 4911, because such acquisitions have, directly or indirectly, replaced acquisitions by United States persons, other than commercial banks, of debt obligations of foreign obligors which are subject to the tax imposed by such section, and

(2) specifies by Executive order that the provisions of this section shall apply to acquisitions by commercial banks of debt obligations of foreign obligors, to the extent specified in such order.

Such Executive order shall be effective, to the extent specified therein, with respect to acquisitions made during the period beginning on the day after the date on which the order is issued and ending on the date set forth in section 4911(d). Such Executive order may be modified from time to time (by Executive order), except that no such modification shall (A) have the effect of excluding from the application of subsection (b) a significant class of acquisitions to which such subsection applied under such Executive order or any modification thereof, or (B) subject any acquisition made on or before the date of issuance of such modification to the application of subsection (b). Clause (A) of the preceding sentence shall not prevent a modification of such Executive order (or any modification thereof) to exclude from the application of subsection (b) acquisitions by commercial banks, through branches located outside the United States, of debt obligations of foreign obligors payable in currency of the United States.

(b) Debt obligations with maturity of 1 year or more, etc.

During the period in which an Executive order issued under subsection (a) is effective, and to the extent specified in such order (and any modifications thereof), sections 4914(b)(2)(A), 4914(j)(1)(A)(ii), and 4915(c)(2)(A) shall not apply.

(c) Exclusions.

(1) Export loans.

The provisions of subsection (b) shall not apply with respect to the acquisition by a commercial

bank of a debt obligation arising out of the sale or lease of personal property or services (or both) if—

(A) not less than 85 percent of the amount of the loan, amount paid, or other consideration given to acquire such debt obligation is attributable to the sale or lease of property manufactured, produced, grown, extracted, created, or developed in the United States, or to the performance of services by United States persons, or to both, and

(B) the extension of credit and the acquisition of the debt obligation related thereto are reasonably necessary to accomplish the sale or lease of property or services out of which the debt obligation arises, and the terms of the debt obligation are not unreasonable in light of credit practices in the business in which the United States person selling or leasing such property or services is engaged.

For purposes of the preceding sentence, the acquisition by a wholly-owned subsidiary of a commercial bank of a debt obligation arising out of a lease made by such subsidiary shall be treated as the acquisition of a debt obligation by a commercial bank.

(2) Foreign currency loans by foreign branches.

The provisions of subsection (b) shall not apply to the acquisition by a commercial bank of a debt obligation of a foreign obligor payable in the currency of a foreign country if, under regulations prescribed by the Secretary or his delegate—

(A) such bank establishes and maintains, for each of its branches located outside the United States, a fund of assets with respect to deposits payable in foreign currency to customers (other than United States persons engaged in the commercial banking business and members of an affiliated group (determined under section 48 (c)(3)(C)) of which such a United States person is a member) of such branch, and

(B) such debt obligation is designated, to the extent permitted by this paragraph, as part of a fund of assets described in subparagraph (A) (but only after debt obligations of foreign obligors payable in foreign currency having a period remaining to maturity of less than one year held by such bank have been designated as part of such a fund).

A debt obligation may be designated as part of a fund of assets described in subparagraph (A) only to the extent that, immediately after such designation, the adjusted basis of all the assets held in such fund does not exceed 110 percent of the deposits payable in foreign currency to customers (other than United States persons engaged in the commercial banking business and members of an affiliated group (determined under section 48(c)(3)(C)) of which such a United States person is a member) of the branch with respect to which such fund is maintained.

(3) Preexisting commitments.

The provisions of subsection (b) shall not apply to the acquisition by a commercial bank of a debt obligation of a foreign obligor—

(A) made pursuant to an obligation to acquire which on August 4, 1964—

(i) was unconditional, or

(ii) was subject only to conditions contained in a formal contract under which partial performance had occurred; or

(B) as to which on or before August 4, 1964, the acquiring commercial bank (or, in a case where 2 or more commercial banks are making acquisitions as part of a single transaction, a majority in interest of such banks) had taken every action to signify approval of the acquisition under the procedures ordinarily employed by such bank (or banks) in similar transactions and had sent or deposited for delivery to the foreign person from whom the acquisition was made written evidence of such approval in the form of a document setting forth, or referring to a document sent by the foreign person from whom the acquisition was made which set forth, the principal terms of such acquisition.

(d) Regulations.

The Secretary or his delegate shall prescribe such regulations (not inconsistent with the provisions of this section or of an Executive order issued under subsection (a)) as may be necessary to carry out the provisions of this section. (Added Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 839, and amended Pub. L. 89-243, §§ 3(e)(1), 4(a)(4), (o), Oct. 9, 1965, 79 Stat. 955, 956, 964; Pub. L. 89-809, title II, § 215(a), Nov. 13, 1966, 80 Stat. 1587.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-809 added provisions that the limitation upon the modification of executive orders prohibiting modifications having the effect of excluding from the application of subsection (b) or (c) a significant class of acquisitions to which such subsection applied under such executive order or modification thereof should not prevent a modification of such executive order (or any modification thereof) to exclude from the application of subsection (b) acquisitions by commercial banks, through branches located outside the United States, of debt obligations of foreign obligors payable in currency of the United States.

1965—Subsec. (a)(2). Pub. L. 89-243, § 3(e)(1)(B), substituted "subsection (b)" for "subsection (b) or (C)" in two instances.

Subsec. (b). Pub. L. 89-243, § 3(e)(1)(D), substituted "1 year" for "3 years" in the catchline.

Subsec. (c). Pub. L. 89-243, § 3(e)(1)(A), redesignated former subsec. (d) as (c). Former subsec. (c), which related to the computation of the tax on debt obligations with a maturity of from 1 to 3 years, was deleted.

Pub. L. 89-243, § 4(o)(2), amended former subsec. (c) (as enacted on Sept. 2, 1964) by striking out "except that, for such purposes, the provisions of section 4918 shall not apply" following "section 4911."

Subsec. (c)(1). Pub. L. 89-243, §§ 3(e)(C), 4(a)(4), struck out "and the tax imposed under subsection (c)" following "subsection (b)", inserted "or lease" in three instances, "amount paid, or other consideration given to acquire such debt obligation", and "or leasing", and added the sentence requiring the acquisition by a wholly-owned subsidiary of a commercial bank of a debt obligation arising out of a lease made by such subsidiary to be treated as the acquisition of a debt obligation by a commercial bank.

Subsec. (c)(2). Pub. L. 89-243, §§ 3(e)(1)(C), 4(o)(1), struck out "and the tax imposed under subsection (c)" following "subsection (b)", and substituted "(other than United States persons engaged in the commercial

banking business and members of an affiliated group (determined under section 48(c)(3)(C)) of which such a United States person is a member)" for "(other than banks)" in two instances.

Subsec. (c)(3). Pub. L. 89-243, § 3(e)(1)(C), struck out "and the tax imposed under subsection (c)" following "subsection (b)."

Subsecs. (d), (e). Pub. L. 89-243, § 3(e)(1)(A), redesignated former subsecs. (d) and (e) as (c) and (d), respectively.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 215(b) of Pub. L. 89-809 provided that: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply with respect to acquisitions of debt obligations made after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 3(e)(2) of Pub. L. 89-243 provided in part that: "The amendments made by this subsection [to this section] shall take effect only at such time as may be provided in a modification hereafter made (in accordance with section 4931 of the Internal Revenue Code of 1954 [this section]) in such Executive order."

Amendment of section by section 4 of Pub. L. 89-243 applicable with respect to acquisitions of stock and debt obligations made after Feb. 10, 1965, except as otherwise specifically provided in said section 4 of Pub. L. 89-243 and in the amendments made by such section, see section 4(q) of Pub. L. 89-243, set out as a note under section 4914 of this title.

EFFECTIVE DATE

Section applicable with respect to acquisitions of stock and debt obligations made after July 18, 1963, except as provided by pars. (2)—(7) of section 3(c) of Pub. L. 88-563, see note under section 4911 of this title.

DEBT OBLIGATIONS WITH MATURITY FROM 1 TO 3 YEARS

Subsection (c) of this section, added by Pub. L. 88-563, § 2(a), Sept. 2, 1964, 78 Stat. 839, amended by Pub. L. 89-243, § 4(o)(2), Oct. 9, 1965, 79 Stat. 964; Pub. L. 90-59, § 3(b), July 31, 1967, 81 Stat. 147, was deleted by Pub. L. 89-243, § 3(e)(1), Oct. 9, 1965, 79 Stat. 955, effective as provided in section 3(e)(2) of Pub. L. 89-243, set out as a note under this section. The text of such subsection (c) provides:

"(c) Debt Obligations With Maturity from 1 to 3 Years.—During the period in which an Executive order issued under subsection (a) is effective, and to the extent specified in such order (and any modifications thereof), there is hereby imposed, on each acquisition by a United States person (as defined in section 4920(a) (4)) which is a commercial bank of a debt obligation of a foreign obligor (if such obligation has a period remaining to maturty of 1 year or more and less than 3 years), a tax equal to a percentage of the actual value of the debt obligation measured by the period remaining to its maturity and determined in accordance with the following table:

"If the period remaining to maturity is:	The tax, as a percentage of actual value, is:
"At least 1 year, but less than 1¼ years	1.58 percent
At least 1¼ years, but less than 1½ years	1.95 percent
At least 1½ years, but less than 1¾ years	2.25 percent
At least 1¾ years, but less than 2¼ years	2.78 percent
At least 2¼ years, but less than 2¾ years	3.45 percent
At least 2¾ years, but less than 3 years	4.13 percent

For purposes of this title, the tax imposed under this subsection shall be treated as imposed under section 4911."

EFFECT OF 1965 AMENDMENT ON EX. ORD. NO. 11198

Section 3(e)(2) of Pub. L. 89-243 provided in part that: "Executive Order 11198 [set out as a note under this section], issued February 10, 1965, shall not be affected by the amendments made by this section [to this section and sections 4911, 4914 and 4920 of this title] and shall continue to apply as though such amendments had not been made."

Section 4(q) of Pub. L. 89-243 provided in part that: "Executive Order 11198 [set out as a note under this section], issued February 10, 1965, to the extent it is inconsistent with the amendments made by this section [to this section and sections 263, 4912, 4914, 4916, 4917, 4919 and 4920 of this title] shall be deemed modified by such amendments."

EX. ORD. NO. 11198. IMPOSITION OF INTEREST EQUALIZATION TAX ON CERTAIN COMMERCIAL BANK LOANS

Ex. Ord. No. 11198, Feb. 10, 1965, 30 F.R. 1929, as amended by Ex. Ord. No. 11304, Sept. 12, 1966, 31 F.R. 12005; Ex. Ord. No. 11328, Feb. 20, 1967, 32 F.R. 3137, provided:

By virtue of the authority vested in me by chapter 41 (sections 4911 through 4931) of the Internal Revenue Code of 1954, as added by the Interest Equalization Tax Act, approved September 2, 1964 (Public Law 88-563, 78 Stat. 809), by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby determined that the acquisition of debt obligations of foreign obligors by commercial banks in making loans in the ordinary course of the commerical banking business has materially impaired the effectiveness of the tax imposed by section 4911 of the Internal Revenue Code of 1954, as added by the Interest Equalization Tax Act, because such acquisitions have replaced acquisitions by United States persons, other than commerical banks, of debt obligations of foreign obligors which are subject to the tax imposed by section 4911, and it is hereby ordered that—

SECTION 1. The provisions of section 4931 of the Internal Revenue Code of 1954, as amended [this section], shall apply to acquisitions by commercial banks of debt obligations of foreign obligors to the extent set forth in sections 2 and 3.

SEC. 2. (a) The exclusions provided in section 4914(j)(1)(A)(ii) and section 4915(c)(2)(A) from the tax imposed by section 4911 shall continue to apply to any acquisition by a commercial bank of a debt obligation of a foreign obligor; and

(b) The exclusion provided in section 4914(b)(2)(A) from the tax imposed by section 4911 shall apply only to an acquisition of such debt obligation which is made by a commercial bank at any of its branches located outside the United States.

SEC. 3. The amendments of section 4931 contained in section 3(e)(1) of the Interest Equalization Tax Extension Act of 1965 (Public Law 89-243; 79 Stat. 954) shall be applicable with respect to acquisitions of debt obligations of foreign obligors made after the date on which this order is issued.

SEC. 4. The Secretary of the Treasury or his delegate is authorized to prescribe from time to time such regulations, rulings, directions, and instructions, and to require such reports of information, as he shall deem necessary to carry out the purposes of this order.

SEC. 5. This order shall be effective with respect to acquisitions of debt obligations of foreign obligors made during the period beginning on the day after the date on which this order is issued and ending on the date set forth in section 4911(d).

LYNDON B. JOHNSON.

Chapter 42.—PRIVATE FOUNDATIONS

Sec.
4940. Excise tax based on investment income.
4941. Taxes on self-dealing.
4942. Taxes on failure to distribute income.
4943. Taxes on excess business holdings.
4944. Taxes on investments which jeopardize charitable purpose.
4945. Taxes on taxable expenditures.
4946. Definitions and special rules.
4947. Application of taxes to certain nonexempt trusts.
4948. Application of taxes and denial of exemption with respect to certain foreign organizations.

AMENDMENTS

1969—Pub. L. 91–172, title I, § 101(b). Dec. 30, 1969, 83 Stat. 498, added the chapter heading and analysis of sections.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 807 of this title.

§ 4940. Excise tax based on investment income.

(a) Tax-exempt foundations.

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 4 percent of the net investment income of such foundation for the taxable year.

(b) Taxable foundations.

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

(c) Net investment income defined.

(1) In general.

For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the net capital gain exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) Gross investment income.

For purposes of paragraph (1), the term "gross investment income" means the gross amount of income from interest, dividends, rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

(3) Deductions.

(A) In general.

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) Modifications.

For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) Capital gains and losses.

For purposes of paragraph (1) in determining net capital gain—

(A) There shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax).

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers.

(5) Tax-exempt income.

For purposes of this section, net investment income shall be determined by applying section 103 (relating to interest on certain governmental obligations) and section 265 (relating to expenses and interest relating to tax-exempt income).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 498.)

EFFECTIVE DATE

Section 101(k) of Pub. L. 91–172 provided:

"(1) **In general.**—Except as otherwise provided in this subsection and subsection (*l*), the amendments made by this section [enacting this section and sections 507, 508, 509, 4941, 4942, 4943, 4944, 4945, 4946, 4947, 4848, 6056, 6684, and 6685 of this title, amending sections 101, 170, 501, 503, 542, 663, 681, 878, 884, 1443, 2039, 2517, 4057, 4221, 4253, 4294, 5214, 6033, 6034, 6043, 6104, 6161, 6201, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 7207, 7422 and 7454 of this title, repealing section 504 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect on January 1, 1970.

"(2) **Provisions effective for taxable years beginning after December 31, 1969.**—The following provisions shall apply to taxable years beginning after December 31, 1969:

"(A) Sections 4940, 4942, 4943, and 4948 of the Internal Revenue Code of 1954 [this section and sections 4942, 4943 and 4948 of this title] (as added by this section), and

"(B) The amendments made by subsection (d) [enacting section 6056 of this title, and amending sections 6033 and 6652 of this title] and paragraphs (3), (15), (16), (20), (21), (30), (31), (32), (33), (34), (35), and (61) of subsection (j) [amending sections 501, 542, 878, 884, 6033, 6034 and 6043 of this title, and repealing section 504 of this title].

"(3) **Sections 508 (a), (b), and (c).**—Sections 508 (a), (b), and (c) of the Internal Revenue Code of 1954 [sections 508 (a), (b), and (c) of this title] (as added by this section) shall take effect on October 9, 1969."

SAVINGS PROVISIONS

Section 101(*l*) of Pub. L. 91–172 provided that:

"(1) **References to internal revenue code provisions.**—Except as otherwise expressly provided, references in the following paragraphs of this subsection are to sections of the Internal Revenue Code of 1954 as amended by this section.

"(2) **Section 4941.**—Section 4941 [section 4941 of this title] shall not apply to—

"(A) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946) [section 4946 of this title], pursuant to the terms of securities of such corporation in existence at the time acquired by the foundation, if such securities were acquired by the foundation before May 27, 1969;

"(B) the sale, exchange, or other disposition of property which is owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter), to a disqualified person, if such foundation is required to dispose of such property in order not to be liable for tax under section 4943 [section 4943 of this title] (relating to taxes on excess business holdings) applied, in the case of a disposition before January 1, 1975, without taking section 4943(c)(4) [section 4943(c)(4) of this title] into account and it receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) [section 503(b) of this title] or the corresponding provisions of prior law);

"(C) the leasing of property or the lending of money or other extension of credit between a disqualified person and a private foundation pursuant to a binding contract in effect on October 9, 1969 (or pursuant to renewals of such a contract), until taxable years beginning after December 31, 1979, if such leasing or lending (or other extension of credit) remains at least as favorable as an arm's-length transaction with an unrelated party and if the execution of such contract was not at the time of such execution a prohibited transaction (within the meaning of section 503(b) [section 503(b) of this title] or the corresponding provisions of prior law);

"(D) the use of goods, services, or facilities which are shared by a private foundation and a disqualified person until taxable years beginning after December 31, 1979, if such use is pursuant to an arrangement in effect before October 9, 1969, and such arrangement was not a prohibited transaction (within the meaning of section 503(b) [section 503(b) of this title] or the corresponding provisions of prior law) at the time it was made and would not be a prohibited transaction if such section continued to apply; and

"(E) the use of property in which a private foundation and a disqualified person have a joint or common interest, if the interests of both in such property were acquired before October 9, 1969.

"(3) **Section 4942.**—In the case of organizations organized before May 27, 1969, section 4942 [section 4942 of this title] shall—

"(A) for all purposes other than the determination of the minimum investment return under section 4942(j)(3)(B)(ii) [section 4942(j)(3)(B)(ii) of this title], for taxable years beginning before January 1, 1972, apply without regard to section 4942(e) [section 4942(e) of this title] (relating to minimum investment return), and for taxable years beginning in 1972, 1973, and 1974, apply with an applicable percentage (as prescribed in section 4942(e)(3)) [section 4942(e)(3) of this title] which does not exceed 4½ percent, 5 percent, and 5½ percent, respectively;

"(B) not apply to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 [section 4942 of this title] shall apply to such organization if the organization would have been denied exemption if section 504(a) [section 504(a) of this title] had not been repealed by this Act, or would have had its deductions under section 642(c) [section 542(c) of this title] limited if section 681(c) [section 681(c) of this title] had not been repealed by this Act. In applying the preceding sentence, in addition to the limitations contained in section 504(a) [section 501(a) of this title] or 681(c) [section 681(c) of this title] before its repeal, section 504(a)(1) [section 504(a)(1) of this title] or 681(c)(1) [section 681(c)(1) of this title] shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date;

"(C) apply to a grant to a private foundation described in section 4942(g)(1)(A)(ii) [section 4942(g)(1)(A)(ii) of this title] which is not described in section 4942(g)(1)(A)(i) [section 4942(g)(1)(A)(i) of this title], pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter, as if such grant is a grant to an operating foundation (as defined in section 4942(j)(3)) [section 4942(j)(3) of this title], if such grant is made for one or more of the purposes described in section 170(c)(2)(B) [section 170(c)(2)(B) of this title] and is to be paid out to such private foundation on or before December 31, 1974;

"(D) apply, for purposes of section 4942(f) [section 4942(f) of this title], in such a manner as to treat any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise as not essentially equivalent to a dividend under section 302(b)(1) [section 302(b)(1) of this title] if such redemption is described in paragraph (2)(B) of this subsection; and

"(E) not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 [section 4942 of this title] are inconsistent with such prohibition.

With respect to taxable years beginning after December 31, 1971, subparagraphs (B) and (E) shall apply only during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942 [section 4942 of this title], and in the case of subparagraph (B) for all periods after the termination of such judicial proceeding during which the governing instrument or any other instrument does not permit compliance with such provisions.

"(4) **Section 4943.**—

"(A) In the case of a private foundation—

"(i) which was incorporated before January 1, 1951;

"(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

"(iii) which acquired such stock solely by gift, devise, or bequest,

section 4943(c)(4)(A)(i) [section 4943(c)(4)(A)(i) of this title] shall be applied with respect to the holdings of such foundation in such incorporated business enterprise by substituting '51 percent' for '50 percent', and section 4943(c)(4)(D) [section 4943(c)(4)(D) of this title] shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

"(B) Subparagraph (A) shall apply to a private foundation only if—

"(i) the foundation does not purchase any stock or other interest in the enterprise described in subparagraph (A) after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943 [section 4943 of this title]; and

"(ii) in the last 5 taxable years ending on or before December 31, 1970, the foundation expends substantially all of its adjusted net income (as defined in section 4942(f) [section 4942(f) of this title]) for the purpose or function for which it is organized and operated.

"(C) For purposes of section 4943(c)(6) [section 4943(c)(6) of this title], the term 'purchase' does not include an exchange which is described in paragraph (2)(B) of this subsection and which is pursuant to a plan for disposition of excess business holdings.

"(5) **Section 4945.**—Section 4945 (d)(4) and (h) [section 4945 (d)(4) and (h) of this title] shall not apply to a grant which is described in paragraph (3)(C) of this subsection.

"(6) **Section 508(e).**—Section 508(e) [section 408(e) of this title] shall not apply to require inclusion in governing instruments of any provisions inconsistent with this subsection.

"(7) **Section 509(a).**—In the case of any trust created under the terms of a will or a codicil to a will executed on or before March 30, 1924, by which the testator bequeathed all of the outstanding common stock of a corporation in trust, the income of which trust is to be used principally for the benefit of those from time to time employed by the corporation and their families, the trustees of which trust are elected or selected from among the employees of such corporation, and which trust does not own directly any stock in any other corporation, if the trust makes an irrevocable election under this paragraph within one year after the date of the enactment of this Act [Dec. 30, 1969], such trust shall be treated as not being a private foundation for purposes of the Internal Revenue Code of 1954 [this title] but shall be treated for purposes of such Code as if it were not exempt from tax under section 501(a) [section 501(a) of this title] for any taxable year beginning after the date of the enactment of this Act [Dec. 30, 1969] and before the date (if any) on which such trust has complied with the requirements of section 507 [section 507 of this title] for termination of the status of an organization as a private foundation.

"(8) **Certain redemptions.**—For purposes of applying section 302(b)(1) [section 302(b)(1) of this title] to the determination of the amount of gross investment income under sections 4940 [this section] and 4948(a) [section 4948(a) of this title], any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend, if such redemption is described in paragraph (2)(B) of this subsection."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4942, 4948, 6212, 6501 of this title.

§ 4941. Taxes on self-dealing.

(a) Initial taxes.

(1) On self-dealer.

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) On foundation manager.

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) Additional taxes.

(1) On self-dealer.

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the correction period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) On foundation manager.

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules.

For purposes of subsections (a) and (b)—

(1) Joint and several liability.

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) $10,000 limit for management.

With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) Self-dealing.

(1) In general.

For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

(2) Special rules.

For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value; and

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational institution described in section 151(e)(4),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed $25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702(a) of title 5, United States Code, for like travel by employees of the United States.

(e) Other definitions.

For purposes of this section—

(1) Taxable period.

The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on whichever of the following is the earlier: (A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or (B) the date on which correction of the act of self-dealing is completed.

(2) Amount involved.

The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the correction period.

(3) Correction.

The terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial posi-

tion not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) Correction period.

The term "correction period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b)(1) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about correction of the act of self-dealing.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 499.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISIONS

Exceptions to applicability of section, see section 101(l)(2) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 4946, 4947, 6213, 6503, 7402, 7454 of this title.

§ 4942. Taxes on failure to distribute income.

(a) Initial tax.

There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(4)),

(C) the foundation notifies the Secretary or his delegate that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

(b) Additional tax.

In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the correction period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

(c) Undistributed income.

For purposes of this section, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) the distributable amount for such taxable year, exceeds

(2) the qualifying distributions made before such time out of such distributable amount.

(d) Distributable amount.

For purposes of this section, the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to—

(1) the minimum investment return or the adjusted net income (whichever is higher), reduced by

(2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

(e) Minimum investment return.

(1) In general.

For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is the amount determined by multiplying—

(A) the excess of (i) the aggregate fair market value of all assets of the foundation other than those being used (or held for use) directly in carrying out the foundation's exempt purpose over (ii) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1), but without regard to the taxable year in which the indebtedness was incurred), by

(B) the applicable percentage for such year, determined under paragraph (3).

(2) Valuation.

For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) Applicable percentage.

For purposes of paragraph (1)(B), the applicable percentage for taxable years beginning in 1970 is 6 percent. The applicable percentage for any taxable year beginning after 1970 shall be determined and published by the Secretary or his delegate and shall bear a relationship to 6 percent which the Secretary or his delegate determines to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1969.

(4) Transitional rules.

For special rules applicable to organizations created before May 27, 1969, see section 101(*l*)(3) of the Tax Reform Act of 1969.

(f) Adjusted net income.

(1) Defined.

For purposes of subsection (d), the term "adjusted net income" means the excess (if any) of—

(A) the gross income for the taxable year (determined with the income modifications provided by paragraph (2)), over

(B) the sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

(2) Income modifications.

The income modifications referred to in paragraph (1)(A) are as follows:

(A) section 103 (relating to interest on certain governmental obligations) shall not apply,

(B) capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year; and

(C) there shall be taken into account—

(i) amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside.

(3) Deduction modifications.

The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) Transitional rule.

For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(g) Qualifying distributions defined.

(1) In general.

For purposes of this section, the term "qualifying distribution" means—

(A) any amount (including administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

(2) Certain set-asides.

Subject to such terms and conditions as may be prescribed by the Secretary or his delegate, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution, but only if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Secretary or his delegate that—

(A) the amount will be paid for the specific project within 5 years, and

(B) the project is one which can be better accomplished by such set-aside than by immediate payment of funds.

For good cause shown, the period for paying the amount set aside may be extended by the Secretary or his delegate.

(3) Certain contributions to section 501(c)(3) organizations.

For purposes of this section, the term "qualifying distribution" includes a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

(h) Treatment of qualifying distributions.

(1) In general.

Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) first out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof,

(B) second out of the undistributed income for the taxable year to the extent thereof, and

(C) then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

(2) Correction of deficient distributions for prior taxable years, etc.

In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(i) Adjustment of distributable amount where distributions during prior years have exceeded income.

(1) In general.

If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) the aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(E)(ii) applies) during such taxable years, exceed

(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

(2) Taxable years in adjustment period.

For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1969, and immediately preceding the taxable year.

(j) Other definitions.

For purposes of this section—

(1) Taxable period.

The term "taxable period" means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212.

(2) Correction period.

The term "correction period" means, with respect to any private foundation for any taxable year, the period beginning with the first day of the taxable year and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (b)) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(3) Operating foundation.

For purposes of this section, the term "operating foundation" means any organization—

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of its adjusted net income (as defined in subsection (f)); and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (5)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted,

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

(4) Allowable distribution period.

The term "allowable distribution period" means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(5) Functionally related business.

The term "functionally related business" means—

(A) a trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 502.)

REFERENCES IN TEXT

Section 101(*l*)(3) of the Tax Reform Act of 1969, referred to in subsec. (e)(4), is set out as a note under section 4940 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(A) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISIONS

Applicability of section to organizations organized before May 27, 1969, see section 101(*l*)(3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 508, 4943, 4948, 6213, 6501, 6503, 7422 of this title.

§ 4943. Taxes on excess business holdings.

(a) Initial tax.

(1) Imposition.

There is hereby imposed on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 5 percent of the value of such holdings.

(2) Special rules.

The tax imposed by paragraph (1)—

(A) shall be imposed on the last day of the taxable year, but

(B) with respect to the private foundation's holdings in any business enterprise, shall be determined as of that day during the taxable year when the foundation's excess holdings in such enterprise were the greatest.

(b) Additional tax.

In any case in which an initial tax is imposed under subsection (a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the correction period with respect to such holdings, the foundation still has excess business holdings in such enterprise, there is hereby imposed a tax equal to 200 percent of such excess business holdings.

(c) Excess business holdings.

For purposes of this section—

(1) In general.

The term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

(2) Permitted holdings in a corporation.

(A) In general.

The permitted holdings of any private foundation in an incorporated business enterprise are—

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

(B) 35 percent rule where third person has effective control of enterprise.

If—

(i) the private foundation and all disqualified persons together do not own more than 35 percent of the voting stock of an incorporated business enterprise, and

(ii) it is established to the satisfaction of the Secretary or his delegate that effective control of the corporation is in one or more persons who are not disqualified persons with respect to the foundation,

then subparagraph (A) shall be applied by substituting 35 percent for 20 percent.

(C) 2 percent de minimis rule.

A private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

(3) Permitted holdings in partnerships, etc.

The permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary or his delegate. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that—

(A) in the case of a partnership or joint venture, "profits interest" shall be substituted for "voting stock", and "capital interest" shall be substituted for "nonvoting stock",

(B) in the case of a proprietorship, there shall be no permitted holdings, and

(C) in any other case, "beneficial interest" shall be substituted for "voting stock".

(4) Present holdings.

(A)(i) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 20 percent of the voting stock on May 26, 1969, the percentage of such holdings shall be substituted for "20 percent," and for "35 percent" (if the percentage

of such holdings is greater than 35 percent), wherever it appears in paragraph (2), but in no event shall the percentage so substituted be more than 50 percent.

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be applied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent.

(iii) The percentage substituted under clause (i), and any percentage substituted under subparagraph (D), shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(iv) In the case of any merger, recapitalization, or other reorganization involving one or more business enterprises, the application of clauses (i), (ii), and (iii) shall be determined under regulations prescribed by the Secretary or his delegate.

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation has more than a 95 percent voting stock interest on such date,

(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date, or

(iii) during the 10-year period beginning on such date, in any other case.

(C) The 20-year, 15-year, and 10-year periods described in subparagraph (B) for the disposition of excess business holdings shall be suspended during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to allow disposition of such holdings.

(D) (i) If, at any time during the second phase, all disqualified persons together have holdings in a business enterprise in excess of 2 percent of the voting stock of such enterprise, then subparagraph (A) (i) shall be applied by substituting for "50 percent" the following: "50 percent, of which not more than 25 percent shall be voting stock held by the private foundation".

(ii) If, immediately before the close of the second phase, clause (i) of this subparagraph did not apply with respect to a business enterprise, then for all periods after the close of the second phase subparagraph (A) (i) shall be applied by substituting for "50 percent" the following: "35 percent, or if at any time after the close of the second phase all disqualified persons together have had holdings in such enterprise which exceed 2 percent of the voting stock, 35 percent, of which not more than 25 percent shall be voting stock held by the private foundation".

(iii) For purposes of this subparagraph, the term "second phase" means the 15-year period immediately following the 20-year, 15-year, or 10-year period described in subparagraph (B), whichever applies, as modified by subparagraph (C).

(E) Clause (ii) of subparagraph (B) shall not apply with respect to any business enterprise if before January 1, 1971, one or more individuals who are substantial contributors (or members of the family (within the meaning of section 4946(d)) of one or more substantial contributors) to the private foundation and who on May 26, 1969, held more than 15 percent of the voting stock of the enterprise elect, in such manner as the Secretary or his delegate may by regulations prescribe, not to have such clause (ii) apply with respect to such enterprise.

(5) Holdings acquired by trust or will.

Paragraph (4) (other than subparagraph (B) (i)) shall apply to any interest in a business enterprise which a private foundation acquires under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter, as if such interest were held on May 26, 1969, except that the 15-year and 10-year periods prescribed in clauses (ii) and (iii) of paragraph (4) (B) shall commence with respect to such interest on the date of distribution under the trust or will in lieu of May 26, 1969.

(6) 5-year period to dispose of gifts, bequests, etc.

Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such

enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

(d) Definitions; special rules.

For purposes of this section—

(1) Business holdings.

In computing the holdings of a private foundation, or a disqualified person (as defined in section 4946) with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. The preceding sentence shall not apply with respect to an income or remainder interest of a private foundation in a trust described in section 4947(a)(2), but only if, in the case of property transferred in trust after May 26, 1969, such foundation holds only an income interest or only a remainder interest in such trust.

(2) Taxable period.

The term "taxable period" means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning on the first day on which there are such excess holdings and ending on the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212 in respect of such holdings.

(3) Correction period.

The term "correction period" means, with respect to excess business holdings of a private foundation in a business enterprise, the period ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (b)) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary or his delegate determines is reasonable and necessary to permit orderly disposition of such excess business holdings.

(4) Business enterprise.

The term "business enterprise" does not include—

(A) a functionally related business (as defined in section 4942(j)(5)), or

(B) a trade or business at least 95 percent of the gross income of which is derived from passive sources.

For purposes of subparagraph (B), gross income from passive sources includes the items excluded by section 512(b) (1), (2), (3), and (5), and income from the sale of goods (including charges or costs passed on at cost to purchasers of such goods or income received in settlement of a dispute concerning or in lieu of the exercise of the right to sell such goods) if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 507.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(A) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISIONS

Applicability of section to private foundations, see section 101(*l*)(4) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 537, 4946, 4947, 6213, 6503, 7422 of this title.

§ 4944. Taxes on investments which jeopardize charitable purpose.

(a) Initial taxes.

(1) On the private foundation.

If a private foundation invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, there is hereby imposed on the making of such investment a tax equal to 5 percent of the amount so invested for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management.

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in the making of the investment, knowing that it is jeopardizing the carrying out of any of the foundation's exempt purposes, a tax equal to 5 percent of the amount so invested for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the making of the investment.

(b) Additional taxes.

(1) On the foundation.

In any case in which an initial tax is imposed by subsection (a)(1) on the making of an investment and such investment is not removed from jeopardy within the correction period, there is hereby imposed a tax equal to 25 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management.

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the removal from jeopardy, there is hereby imposed a tax equal to 5 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the removal from jeopardy.

(c) Exception for program-related investments.

For purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.

(d) Special rules.

For purposes of subsections (a) and (b)—

(1) Joint and several liability.

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to any one investment, all such persons shall be jointly and severally liable under such paragraph with respect to such investment.

(2) Limit for management.

With respect to any one investment, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(e) Definitions.

For purposes of this section—

(1) Taxable period.

The term "taxable period" means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which the amount is so invested and ending on whichever of the following is the earlier: (A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or (B) the date on which the amount so invested is removed from jeopardy.

(2) Removal from jeopardy.

An investment which jeopardizes the carrying out of exempt purposes shall be considered to be removed from jeopardy when such investment is sold or otherwise disposed of, and the proceeds of such sale or other disposition are not investments which jeopardize the carrying out of exempt purposes.

(3) Correction period.

The term "correction period" means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which such investment is entered into and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b)(1) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about removal from jeopardy.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 511.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 4947, 6213, 6503, 7422, 7454 of this title.

§ 4945. Taxes on taxable expenditures.

(a) Initial taxes.

(1) On the foundation.

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management.

There is hereby imposed on the agreement of any foundation manager to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who agreed to the making of the expenditure.

(b) Additional taxes.

(1) On the foundation.

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management.

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules.

For purposes of subsections (a) and (b)—

(1) Joint and several liability.

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(2) Limit for management.

With respect to any one taxable expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) Taxable expenditure.

For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation—

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

(4) as a grant to an organization (other than an organization described in paragraph (1), (2), or (3) of section 509(a)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

(5) for any purpose other than one specified in section 170(c)(2)(B).

(e) Activities within subsection (d)(1).

For purposes of subsection (d)(1), the term "taxable expenditure" means any amount paid or incurred by a private foundation for—

(1) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and

(2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be),

other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

(f) Nonpartisan activities carried on by certain organizations.

Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

(1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),

(2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,

(3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,

(4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946 (a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and

(5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of such organization (excluding therefrom any preceding taxable year which begins before January 1, 1970). Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

(g) Individual grants.

Subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary or his delegate, if it is demonstrated to the satisfaction of the Secretary or his delegate that—

(1) the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational institution described in section 151 (e)(4),

(2) the grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or

(3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

(h) Expenditure responsibility.

The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures—

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary or his delegate.

(i) Other definitions.

For purposes of this section—

(1) Correction.

The terms "correction" and "correct" mean, with respect to any taxable expenditure, (A) recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary or his delegate by regulations, or (B) in the case of a failure to comply with subsection (h)(2) or (h)(3), obtaining or making the report in question.

(2) Correction period.

The term "correction period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to

the tax imposed by subsection (b)(1) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about correction of the taxable expenditure (except that such determination shall not be made with respect to any taxable expenditure within the meaning of paragraph (1), (2), (3), or (4) of subsection (d) because of any action by an appropriate State officer as defined in section 6104(c)(2)).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 512.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISIONS

Applicability of subsecs. (d)(4) and (h) of this section to grants to private foundations described in section 101(*l*)(C)(3) of Pub. L. 91–172, see section 101(*l*)(5) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 4947, 6213, 6503, 7422, 7454 of this title.

§ 4946. Definitions and special rules.

(a) Disqualified person.

(1) In general.

For purposes of this chapter, the term "disqualified person" means, with respect to a private foundation, a person who is—

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

(C) an owner of more than 20 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

(2) Substantial contributors.

For purposes of paragraph (1), the term "substantial contributor" means a person who is described in section 507(d)(2).

(3) Stockholdings.

For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) Partnerships; trusts.

For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) Foundation manager.

For purposes of this chapter, the term "foundation manager" means, with respect to any private foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) Government official.

For purposes of subsection (a)(1)(I) and section 4941, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of compensation prescribed for GS–16 of the General Schedule under section 5332 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of $15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $15,000 or more, or

(6) a position as personal or executive assistant or secretary to any of the foregoing.

(d) Members of family.

For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, lineal descendants, and spouses of lineal descendants. (Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 515.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 509, 4941, 4942, 4943, 4945, 4948, 6033, 6056, 7454 of this title.

§ 4947. Application of taxes to certain nonexempt trusts.

(a) Application of tax.

(1) Charitable trusts.

For purposes of part II of subchapter F of chapter 1 (other than section 508 (a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

(2) Split-interest trusts.

In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170 (f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B),

(B) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) any amounts transferred in trust before May 27, 1969.

(3) Segregated amounts.

For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

(b) Special rules.

(1) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(2) Limit to segregated amounts.

If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

(3) Sections 4943 and 4944.

Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trusts, or

(B) a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 517.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 4943, 6034 of this title.

§ 4948. Application of taxes and denial of exemption with respect to certain foreign organizations.

(a) Tax on income of certain foreign organizations.

In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

(b) Certain sections inapplicable.

Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

(c) Denial of exemption to foreign organizations engaged in prohibited transactions.

(1) General rule.

A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Prohibited transactions.

For purposes of this subsection, the term "prohibited transaction" means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

(3) Taxable years affected.

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction. The Secretary or his delegate shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary or his delegate, any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary or his delegate is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

(4) Disallowance of certain charitable deductions.

No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary or his delegate publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

(Added Pub. L. 91–172, title I, § 101(b), Dec. 30, 1969, 83 Stat. 518.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(A) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 663, 1443, 2055, 2522 of this title.

Subtitle E.—Alcohol, Tobacco, and Certain Other Excise Taxes

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 6806 of this title.

Chapter
51. Distilled spirits, wines, and beer.
52. Tobacco, cigars, cigarettes, and cigarette papers and tubes.
53. Machine guns and certain other firearms.

Chapter 51.—DISTILLED SPIRITS, WINES, AND BEER

Subchapter
A. Gallonage and occupational taxes.
B. Qualification requirements for distilled spirits plants.
C. Operation of distilled spirits plants.
D. Industrial use of distilled spirits.
E. General provisions relating to distilled spirits.
F. Bonded and taxpaid wine premises.
G. Breweries.
H. Miscellaneous plants and warehouses.
I. Miscellaneous general provisions.
J. Penalties, seizures, and forfeitures relating to liquors.

CODIFICATION

This chapter as added by Pub. I. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, constitutes a general revision of the provisions of a prior chapter 51, as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter. The analysis reflects the following changes that were made by way of substitution:

"Qualification requirements for distilled spirits plants" for "Distilleries" in subch. B;

"Operation of distilled spirits plants" for "Internal Revenue bonded warehouses" in subch. C;

"Industrial use of distilled spirits" for "Rectifying plants" in subch. D; and

"General provisions relating to distilled spirits" for "Industrial alcohol plants, bonded warehouses, denaturing plants, and denaturation" in subch. E.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5846 of this title; title 19 section 1754.

Subchapter A.—Gallonage and Occupational Taxes

Part
I. Gallonage taxes.
II. Occupational tax.

PART I.—GALLONAGE TAXES

Subpart
A. Distilled spirits.
B. Rectification.
C. Wines.
D. Beer.
E. General provisions.

SUBPART A.—DISTILLED SPIRITS

Sec.
5001. Imposition, rate, and attachment of tax.
5002. Definitions.
5003. Cross references to exemptions, etc.
5004. Lien for tax.
5005. Persons liable for tax.
5006. Determination of tax.
5007. Collection of tax on distilled spirits.
5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits.
5009. Drawback.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5001—5012.

Section 5003 related to "Exemptions".

Section 5008 related to "Strip stamps for distilled spirits".

Section 5009 related to "Stamps for distilled spirits withdrawn for exportation".

Section 5010, act Aug. 16, 1954, ch. 736, 68A Stat. 603, related to "Miscellaneous stamp provisions". See section 5205 (e)—(g), (i)(2) of this title.

Section 5011, act Aug. 16, 1954, ch. 736, 68A Stat. 604, related to "Abatement, remission, refund and allowance for loss or destruction of distilled spirits". See section 5008 of this title.

Section 5012, act Aug. 16, 1954, ch. 736, 68A Stat. 605, related to "Drawback". See section 5009 of this title.

§ 5001. Imposition, rate, and attachment of tax.

(a) Rate of tax—

(1) General.

There is hereby imposed on all distilled spirits in bond or produced in or imported into the United States an internal revenue tax at the rate of $10.50 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

(2) Products containing distilled spirits.

All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

(3) Imported perfumes containing distilled spirits.

There is hereby imposed on all perfumes imported into the United States containing distilled spirits a tax of $10.50 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

(4) Wines containing more than 24 percent alcohol by volume.

Wines containing more than 24 percent of alcohol by volume shall be taxed as distilled spirits.

(5) Distilled spirits withdrawn free of tax.

Any person who removes, sells, transports, or uses distilled spirits, withdrawn free of tax under section 5214 (a) or section 7510, in violation of laws or regulations now or hereafter in force pertaining thereto, and all such distilled spirits shall be subject to all provisions of law relating to distilled spirits subject to tax, including those requiring payment of the tax thereon; and the person so removing, selling, transporting, or using the distilled spirits shall be required to pay such tax.

(6) Denatured distilled spirits or articles.

Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured distilled spirits or articles shall be subject to all provisions of law pertaining to distilled spirits that are not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured distilled spirits or articles shall be required to pay such tax.

(7) Fruit-flavor concentrates.

If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, is sold, transported, or used by any person in violation of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, including those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax.

(8) Imported liqueurs and cordials.

Imported liqueurs and cordials, or similar compounds, containing distilled spirits, shall be taxed as distilled spirits.

(9) Imported distilled spirits withdrawn for beverage purposes.

There is hereby imposed on all imported distilled spirits withdrawn from customs custody under section 5232 without payment of the internal revenue tax, and thereafter withdrawn from bonded premises for beverage purposes, an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty previously paid thereon.

(10) Alcoholic compounds from Puerto Rico.

Except as provided in section 5314, upon bay rum, or any article containing distilled spirits, brought from Puerto Rico into the United States for consumption or sale there is hereby imposed a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States.

(b) Time of attachment on distilled spirits.

The tax shall attach to distilled spirits as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirits,

or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(c) Cross reference.

For provisions relating to the tax on shipments to the United States of taxable articles from Puerto Rico and the Virgin Islands, see section 7652.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1314, and amended Pub. L. 86–75, § 3(a)(2), (3), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, § 202(a)(4), (5), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, § 3(a) (4), (5), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 3(a) (3), (4), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, § 3(a) (4), (5), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, § 2(a)(4), (5), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, § 501(a), June 21, 1965, 79 Stat. 150.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5001, act Aug. 16, 1954, ch. 736, 68A stat. 595, as amended by acts Mar. 30, 1955, ch. 18, § 3(a)(5), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(4), (5), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 3(a)(2), (3), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 3(a) (2), (3), 72 Stat. 259.

Former section 5001(c) was a cross reference to a penalty provision for tampering with a stamp machine. See section 5061(d) of this title.

AMENDMENTS

1965—Subsec. (a)(1). Pub. L. 89–44 struck out the last sentence which provided that the rate of tax imposed by par. (1) would be $9 on and after July 1, 1965.

Subsec. (a)(3). Pub. L. 89–44 struck out the last sentence which provided that the rate of tax imposed by par. (3) would be $9 on and after July 1, 1965.

1964—Subsec. (a)(1). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964."

Subsec. (a)(3). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964."

1963—Subsec. (a)(1). Pub. L. 88–52, § 3(a)(4); substituted "July 1, 1964" for "July 1, 1963".

Subsec. (a)(3). Pub. L. 88–52, § 3(a)(5), substituted "July 1, 1964" for "July 1, 1963".

1962—Subsec. (a)(1). Pub. L. 87–508, § 3(a)(3), substituted "July 1, 1963" for "July 1, 1962."

Subsec. (a)(3). Pub. L. 87–508, § 3(a)(4), substituted "July 1, 1963" for "July 1, 1962."

1961—Subsec. (a)(1). Pub. L. 87–72, § 3(a)(4), substituted "July 1, 1962" for "July 1, 1961."

Subsec. (a)(3). Pub. L. 87–72, § 3(a)(5), substituted "July 1, 1962" for "July 1, 1961."

1960—Subsec. (a)(1). Pub. L. 86–564, § 202(a)(4), substituted "July 1, 1961" for "July 1, 1960."

Subsec. (a)(3). Pub. L. 86–564, § 202(a)(5), substituted "July 1, 1961" for "July 1, 1960."

1959—Subsec. (a)(1). Pub. L. 86–75, § 3(a)(2) substituted "July 1, 1960" for "July 1, 1959".

Subsec. (a)(3). Pub. L. 86–75, § 3(a)(3), substituted "July 1, 1960" for "July 1, 1959".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by section 501 of Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE

Section 210 (a)(1) of Pub. L. 85–859 provided that: "The amendments made by sections 201 and 205 [amending this chapter and repealing Acts Mar. 3, 1877, 114, 19 Stat. 393 and Oct. 18, 1888, c. 1194, 25 Stat. 560] shall take effect on July 1, 1959, except that any provision having the effect of a provision contained in such amendments may be made effective at an earlier date by the promulgation of regulations by the Secretary or his delegate to effectuate such provision, in which case the effective date shall be that prescribed in such regulations. The amendments made by paragraphs (17) and (18) of section 204 [to subsecs. (a) (1) and (b) (1) of section 7652 of this title] shall take effect on July 1, 1959. Except as provided in section 206 (f), all other provisions of this title [adding sections 5849, 5854, 5855 and 7608 of this title, amending chapter 52 of this title and sections 5801 (a), (b), 5811 (a), 5814 (c)—(e), 5821 (a), (b) (2), 5843, 5848 (3), (4), (9), 5851, 6071 (b), 6207 (4), (6)—(9), 6422 (14), 7214 (c), 7272 (a), (b), 7301 (e), 7324—7326, 7609, and 7655 (a) (5), (6) of this title, and repealing former section 5854 of this title] shall take effect on the day following the date of the enactment of this Act [September 2, 1958]."

SAVINGS PROVISION

Section 210(b) of Pub. L. 85–859 provided that: "The amendment of any provision of the Internal Revenue Code of 1954 by this title [which added sections 5849, 5854, 5855 and 7608 of this title, amended this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324—7326, 7609, 7652 and 7655 of this title, and enacted notes set out under sections 5001, 5006, 5025, 5064, 5175, 5304 and 5601 of this title] shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before such amendment; but all rights and liabilities under such code prior to such amendment shall continue, and may be enforced in the same manner, as if such amendment had not been made."

REFERENCES TO OTHER PROVISIONS OF LAW

Section 210(d) of Pub. L. 85–859 provided that: "For the purpose of applying any provision of this title [which added sections 5849, 5854, 5855 and 7608 of this title, amended this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324—7326, 7609, 7652, and 7655 of this title, and enacted notes set out under sections 5001, 5006, 5025, 5064, 5175, 5304 and 5601, of this title] to any occurrence on or after the effective date of such provision, any reference in this title to another provision thereof shall also be deemed to be a reference to the corresponding provision of prior law, when consistent with the purpose of the provision to be applied."

REPEAL OF ACTS MAR. 3, 1877 AND OCT. 18, 1888

Section 205 of Pub. L. 85–859 repealed acts March 3, 1877, ch. 114, 19 Stat. 393 and Oct. 18, 1888, ch. 1194, 25 Stat. 560, which related to production and warehousing of fruit brandy, and are now covered by this chapter. For effective date of repeal, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under this section.

CROSS REFERENCES

Application of part to Puerto Rico and Virgin Islands, see section 5314 of this title.

Collection of tax on distilled spirits, see section 5007 of this title.

Exemption from rectifying and spirits taxes, see section 5391 of this title.

Lien for tax, see section 5004 of this title.

Method of collecting tax, see section 5061 of this title.

Persons liable for tax, see section 5005 of this title.

Tax on cordials and liqueurs containing wine, see section 5022 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5004, 5005, 5007, 5008, 5066, 5233, 5314, 5391 of this title.

§ 5002. Definitions.

(a) Definitions.

When used in this chapter—

(1) Distilled spirits plant.

The term "distilled spirits plant" means an establishment which is qualified under subchapter B to perform any operation, or any combination of operations, for which qualification is required under such subchapter.

(2) Bonded premises.

The term "bonded premises", when used with reference to distilled spirits, means the premises of a distilled spirits plant, or part thereof, as described in the application required by section 5171 (a), on which operations relating to production, storage, denaturation, or bottling of distilled spirits, prior to the payment or determination of the distilled spirits tax, are authorized to be conducted.

(3) Bottling premises.

The term "bottling premises", when used with reference to distilled spirits plants, means the premises of a distilled spirits plant, or part thereof, as described in the application required by section 5171 (a), on which operations relating to the rectification or bottling of distilled spirits or wines on which the tax has been paid or determined, are authorized to be conducted.

(4) Bonded warehouseman.

The term "bonded warehouseman" means the proprietor of a distilled spirits plant who is authorized to store distilled spirits after entry for deposit in storage and prior to payment or determination of the internal revenue tax or withdrawal as provided in section 5214 or 7510.

(5) Distiller.

The term "distiller" shall include every person—

(A) who produces distilled spirits from any source or substance; or

(B) who brews or makes mash, wort, or wash, fit for distillation or for the production of distilled spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation); or

(C) who by any process separates alcoholic spirits from any fermented substance; or

(D) who, making or keeping mash, wort, or wash, has also in his possession or use a still.

(6) Distilled spirits.

(A) General definition.

The terms "distilled spirits", "alcoholic spirits", and "spirits" mean that substance known as ethyl alcohol, ethanol, or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, and shall include whisky, brandy, rum, gin, and vodka.

(B) Products of rectification.

As used in section 5291 (a) the term "distilled spirits" includes products produced in such manner that the person producing them is a rectifier within the meaning of section 5082.

(7) Proof spirits.

The term "proof spirits" means that liquid which contains one-half its volume of ethyl alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (.7939) at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

(8) Proof gallon.

The term "proof gallon" means a United States gallon of proof spirits, or the alcoholic equivalent thereof.

(9) Container.

The term "container", when used with respect to distilled spirits, means any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring, or conveying distilled spirits.

(10) Approved container.

The term "approved container", when used with respect to distilled spirits, means a container the use of which is authorized by regulations prescribed by the Secretary or his delegate.

(11) Articles.

The term "articles" means any substance or preparation in the manufacture of which denatured distilled spirits are used, unless another meaning is distinctly expressed or manifestly intended.

(12) Export.

The terms "export", "exported", and "exportation" shall include shipments to a possession of the United States.

(b) Cross references.

(1) For definition of wine gallon, see section 5041 (c).
(2) For definition of rectifier, see section 5082.
(3) For definition of manufacturer of stills, see section 5102.
(4) For definition of dealer, see section 5112 (a).
(5) For definitions of wholesale dealers, see section 5112.
(6) For definitions of retail dealers, see section 5122.
(7) For definitions of general application to this title, see chapter 79.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958 72 Stat. 1315, and amended Pub. L. 89–44, title VIII, § 807(a), June 21, 1965, 79 Stat. 164.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5002, act Aug. 16, 1954, ch. 736, 68A Stat. 597.

Provisions similar to those comprising subsec. (a) (6), (9) and (11) of this section were contained in former sections 5213(a)(1) and 5319 (1), (2) and (7), act Aug. 16, 1954, ch. 736, 68A Stat. 639, 661, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44 added par. (12).

EFFECTIVE DATE OF 1965 AMENDMENT

Section 807(c) of Pub. L. 89–44 provided that: "The amendments made by subsections (a) and (b) [to this section and section 5053(a) of this title] shall take effect on July 1, 1965."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5301 of this title.

§ 5003. Cross references to exemptions, etc.

(1) For provisions authorizing the withdrawal of distilled spirits free of tax for use by Federal or State agencies, see sections 5214 (a) (2) and 5313.

(2) For provisions authorizing the withdrawal of distilled spirits free of tax by nonprofit educational organizations, scientific universities or colleges of learning, laboratories, hospitals, blood banks, sanitariums, and charitable clinics, see section 5214 (a) (3).

(3) For provisions authorizing the withdrawal of certain imported distilled spirits from customs custody without payment of tax, see section 5232.

(4) For provisions authorizing the withdrawal of denatured distilled spirits free of tax, see section 5214 (a) (1).

(5) For provisions exempting from tax distilled spirits for use in production of vinegar by the vaporizing process, see section 5505 (j).

(6) For provisions relating to the withdrawal of wine spirits without payment of tax for use in the production of wine, see section 5373.

(7) For provisions exempting from tax volatile fruit-flavor concentrates, see section 5511.

(8) For provisions authorizing the withdrawal of distilled spirits from bonded premises without payment of tax for export, see section 5214 (a) (4).

(9) For provisions authorizing withdrawal of distilled spirits without payment of tax to customs manufacturing bonded warehouses for export, see section 5522 (a).

(10) For provisions relating to withdrawal of distilled spirits without payment of tax as supplies for certain vessels and aircraft, see 19 U. S. C. 1309.

(11) For provisions authorizing regulations for withdrawal of distilled spirits for use of United States free of tax, see section 7510.

(12) For provisions relating to withdrawal of distilled spirits without payment of tax to foreign-trade zones, see 19 U. S. C. 81c.

(13) For provisions relating to exemption from tax of taxable articles going into the possessions of the United States, see section 7653 (b).

(14) For provisions authorizing the removal of samples free of tax for making tests or laboratory analyses, see section 5214 (a) (9).

(15) For provisions relating to allowance for certain losses in bond, see section 5008 (a).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1316.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5003, act Aug. 16, 1954, ch. 736, 68A Stat. 597.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5004. Lien for tax.

(a) Distilled spirits subject to lien.

(1) General.

The tax imposed by section 5001 (a) (1) shall be a first lien on the distilled spirits from the time the spirits are in existence as such until the tax is paid.

(2) Exceptions.

The lien imposed by paragraph (1), or any similar lien imposed on the spirits under prior provisions of internal revenue law, shall terminate in the case of distilled spirits produced on premises qualified under internal revenue law for the production of distilled spirits when such distilled spirits are—

(A) withdrawn from bonded premises on determination of tax; or

(B) withdrawn from bonded premises free of tax under provisions of section 5214 (a) (1), (2), (3), or (9), or section 7510; or

(C) exported, deposited in a foreign-trade zone, used in the production of wine, deposited in customs manufacturing bonded warehouses, or laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, as provided by law.

(b) Other property subject to lien.

(1) General.

The tax imposed by section 5001 (a) (1) shall be a first lien on the distillery used for producing the distilled spirits, the stills, vessels, and fixtures therein, the lot or tract of land on which such distillery is situated, and on any building thereon, from the time such spirits are in existence as such until the tax is paid, or until the persons liable for the tax under section 5005 (a) or (b) have been relieved of liability for such tax by reason of the provisions of section 5005 (c) (2), (c) (3), (d), or (e). In the case of a distilled spirits plant producing distilled spirits, the premises subject to lien shall comprise the bonded premises of such plant, any building containing any part of the bonded premises and the land on which such building is situated, as described in the application for registration of such plant. Any similar lien on the property described in this paragraph arising under prior provisions of internal revenue law shall not be assertable as to the tax on any distilled spirits in respect to which the persons liable for the tax have been relieved of liability therefor by reason of the provisions of section 5005 (c) (2), (c) (3), (d), or (e).

(2) Exception during term of bond.

No lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus, under this subsection, by reason of distilling done during any period included within the term of any bond given under section 5173 (b) (1) (C).

(3) Extinguishment of lien.

Any lien under paragraph (1), or any similar lien imposed on the property described in paragraph (1) under prior provisions of internal revenue law, shall be held to be extinguished—

(A) if the property is no longer used for distilling and there is no outstanding liability against any person referred to in section 5005 (a) or (b) for taxes or penalties imposed by law on the distilled spirits produced thereon, and no litigation is pending in respect of any such tax or penalty; or

(B) if an indemnity bond given under the provisions of section 5173 (b) (1) (C), further conditioned to stand in lieu of such lien or liens and to indemnify the United States for the payment of all taxes and penalties which otherwise could be asserted against such property by reason of such lien or liens, is accepted and approved by the Secretary or his delegate. Such bond shall not be accepted or approved if there is any pending litigation or outstanding assessment with respect to such taxes or penalties, or if the Secretary or his delegate has knowledge of any circumstances indicating that such bond is tendered with intent to evade payment or defeat collection of any tax or penalty.

(4) Certificate of discharge.

Any person claiming any interest in the property subject to lien under paragraph (1) may apply to the Secretary or his delegate for a duly acknowledged certificate to the effect that such lien is discharged and, if the Secretary or his delegate determines that such lien is extinguished, the Secretary or his delegate shall issue such certificate, and any such certificate may be recorded.

(c) Cross reference.

For provisions relating to extinguishing of lien in case of redistillation, see section 5223(e).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1317, and amended Pub. L. 89–44, title VIII, § 805(f)(1), June 21, 1965, 79 Stat. 161.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5004, act Aug. 16, 1954, ch. 736, 68A Stat. 598.

Provisions similar to those comprising subsec. (b)(1) of this section were contained in former section 5007(e)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 600, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-44 substituted "5223(e)" for "5223(d)".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (c) by Pub. L. 89-44 effective October 1, 1965, see section 805(g)(2) of Pub. L. 89-44, set out as a note under section 5025 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Application of part to Puerto Rico and Virgin Islands, see section 5314 of this title.

Lien for taxes generally, see section 6321 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5173 of this title.

§ 5005. Persons liable for tax.

(a) General.

The distiller or importer of distilled spirits shall be liable for the taxes imposed thereon by section 5001 (a) (1).

(b) Domestic distilled spirits.

(1) Liability of persons interested in distilling.

Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(2) Exception.

A person owning or having the right of control of not more than 10 percent of any class of stock of a corporate proprietor of a distilled spirits plant shall not be deemed to be a person liable for the tax for which such proprietor is liable under the provisions of paragraph (1). This exception shall not apply to an officer or director of such corporate proprietor.

(c) Proprietors of distilled spirits plants.

(1) Bonded storage.

Every person operating bonded premises of a distilled spirits plant shall be liable for the internal revenue tax on all distilled spirits while the distilled spirits are stored on such premises, and on all distilled spirits which are in transit to such premises (from the time of removal from the transferor's bonded premises) pursuant to application made by him. Such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008 (a). Nothing in this paragraph shall relieve any person from any liability imposed by subsection (a) or (b).

(2) Transfers in bond.

When distilled spirits are transferred in bond in accordance with the provisions of section 5212, persons liable for the tax on such spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability, if proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so transferred. Such relief from liability shall be effective from the time of removal from the transferor's bonded premises, from the time of such divestment of interest, or on July 1, 1959, whichever is later. The provisions of this paragraph shall be construed to apply to distilled spirits transferred in bond, whether such transfers occur prior to or on or after July 1, 1959, but shall not apply in any case in which the tax was paid or determined prior to such date.

(3) Withdrawals on determination of tax.

(A) Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant on determination of tax, upon giving of a withdrawal bond as provided for in section 5174, shall be liable for payment of the internal revenue tax on the distilled spirits so withdrawn, from the time of such withdrawal.

(B) All persons liable for the tax on distilled spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of liability with respect to the tax on any distilled spirits withdrawn on determination of tax under withdrawal bond (as provided for in section 5174) if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.

(d) Withdrawals free of tax.

All persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability as to distilled spirits withdrawn free of tax under the provisions of section 5214 (a) (1), (2), (3), or (9), or under section 7510, at the time such spirits are so withdrawn from bonded premises.

(e) Withdrawals without payment of tax.

(1) Liability for tax.

Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant without payment of tax, as provided in section 5214 (a) (4), (5), (6), (7), or (8), shall be liable for the internal revenue tax on such distilled spirits, from the time of such withdrawal; and all persons liable for the tax on such distilled spirits under subsection (a) or (b), or under any

similar prior provisions of internal revenue law, shall, at the time of such withdrawal, be relieved of any such liability on the distilled spirits so withdrawn if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.

(2) Relief from liability.

All persons liable for the tax on distilled spirits under paragraph (1) of this subsection, or under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of any such liability at the time, as the case may be, the distilled spirits are exported, deposited in a foreign-trade zone, used in the production of wine, deposited in customs manufacturing bonded warehouses, or laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, as provided by law.

(f) Cross references.

(1) For provisions conditioning warehousing bonds on the payment of the tax, see section 5173 (c).

(2) For provisions relating to transfer of tax liability to redistiller in case of redistillation, see section 5223.

(3) For liability for tax on denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001 (a) (6) and (7).

(4) For liability for tax on distilled spirits withdrawn free of tax, see section 5001 (a) (5).

(5) For liability of wine producer for unlawfully using wine spirits withdrawn for the production of wine, see section 5391.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1318.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5005, act Aug. 16, 1954, ch. 736, 68A Stat. 599.

Provisions similar to those comprising subsec. (c) (1), (2) of this section were contained in former sections 5194(f), 5217(a) and 5232(a), act Aug. 16, 1954, ch. 736, 68A Stat. 634, 641, 643, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Application of part to Puerto Rico and Virgin Islands, see section 5314 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5004 of this title.

§ 5006. Determination of tax.

(a) Requirements.

(1) In general.

Except as otherwise provided in this section, the internal revenue tax on distilled spirits shall be determined when the spirits are withdrawn from bond. Such tax shall be determined by such means as the Secretary or his delegate shall by regulations prescribe, and with the use of such devices and apparatus (including but not limited to storage, gauging, and bottling tanks and pipelines) as the Secretary or his delegate may require. The tax on distilled spirits withdrawn from the bonded premises of a distilled spirits plant shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises, under such regulations as the Secretary or his delegate shall prescribe.

(2) Distilled spirits entered for storage.

(A) Bonding period limitation.

Except as provided in subparagraph (B), the tax on distilled spirits entered for deposit in storage in internal revenue bond shall be determined within 20 years from the date of original entry for deposit in such storage.

(B) Exceptions.

Subparagraph (A) and section 5173 (c) (1) (A) shall not apply in the case of—

(i) distilled spirits of 190 degrees or more of proof;

(ii) denatured distilled spirits; or

(iii) distilled spirits which on July 26, 1936, were 8 years of age or older and which were in bonded warehouses on that date.

(C) Distilled spirits mingled in internal revenue bond.

In applying subparagraph (A) and section 5173 (c) (1) (A) to distilled spirits entered for deposit in storage on different dates and lawfully mingled in internal revenue bond, the Secretary or his delegate shall, by regulations, provide for the application of the 20-year period to such spirits in such manner that no more spirits will remain in bond than would have been the case had such mingling not occurred.

(3) Distilled spirits not accounted for.

If the Secretary or his delegate finds that the distiller has not accounted for all the distilled spirits produced by him, he shall, from all the evidence he can obtain, determine what quality of distilled spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of tax imposed by law for every proof gallon.

(b) Taxable loss.

(1) On original quantity.

Where there is evidence satisfactory to the Secretary or his delegate that there has been any loss of distilled spirits from any cask or other package deposited in storage in internal revenue bond, other than a loss which by reason of section 5008 (a) is not taxable, the Secretary or his delegate may require the withdrawal from bonded premises of such distilled spirits, and direct the officer designated by him to collect the tax accrued on the original quantity of distilled spirits entered for deposit in storage in internal revenue bond in such cask or package, nothwithstanding that the time specified in any bond given for the withdrawal of the spirits entered in storage in such cask or package has not expired, except that, under regulations prescribed by the Secretary or his delegate, when the extent of any loss from causes other than theft or unauthorized voluntary destruction

can be established by the proprietor to the satisfaction of the Secretary or his delegate, an allowance of the tax on the loss so established may be credited against the tax on the original quantity. If such tax is not paid on demand it shall be assessed and collected as other taxes are assessed and collected.

(2) Alternative method.

Where there is evidence satisfactory to the Secretary or his delegate that there has been access, other than is authorized by law, to the contents of casks or packages stored on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the Secretary or his delegate (in lieu of requiring the casks or packages to which such access has been had to be withdrawn and tax paid on the original quantity of distilled spirits entered for deposit in storage in internal revenue bond in such casks or packages as provided in paragraph (1)) may assess an amount equal to the tax on 5 proof gallons of distilled spirits at the prevailing rate on each of the total number of such casks or packages as determined by him.

(3) Application of subsection.

The provisions of this subsection shall apply to distilled spirits which are filled into casks or packages, as authorized by law, after entry and deposit in storage in internal revenue bond, whether by recasking, filling from storage tanks, consolidation of packages, or otherwise; and the quantity filled into such casks or packages shall be deemed to be the original quantity for the purpose of this subsection, in the case of loss from such casks or packages.

(c) Distilled spirits not bonded.

(1) General.

The tax on any distilled spirits, removed from the place where they were distilled and (except as otherwise provided by law) not deposited in storage on bonded premises of a distilled spirits plant, shall, at any time within the period of limitation provided in section 6501, when knowledge of such fact is obtained by the Secretary or his delegate, be assessed on the distiller of such distilled spirits (or other person liable for the tax) and payment of such tax immediately demanded and, on the neglect or refusal of payment, the Secretary or his delegate shall proceed to collect the same by distraint. This paragraph shall not exclude any other remedy or proceeding provided by law.

(2) Production at other than qualified plants.

Except as otherwise provided by law, the tax on any distilled spirits produced in the United States at any place other than a qualified distilled spirits plant shall be due and payable immediately upon production.

(d) Unlawfully imported distilled spirits.

Distilled spirits smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

(e) Cross reference.

For provisions relating to removal of distilled spirits from bonded premises on determination of tax, see section 5213.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1320.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5006, act Aug. 16, 1954, ch. 736, 68A Stat. 599.

Provisions similar to those comprising subsecs. (a) (2) (A), (3) of this section were contained in former sections 5007(e)(1) and 5232(a), act Aug. 16, 1954, ch. 736, 68A Stat. 600, 643, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5008, 5173, 5205 of this title.

§ 5007. Collection of tax on distilled spirits.

(a) Tax on distilled spirits removed from bonded premises.

(1) General.

The tax on domestic distilled spirits and on distilled spirits removed from customs custody under section 5232 shall be paid in accordance with section 5061.

(2) Distilled spirits withdrawn to bottling premises under withdrawal bond.

If distilled spirits are withdrawn from bonded premises under section 5213 and a withdrawal bond is posted under section 5174 (a) (2), the Secretary or his delegate shall, in fixing the time for filing the return and the time for payment of the tax under section 5061 (a), make allowance for the period of transportation of the distilled spirits from the bonded premises to the bottling premises, not to exceed such maximum periods as he may by regulations prescribe.

(b) Collection of tax on imported distilled spirits and perfumes containing distilled spirits.

(1) Distilled spirits.

The internal revenue tax imposed by section 5001 (a) (1) and (2) upon imported distilled spirits shall be collected by the Secretary or his delegate and deposited as internal revenue collections, under such regulations as the Secretary or his delegate may prescribe. Such tax shall be in addition to any customs duty imposed under the Tariff Act of 1930 (46 Stat. 590; 19 U. S. C., chapter 4), or any subsequent act. Section 5688 shall be applicable to the disposition of imported spirits.

(2) Perfumes containing distilled spirits.

The internal revenue tax imposed by section 5001 (a) (3) upon imported perfumes containing distilled spirits shall be collected by the Secretary or his delegate and deposited as internal revenue collections, under such regulations as the Secretary or his delegate may prescribe.

(c) Cross references.

(1) For authority of the Secretary or his delegate to make determinations and assessments of internal revenue taxes and penalties, see section 6201 (a).

(2) For authority to assess tax on distilled spirits not bonded, see section 5006 (c).

(3) For provisions relating to payment of tax, under certain conditions, on distilled spirits withdrawn free of tax, denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001(a) (5), (6), and (7).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1322.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5007, act Aug. 16, 1954, ch. 736, 68A Stat. 600.

Former section 5007(c) related to "payment of tax on alcoholic compounds from Puerto Rico and Virgin Islands". See section 7652 of this title.

Former section 5007(e)(1) related to "assessment for deficiencies in production and excess of materials used" and "requirement". See sections 5004(b)(1) and 5006 (a)(3) of this title.

Former section 5007(e)(2) related to "relief from assessment for deficiencies in production and excess of materials used" and is obsolete.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits.

(a) Distilled spirits lost or destroyed in bond.

(1) Extent of loss allowance.

No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(A) Theft.

In the case of loss by theft, unless the Secretary or his delegate finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them; and

(B) Voluntary destruction.

In the case of voluntary destruction, unless such destruction is carried out as provided in subsection (b) (1).

(2) Proof of loss.

In any case in which distilled spirits are lost or destroyed, whether by theft or otherwise, the Secretary or his delegate may require the proprietor of the distilled spirits plant or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the satisfaction of the Secretary or his delegate that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(3) Refund of tax.

In any case where the tax would not be collectible by virtue of paragraph (1), but such tax has been paid, the Secretary or his delegate shall refund such tax.

(4) Limitations.

Except as provided in paragraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006 (a)). The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(5) Applicability.

The provisions of this subsection shall extend to and apply in respect of distilled spirits lost after the tax was determined and prior to the completion of the physical removal of the distilled spirits from bonded premises, but shall not be applicable where the loss occurred after the time prescribed for the withdrawal of the distilled spirits from bonded premises under section 5006 (a) (2) unless the loss occurred in the course of physical removal of the spirits immediately subsequent to such time. This paragraph shall not be applicable to any loss of distilled spirits for which abatement, remission, credit, or refund of tax is allowable under the provisions of subsection (c), or would be allowable except for the limitations established under subsection (c) (3).

(b) Voluntary destruction.

(1) Distilled spirits in bond.

The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision, and under such regulations, as the Secretary or his delegate may prescribe.

(2) Distilled spirits withdrawn for rectification or bottling.

Any distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling may, before removal from the bottling premises of the distilled spirits plant to which removed from bond or after return to such bottling premises, on application to the Secretary or his delegate, be destroyed after such gauge and under such supervision as the Secretary or his delegate may by regulations prescribe. If a claim is filed within 6 months from the date of such destruction, the Secretary or his delegate shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the taxes imposed under section 5001(a)(1) or under subpart B of this part on the spirits so destroyed, to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax.

(c) Loss of distilled spirits withdrawn from bond for rectification or bottling.

(1) General.

Whenever any distilled spirits withdrawn from bond on payment or determination of tax for

rectification or bottling are lost before removal from the premises of the distilled spirits plant to which removed from bond, the Secretary or his delegate shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the tax imposed on such spirits under section 5001(a)(1) to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax for removal to his bottling premises, if it is established to the satisfaction of the Secretary or his delegate that—

(A) such loss occurred (i) by reason of accident while being removed from bond to bottling premises, or (ii) by reason of flood, fire, or other disaster, or (iii) by reason of accident while on the distilled spirits plant premises and amounts to 10 proof gallons or more in respect of any one accident; or

(B) such loss occurred (i) before the completion of the bottling and casing or other packaging of such spirits for removal from the bottling premises and (ii) by reason of, and was incident to, authorized rectifying, packaging, bottling, or casing operations (including losses by leakage or evaporation occurring during removal from bond to the bottling premises and during storage on bottling premises pending rectification or bottling).

(2) Limitation.

No abatement, remission, credit, or refund of taxes shall be made under this subsection—

(A) in any case where the claimant is indemnified or recompensed for the tax;

(B) in excess of the amount allowable under paragraph (3), in case of losses referred to in paragraph (1) (B); or

(C) unless a claim is filed, under such regulations as the Secretary or his delegate may prescribe, by the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax, (i) within 6 months from the date of the loss in case of losses referred to in paragraph (1) (A), or (ii) within 6 months from the close of the fiscal year in which the loss occurred in case of losses referred to in paragraph (1) (B).

The quantity of distilled spirits lost within the meaning of subparagraph (B) of paragraph (1) shall be determined at such times and by such means or methods as the Secretary or his delegate shall by regulations prescribe.

(3) Maximum loss allowances.

(A) If all the alcoholic ingredients used in distilled spirits products during the fiscal year were distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax, for removal to such premises, the loss allowable in such fiscal year under paragraph (1) (B) shall not be greater than the excess of losses over gains, and shall not exceed the maximum amount of loss allowable as shown in the following schedule:

If total completions during the fiscal year in proof gallons are:	The maximum allowable loss in proof gallons is:
Not over 24,000	2 percent of completions.
Over 24,000 but not over 120,000.	480 proof gallons plus 1% of excess over 24,000.
Over 120,000 but not over 600,000.	1,440 proof gallons plus .6% of excess over 120,000.
Over 600,000 but not over 2,400,000.	4,320 proof gallons plus .3% of excess over 600,000.
Over 2,400,000	9,720 proof gallons plus .2% of excess over 2,400,000.

The Secretary or his delegate may, by regulations, reduce the amount of the maximum allowable losses in the preceding schedule when he finds that such adjustment is necessary for protection of the revenue, or increase the amount of such maximum allowable losses if he finds that such may be done without undue jeopardy to the revenue and is necessary to more nearly provide for the actual losses described in paragraph (1) (B). However, in no event shall allowable losses exceed 2 percent of total completions.

(B) If alcoholic ingredients other than distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax, for removal to such premises, were used in distilled spirits products during the fiscal year, the loss allowable under paragraph (1) (B) shall be determined by first obtaining the amount that would have been allowable if all of the ingredients had been distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax, for removal to such premises, and thereafter reducing this amount by an amount proportional to the percentage which the total proof gallons of such alcoholic ingredients bears to the total proof gallons of all alcoholic ingredients used in such distilled spirits products.

(C) As used in this subsection, the term "completions" means the distilled spirits products bottled and cased or otherwise packaged or placed in approved containers for removal from the bottling premises, and the term "fiscal year" means the period from July 1 of a calendar year through June 30 of the following year.

(D) The Secretary or his delegate may, under such regulations and conditions as he may prescribe, make tentative allowances for losses provided for in paragraph (1) (B), for fractional parts of a year, which allowances shall be computed by the procedures prescribed in paragraphs (3) (A) and (3) (B), except that the numerical values for the completions and for the maximum allowable losses in proof gallons in the schedule in paragraph (3) (A) shall be divided by the number of such fractional parts within the fiscal year.

(E) The loss allowable to any proprietor qualifying for abatement, remission, credit, or refund of taxes under paragraph (1) (B) shall not exceed the quantity which would be allowed by a tentative estimates schedule constructed

in accordance with paragraph (3) (D) for the portion of the fiscal year that such proprietor was qualified to operate the distilled spirits plant.

(F) Notwithstanding the limitations contained in the schedule in paragraph (3) (A) the Secretary or his delegate may, under such regulations as he may prescribe, in addition to the losses allowable under paragraphs (1) (A) and (1) (B), allow actual determined losses incurred in the manufacture of gin and vodka where produced in closed systems in a manner similar to that authorized on bonded premises.

(4) Eligible proprietors.

(A) The term "proprietor" as used in this subsection and in subsection (b) (2) shall, in the case of a corporation, include all affiliated or subsidiary corporations who are qualified during the fiscal year for successive operation of the same bottling premises and who make joint application to the Secretary or his delegate to be treated as one proprietor for the purposes of this subsection and subsection (b) (2) and who comply with such conditions as the Secretary or his delegate may by regulations prescribe.

(B) For the purposes of this subsection and subsection (b) (2) a proprietor of bottling premises of a distilled spirits plant who makes application to the Secretary or his delegate for the withdrawal of distilled spirits from bond on payment of tax for removal to such bottling premises shall be deemed to be the proprietor who withdrew distilled spirits on payment of tax, and the distilled spirits withdrawn pursuant to such application shall be deemed to have been withdrawn by such proprietor on payment of tax, whether or not he was the person who paid the tax.

(5) Distilled spirits returned to bottling premises.

Distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling which are removed from bottling premises and subsequently returned to the premises from which removed may be dumped and gauged after such return under such regulations as the Secretary or his delegate may prescribe, and subsequent to such gauge shall be eligible for allowance of loss under this subsection as though they had not been removed from such bottling premises.

(d) Distilled spirits returned to bonded premises.

(1) Allowance of tax.

Whenever any distilled spirits withdrawn from bonded premises, on or after July 1, 1959, on payment or determination of tax are returned under section 5215 to the bonded premises of a distilled spirits plant, the Secretary or his delegate shall abate, remit, or (without interest) credit or refund the tax imposed under section 5001 (a) (1) on the spirits so returned.

(2) Limitation.

No allowance under paragraph (1) shall be made unless a claim is filed, under such regulations as the Secretary or his delegate may prescribe, by the proprietor of the distilled spirits plant to which the distilled spirits are returned, within 6 months of the date of return.

(e) Samples for use by the United States.

The Secretary or his delegate shall, under such regulations as he may prescribe, without interest, credit or refund to the proprietor the tax on any samples of distilled spirits removed from the premises of a distilled spirits plant for analysis or testing by the United States.

(f) Distilled spirits withdrawn without payment of tax.

The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to—

(1) the port of export, in case of withdrawal under section 5214 (a) (4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214 (a) (6);

(3) the vessel or aircraft, in case of withdrawal under section 5214 (a) (7); and

(4) the foreign-trade zone, in case of withdrawal under section 5214 (a) (8).

(g) Other laws applicable.

All provisions of law, including penalties, applicable in respect of the internal revenue tax on distilled spirits, shall, insofar as applicable and not inconsistent with subsections (b) (2), (c), and (d), be applicable to the credits or refunds provided for under such subsections to the same extent as if such credits or refunds constituted credits or refunds of such tax.

(h) Cross reference.

For provisions relating to allowance for loss in case of wine spirits withdrawn for use in wine production, see section 5373 (b) (3).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1323, and amended Pub. L. 89–44, title VIII, § 805(a), June 21, 1965, 79 Stat. 160; Pub. L. 90–630, § 1, Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91–659, §§ 1, 2(a), (b), Jan. 8, 1971, 84 Stat. 1964.)

CODIFICATION

A prior section 5008, act Aug. 16, 1954, ch. 736, 68A Stat. 602, related to "strip stamps for distilled spirits". See sections 5205 (a), (g) and 5604(a) (1) of this title.

Provisions similar to those comprising subsecs. (a) (1)—(4) and (f) (1), (2) of this section were contained in former sections 5011(a) (1—4), 5023, 5247(e) and 5522 (b), act Aug. 16, 1954, ch. 736, 68A Stat. 604, 606, 648, 679, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1971—Subsec. (b) (2). Pub. L. 91–659, § 2(a), eliminated the condition that the distilled spirits can be destroyed only before bottling and permitted destruction after completion of bottling so long as the distilled spirits are on the bottling premises and added taxes imposed under subpart B of this Part as additional taxes which can be claimed for abatement, remission, credit or refund.

Subsec. (c) (1) (A). Pub. L. 91–659, § 1, added cl. (iii).

Subsec. (c) (5). Pub. L. 91–659, § 2(b), permits distilled spirits returned to bottling premises to be treated for purposes of the various loss provisions as though they had not been removed from the bottling premises.

1968—Subsec. (c)(1). Pub. L. 90–630 added provisions allowing abatement, remission, and refund if the casualty loss occurs after completion of the packaging but before the spirits have been removed from the premises of the distilled spirits plant to which the spirits were removed from bond.

1965—Subsec. (d)(2). Pub. L. 89–44 struck out final clause prohibiting the allowance of a claim in respect to any distilled spirits withdrawn from bonded premises of a distilled spirits plant more than 6 months prior to the date of such return.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on the first day of the first calendar month which begins more than 90 days after January 8, 1971, see, section 6 of Pub. L. 91–659, set out under section 5066 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of Pub. L. 90–630 provided that:

"(a) For purposes of subsection (b), the effective date of this Act is the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 22, 1968].

"(b) The amendments made by the first section of this Act [amending this section] shall apply only to losses sustained on or after such effective date. The amendments made by section 2 [amending section 5062(b) of this title and section 1313(d) of Title 19] shall apply only to articles exported on or after such effective date. The amendments made by section 3 [amending section 5232 of this title and section 1202 of Title 19, sched. 1, pt. 12, headnote 3] shall apply only to withdrawals from customs custody on or after such effective date."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 805(g)(1) of Pub. L. 89–44 provided that: "The amendments made by subsections (a), (c), (e), and (f)(6) [to this section and sections 5062(c)(1), 5215(a), and 5608(b) of this title] shall take effect on July 1, 1965."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5005, 5006, 5373 of this title.

§ 5009. Drawback.

(a) Drawback on exportation of distilled spirits in casks or packages.

On the exportation of distilled spirits in casks or packages containing not less than 20 wine gallons each, filled in internal revenue bond, drawback of the internal revenue tax paid or determined may be allowed, under such regulations, and on the filing of such bonds, reports, returns, and applications, and the keeping of such records, as the Secretary or his delegate may prescribe. The drawback shall be paid or credited in an amount equal to such tax on the quantity of distilled spirits exported, as ascertained prior to exportation by such gauge as the Secretary or his delegate may by regulations prescribe. The drawback shall be paid or credited only after all requirements of law and regulations have been complied with and on the filing, with the Secretary or his delegate, of a proper claim and evidence satisfactory to the Secretary or his delegate that the tax on such distilled spirits has been paid or determined and that the distilled spirits have been exported.

(b) Cross references.

(1) For provisions relating to drawback on distilled spirits packaged or bottled especially for export, see section 5062 (b).

(2) For provisions relating to drawback on designated nonbeverage products, see sections 5131 through 5134.

(3) For drawback on distilled spirits used in flavoring extracts or medicinal or toilet preparations exported, see section 313 (d) of the Tariff Act of 1930 (46 Stat. 694; 19 U. S. C. 1313).

(4) For drawback on articles removed to foreign-trade zones, see 19 U. S. C. 81c.

(5) For drawback on shipments from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa, see section 7653 (c).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1327.)

CODIFICATION

A prior section 5009, act Aug. 16, 1954, ch. 736, 68A Stat. 603, related to "stamps for distilled spirits withdrawn for exportation". See sections 5205 (c)(1), (f), (i)(4) and 5206(c) of this title.

Provisions similar to those comprising this section were contained in former section 5012, act Aug. 16, 1954, ch. 736, 68A Stat. 605, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART B.—RECTIFICATION

Sec.
5021. Imposition and rate of tax.
5022. Tax on cordials and liqueurs containing wine.
5023. Tax on blending of beverage rums or brandies.
5024. Definitions.
5025. Exemption from rectification tax.
5026. Determination and collection of rectification tax.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5021—5028.

Section 5027, act Aug. 16, 1954, ch. 736, 68A Stat. 609, related to "Stamp provisions applicable to rectifiers". See sections 5061 and 5205 of this title.

Section 5028, act Aug. 16, 1954, ch. 736, 68A Stat. 609, was a cross reference to penalty provisions applicable to this subpart.

§ 5021. Imposition and rate of tax.

In addition to the tax imposed by this chapter on distilled spirits and wines, there is hereby imposed (except as otherwise provided in this chapter) a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines rectified, purified, or refined in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier (as defined in section 5082). Spirits or wines shall not twice be subjected to tax under this section because of separate acts of rectification, pursuant to approved formula, between the time such spirits or wines are received on the bottling premises and the time they are removed therefrom. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1328.)

CODIFICATION

Provisions similar to those comprising the first sentence of this section were contained in a prior section 5021(a), act Aug. 16, 1954, ch. 736, 68A Stat. 606.

Former section 5021(b) related to "change in proof or volume" and has been omitted from the Code.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Refund and drawback in case of exportation, see section 5062 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5022, 5025, 5026, 5173, 5363, 5391 of this title.

§ 5022. Tax on cordials and liqueurs containing wine.

On all liqueurs, cordials, or similar compounds produced in the United States and not produced for sale as wine, wine specialties, or cocktails, which contain more than 2½ percent by volume of wine of an alcoholic content in excess of 14 percent by volume, there shall be paid, in lieu of the tax imposed by section 5021, a tax at the rate of $1.92 per wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon. The last sentence of section 5021 shall not be construed to limit the imposition of tax under this section. All other provisions of law applicable to rectification shall apply to the products subject to tax under this section. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1328, and amended Pub. L. 86–75, § 3(a)(4), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, § 202(a)(6), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, § 3(a)(6), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 3(a)(5), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, § 3(a)(6), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, § 2 (a)(6), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, § 501(b), June 21, 1965, 79 Stat. 150.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5022, act Aug. 16, 1954, ch. 736, 68A Stat. 606, as amended by acts Mar. 30, 1955, ch. 18, § 3(a)(6), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(6), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 3(a)(4), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 3(a)(4), 72 Stat. 259.

AMENDMENTS

1965—Pub. L. 89–44 struck out, at the end of the first sentence, "until July 1, 1965, and on or after July 1, 1965, at the rate of $1.60 per wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon".

1964—Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in two instances.

1963—Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in two instances.

1962—Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in two instances.

1961—Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in two instances.

1960—Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in two instances.

1959—Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" in two places.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 501 of Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5026, 5173 of this title.

§ 5023. Tax on blending of beverage rums or brandies.

In the case of rums or fruit brandies mixed or blended pursuant to section 5234 (c), in addition to the tax imposed by this chapter on the production of distilled spirits, there shall, except in the case of such rums or brandies which have been aged in wood at least 2 years at the time of their first blending or mixing, be paid a tax of 30 cents as to each proof gallon (and a proportionate tax at a like rate on all fractional parts of such proof gallon) of rums or brandies so mixed or blended and withdrawn from bonded premises, except when such rums or brandies are withdrawn under section 5214 or section 7510. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1328.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5023, act Aug. 16, 1954, ch. 736, 68A Stat. 606.

Former section 5023 also related to the blending of beverage brandies, exemption from rectification tax and refund of taxes for loss of blended brandies. See sections 5008(a), 5025(e)(4) and 5234(c) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5026 of this title.

§ 5024. Definitions.

(1) For definition of "rectifier", see section 5082.

(2) For definition of "products of rectification" as "distilled spirits" for certain purposes, see section 5002 (a)(6)(B).

(3) For other definitions relating to distilled spirits, see section 5002.

(4) For definitions of general application to this title, see chapter 79.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1328.)

CODIFICATION

Provisions similar to those comprising subds. (1) and (2) of this section were contained in a prior section 5024, act Aug. 16, 1954, ch. 736, 68A Stat. 607.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5025. Exemption from rectification tax.

(a) Absolute alcohol.

The process of extraction of water from high-proof distilled spirits for the production of absolute alcohol shall not be deemed to be rectification within the meaning of sections 5081 and 5082, and absolute alcohol shall not be subject to the tax imposed by section 5021, but the production of such absolute alcohol shall be under such regulations as the Secretary or his delegate may prescribe.

(b) Production of gin and vodka.

The tax imposed by section 5021 shall not apply to gin produced on bottling premises of distilled spirits plants by the redistillation of a pure spirit over juniper berries and other natural aromatics or to vodka produced on bottling premises of distilled spirits plants from pure spirits in the manner authorized on bonded premises of distilled spirits plants.

(c) Refining spirits in course of original distillation.

The purifying or refining of distilled spirits, in the course of original and continuous distillation or other original and continuous processing, through any material which will not remain incorporated with such spirits when the production thereof is complete shall not be held to be rectification within the meaning of sections 5021, 5081, or 5082, nor shall these sections be held to prohibit such purifying or refining.

(d) Redistillation of distilled spirits on bonded premises.

Sections 5021, 5081, and 5082 shall not apply to the redistillation of distilled spirits under section 5223.

(e) Mingling of distilled spirits.

Sections 5021, 5081, and 5082 shall not apply to—

(1) the mingling on bonded premises of spirits distilled at 190 degrees or more of proof; or

(2) the mingling of distilled spirits on bonded premises, or in the course of removal therefrom, for redistillation, storage, or any other purpose, incident to the requirements of the national defense; or

(3) the mingling in bulk gauging tanks on bonded premises of heterogeneous distilled spirits for immediate removal to bottling premises, exclusively for use in taxable rectification, or for blending under subsection (f), or for other mingling or treatment under subsection (k); or

(4) the blending on bonded premises of beverage brandies or rums, under the provisions of section 5234 (c); or

(5) the mingling of homogeneous distilled spirits; or

(6) the mingling on bonded premises of distilled spirits for immediate redistillation, immediate denaturation, or immediate removal from such premises free of tax under section 5214 (a) (1), (2), or (3), or section 7510; or

(7) the mingling on bonded premises of distilled spirits for further storage in bond as authorized by section 5234 (a) (2).

(f) Blending straight whiskies, rums, fruit brandies, or wines.

The taxes imposed by this subpart shall not attach—

(1) to blends made exclusively of two or more pure straight whiskies, differing as to type, aged in wood for a period not less than 4 years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below 80 proof; or

(2) to blends made exclusively of two or more pure fruit brandies, differing as to type, distilled from the same kind of fruit, aged in wood for a period not less than 2 years and without the addition of coloring or flavoring matter (other than caramel) or any other substance than pure water and if not reduced below 80 proof; or

(3) to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards; or

(4) to blends made exclusively of two or more rums, differing as to type, aged in wood for a period not less than 2 years and without the addition of coloring or flavoring matter (other than caramel) or any other substance than pure water and if not reduced below 80 proof.

Such blended whiskies, blended rums, and blended fruit brandies shall be exempt from tax under this subpart only when blended in such tanks and under such conditions and supervision as the Secretary or his delegate may by regulations prescribe.

(g) Addition of caramel to brandy or rum.

The addition of caramel to commercial brandy or rum on the bonded premises of a distilled spirits plant, pursuant to regulations prescribed by the Secretary or his delegate, shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082.

(h) Apothecaries.

The taxes imposed by this subpart and by part II of this subchapter shall not be imposed on apothecaries as to wines or distilled spirits which they use exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

(i) Manufacturer recovering distilled spirits for reuse in products unfit for beverage purposes.

The taxes imposed by this subpart and by part II of this subchapter shall not be imposed on any manufacturer for recovering distilled spirits, on which the tax has been paid or determined, from dregs or marc of percolation or extraction, or from medicines, medicinal preparations, food products, flavors, or flavoring extracts, which do not meet the manufacturer's standards, if such recovered distilled spirits are used by such manufacturer in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for use for beverage purposes.

(j) Stabilization of distilled spirits.

The removal, on the premises of a distilled spirits plant, of extraneous insoluble materials from distilled spirits, and minor changes in the soluble color or soluble solids of distilled spirits, which occur solely as a result of such filtrations or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the completed product) at the time of, or preparatory to, the bottling of distilled spirits, as may be necessary or desirable to produce a stable product, shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082, if such changes do not exceed maximum limitations which the Secretary or his delegate may by regulations provide.

(k) Other mingling or treatment of distilled spirits.

The tax imposed by section 5021 shall not apply to the mingling of distilled spirits of the same class and type, or to the treatment of distilled spirits in such a manner as not to change the class and type of the distilled spirits, on bottling premises of a distilled spirits plant under such regulations as the Secretary or his delegate may prescribe.

(*l*) Addition of tracer elements.

The authorized addition of tracer elements to distilled spirits under provisions of section 5201 (d) shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082.

(m) Cross references.

(1) For provisions exempting distilled spirits and wines rectified in customs manufacturing bonded warehouses, see section 5523.

(2) For provisions exempting winemakers in the use or treatment of wines or wine spirits, see section 5391.

(3) For provisions exempting the manufacture of volatile fruit-flavor concentrates, see section 5511.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1328, and amended Pub. L. 89–44, title VIII, § 805(b), (f)(2)–(5), June 21, 1965, 79 Stat. 161.)

CODIFICATION

Provisions similar to those comprising subsecs. (a)—(d), (f)—(l) and (*l*) of this section were contained in a prior section 5025, act Aug. 16, 1954, ch. 736, 68A Stat. 607.

Provisions similar to those comprising subsec. (e)(1), (2), (4) of this section were contained in former sections 5023, 5217(a) and 5306, act Aug. 16, 1954, ch. 736, 68A Stat. 606, 641, 657, prior to the general revision of this chapter by Pub. L. 85–859.

1965—Subsec. (e)(3). Pub. L. 89–44, § 805(f)(2), struck out "or in rectification under subsection (f); or" and inserted in lieu thereof "or for blending under subsection (f), or for other mingling or treatment under subsection (k); or".

Subsec. (f)(1). Pub. L. 89–44, § 805(f)(3), inserted ", differing as to type," after "whiskies".

Subsec. (f)(2). Pub. L. 89–44, § 805(f)(4), inserted ", differing as to type," after "brandies".

Subsec. (f)(4). Pub. L. 89–44, § 805(f)(5), inserted ", differing as to type," after "rums".

Subsec. (k). Pub. L. 89–44, § 805(b), added subsec. (k). Former subsec. (k) was redesignated (*l*).

Subsecs. (*l*) and (m). Pub. L. 89–44, § 805(b), redesignated subsec. (k) as (*l*) and (*l*) as (m), respectively.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 805(g)(2) of Pub. L. 89–44 provided that: "The amendments made by subsections (b), (d), and (f) (other than paragraph (6)) [to this section and sections 5004(c), 5083(14), (15), 5223(c), (d) and (e) and 5234(a)(1)(B) of this title], shall take effect on October 1, 1965."

EFFECTIVE DATE

Section as effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

EXCEPTION TO EFFECTIVE DATE

Section 210(a)(2) of Pub. L. 85–859 provided that: "Provisions having the effect of—

"(A) section 5025 (e) (7) [section 5234 (a) (2) of this title] (exemption from laws pertaining to rectification), and

"(B) section 5234 (a) (2) (permitting the mingling of distilled spirits for further storage in bond)

of the Internal Revenue Code of 1954 (as such sections are included in chapter 51 of such Code as amended by section 201 of this Act) [this chapter] shall be deemed to be included in the Internal Revenue Code of 1954, effective on the day following the date of the enactment of this Act [September 2, 1958]. In applying the provisions of such sections 5025 (e) (7) and 5234 (a) (2) during the period beginning on the day following the date of the enactment of this Act [September 2, 1958] and ending at the close of June 30, 1959, references to bonded premises shall be treated as references to internal revenue bonded warehouses."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5223, 5234 of this title.

§ 5026. Determination and collection of rectification tax.

(a) Determination of tax.

(1) General.

The taxes imposed by sections 5021 and 5022 shall be determined upon the completion of the process of rectification by such means as the Secretary or his delegate shall by regulations prescribe and with the use of such devices and apparatus (including but not limited to storage, gauging, and bottling tanks, and pipelines) as the Secretary or his delegate may by regulations prescribe.

(2) Unauthorized rectification.

In the case of taxable rectification on premises other than premises on which rectification is authorized, the tax imposed by section 5021 or 5022 shall be due and payable at the time of such rectification.

(b) Payment of tax.

Except as provided in subsection (a) (2), the taxes imposed by sections 5021, 5022, and 5023, shall be paid in accordance with section 5061. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1330.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5026, act Aug. 16, 1954, ch. 736, 68A Stat. 608.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART C.—WINES

Sec.
5041. Imposition and rate of tax.
5042. Exemption from tax.
5043. Collection of taxes on wines.
5044. Refund of tax on unmerchantable wine.
5045. Cross references.

§ 5041. Imposition and rate of tax.

(a) Imposition.

There is hereby imposed on all wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in bond in, produced in, or imported into, the United States, taxes at the rates shown in subsection (b), such taxes to be determined as of the time of removal for consumption or sale. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and taxed accordingly. Still wines shall include those wines containing not more than 0.277 gram of carbon dioxide per hundred milliliters of wine; except that the Secretary or his delegate may by regulations prescribe such tolerances to this maximum limitation as may be reasonably necessary in good commercial practice.

(b) Rates of tax.

(1) On still wines containing not more than 14 percent of alcohol by volume, 17 cents per wine gallon;

(2) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, 67 cents per wine gallon;

(3) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, $2.25 per wine gallon;

(4) On champagne and other sparkling wines, $3.40 per wine gallon; and

(5) On artificially carbonated wines, $2.40 per wine gallon.

(c) Wine gallon.

For the purpose of this chapter, the term "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon).

(d) Illegally produced wine.

Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case

of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1331, and amended Pub. L. 86–75, § 3(a)(5), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, § 202(a)(7), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, § 3(a)(7), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 3(a)(6), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, § 3(a)(7), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, § 2(a)(7), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, § 501(c), title VIII, § 806(a), June 21, 1965, 79 Stat. 150, 162.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5041, act Aug. 16, 1954, ch. 736, 68A Stat. 609, as amended by acts Mar. 30, 1955, ch. 18, § 3(a)(7), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(7), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 3(a)(5), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 3(a)(5), 72 Stat. 259.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44, § 806(a), struck out "0.256" in the last sentence and inserted in lieu thereof "0.277".

Subsec. (b). Pub. L. 89–44, § 501(c) (1)—(5), struck out provisions at the end of each par. setting out a specified reduced rate to be applied on and after July 1, 1965.

1964—Subsec. (b). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in five instances.

1963—Subsec. (b). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in five instances.

1962—Subsec. (b). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in five instances.

1961—Subsec. (b). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in five instances.

1960—Subsec. (b). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in five places.

1959—Subsec. (b). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" in five places.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b) by section 501 of Pub. L. 89–44, applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

Section 806(d)(1) of Pub. L. 89–44 provided that: "The amendment made by subsection (a) [to this section] shall take effect on July 1, 1965."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Loss or destruction of wine not taxable under this section, see section 5370 of this title.

Penalty for failure to pay tax imposed on wine, see section 5661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5044 of this title.

§ 5042. Exemption from tax.

(a) Tax-free production.

(1) Cider.

Subject to regulations prescribed by the Secretary or his delegate, the noneffervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine, shall not be subject to tax as wine nor to the provisions of subchapter F.

(2) Family wine.

Subject to regulations prescribed by the Secretary or his delegate, the duly registered head of any family may, without payment of tax, produce for family use and not for sale an amount of wine not exceeding 200 gallons per annum.

(3) Experimental wine.

Subject to regulations prescribed by the Secretary or his delegate, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, and store wine, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, and may receive such wine spirits without payment of tax as may be necessary for such production.

(b) Cross references.

(1) For provisions relating to exemption of tax on losses of wine (including losses by theft or authorized destruction), see section 5370.

(2) For provisions exempting from tax samples of wine, see section 5372.

(3) For provisions authorizing withdrawals of wine free of tax or without payment of tax, see section 5362.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1331.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5042, act Aug. 16, 1954, ch. 736, 688A Stat. 610.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5041, 5222, 5351 of this title.

§ 5043. Collection of taxes on wines.

(a) Persons liable for payment.

The taxes on wine provided for in this subpart shall be paid—

(1) Bonded wine cellars.

In the case of wines removed from any bonded wine cellar, by the proprietor of such bonded wine cellar; except that—

(A) in the case of any transfer of wine in bond between bonded wine cellars as authorized under the provisions of section 5362 (b), the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor's premises, and the transferor shall thereupon be relieved of such liability; and

(B) in the case of any wine withdrawn by a person other than such proprietor without payment of tax as authorized under the provisions of section 5362 (c), the liability for payment of the tax shall become the liability of such person from the time of the removal of the wine from the bonded wine cellar, and such proprietor shall thereupon be relieved of such liability.

(2) Foreign wine.

In the case of foreign wines, by the importer thereof.

(3) Other wines.

Immediately, in the case of any wine produced, imported, received, removed, or possessed other-

wise than as authorized by law, by any person producing, importing, receiving, removing, or possessing such wine; and all such persons shall be jointly and severally liable for such tax with each other as well as with any proprietor, transferee, or importer who may be liable for the tax under this subsection.

(b) Payment of tax.

Except as provided in subsection (a) (3), the taxes on wines shall be paid in accordance with section 5061. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1332.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5043, act Aug. 16, 1954, ch. 736, 69A Stat. 610.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5044. Refund of tax on unmerchantable wine.

(a) General.

In the case of any wine produced in the United States and returned to bond as unmerchantable under section 5361—

(1) any tax imposed by section 5041 shall, if paid, be refunded or credited, without interest, to the proprietor of the bonded wine cellar to which such wine is delivered; or

(2) if any tax so imposed has not been paid, the person liable for the tax may be relieved of liability therefor,

under such regulations as the Secretary or his delegate may prescribe. Such regulations may provide that claim for refund or credit under paragraph (1), or relief from liability under paragraph (2), may be made only with respect to minimum quantities specified in such regulations. The burden of proof in all such cases shall be on the applicant.

(b) Date of filing.

No claim under subsection (a) shall be allowed unless filed within 6 months after the date of the return of the wine to bond.

(c) Status of wine returned to bond.

All provisions of this chapter applicable to wine in bond on the premises of a bonded wine cellar and to removals thereof shall be applicable to wine returned to bond under the provisions of this section. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1332.)

CODIFICATION

Provisions similar to those comprising subsec. (a) of this section were contained in a prior section 5044, act Aug. 16, 1954, ch. 736, 68A Stat. 611.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5045. Cross references.

For provisions relating to the establishment and operation of wineries, see subchapter F, and for penalties pertaining to wine, see subchapter J.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1333.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5045, act Aug. 16, 1954, ch. 736, 68A Stat. 611.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART D.—BEER

Sec.
5051. Imposition and rate of tax.
5052. Definitions.
5053. Exemptions.
5054. Determination and collection of tax on beer.
5055. Drawback of tax.
5056. Refund and credit of tax, or relief from liability.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5051—5057.

Section 5054 related to "Persons liable for tax".

Section 5055 related to "Determination and collection of tax on beer".

Section 5056 related to "Drawback of tax".

Section 5057, act Aug. 16, 1954, ch. 736, 68A Stat. 613, related to "Refund and credit of tax, or relief from liability". See sections 5054(b) and 5056 of this title.

§ 5051. Imposition and rate of tax.

(a) Rate of tax.

There is hereby imposed on all beer, brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States, a tax of $9 for every barrel containing not more than 31 gallons and at a like rate for any other quantity or for fractional parts of a barrel. Where the Secretary or his delegate finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(b) Assessment on materials used in production in case of fraud.

Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1333, and amended Pub. L. 86–75, § 3(a)(6), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, § 202(a)(8), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, § 3(a)(8), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 3(a)(7), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, § 3(a)(8), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, § 2(a)(8), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, § 501(d), June 21, 1965, 79 Stat. 150.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5051, act Aug. 16, 1954, ch. 736, 68A Stat. 611, as amended by acts Mar. 30, 1955, ch. 18, § 3(a)(8), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(8), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 3(a)(6), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 3(a)(6), 72 Stat. 259.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44 struck out sentence providing for the imposition on and after July 1, 1965, of a tax of $8 in lieu of the tax imposed by the section.

1964—Subsec. (a). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964."

1963—Subsec. (a). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963".

1962—Subsec. (a). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962."

1961—Subsec. (a). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961."

1960—Subsec. (a). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960."

1959—Subsec. (a). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by section 501 of Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Method of collecting tax, see section 5061 of this title.

Penalty and forfeiture for evasion of beer tax, see section 5671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5054, 5671 of this title.

§ 5052. Definitions.

(a) Beer.

For purposes of this chapter (except when used with reference to distilling or distilling material) the term beer means beer, ale, porter, stout, and other similar fermented beverages (including saké or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

(b) Gallon.

For purposes of this subpart, the term gallon means the liquid measure containing 231 cubic inches.

(c) Removed for consumption or sale.

Except as provided for in the case of removal of beer without payment of tax, the term "removed for consumption or sale", for the purposes of this subpart means—

(1) Sale of beer.

The sale and transfer of possession of beer for consumption at the brewery; or

(2) Removals.

Any removal of beer from the brewery.

(d) Brewer.

For definition of brewer, see section 5092.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1333, and amended Pub. L. 91–673, § 1(b), Jan. 12, 1971, 84 Stat. 2056.)

CODIFICATION

Provisions similar to those comprising subsecs. (a), (b) and (d) of this section were contained in a prior section 5052, act Aug. 16, 1954, ch. 736, 68A Stat. 612.

AMENDMENTS

1971—Subsec. (c)(2). Pub. L. 91–673 struck out the proviso that removal of beer shall not include beer returned to the brewery on the same day such beer is removed from the brewery.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5053. Exemptions.

(a) Removals for export.

Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary or his delegate may by regulations prescribe.

(b) Removals when unfit for beverage use.

When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under such regulations as the Secretary or his delegate may prescribe.

(c) Removals for laboratory analysis.

Beer may be removed from the brewery, without payment of tax, for laboratory analysis, subject to such limitations and under such regulations as the Secretary or his delegate may prescribe.

(d) Removals for research, development, or testing.

Under such conditions and regulations as the Secretary or his delegate may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.

(e) Removal as supplies for certain vessels and aircraft.

For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U. S. C. 1309).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1334, and amended Pub. L. 89–44, title VIII, § 807(a), June 21, 1965, 79 Stat. 164; Pub. L. 91–673, § 2, Jan. 12, 1971, 84 Stat. 2056.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5053, act Aug. 16, 1954, ch. 736, 68A Stat. 612.

AMENDMENTS

1971—Subsec. (d). Pub. L. 91–673 added subsec. (d), and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 91–673 redesignated former subsec. (d) as (e).

1965—Subsec. (a). Pub. L. 89–44 struck out "to a foreign country" following "export".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–44 effective July 1, 1965, see section 807(c) of Pub. L. 89–44, set out as a note under section 5002 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5054. Determination and collection of tax on beer.

(a) Time of determination.

(1) Beer produced in the United States.

Except as provided in paragraph (3), the tax imposed by section 5051 on beer produced in the United States shall be determined at the time it is removed for consumption or sale, and shall be paid by the brewer thereof in accordance with section 5061.

(2) Beer imported into the United States.

Except as provided in paragraph (4), the tax imposed by section 5051 on beer imported into the United States shall be determined at the time of the importation thereof, or, if entered into customs custody, at the time of removal from such custody, and shall be paid under such regulations as the Secretary or his delegate shall prescribe.

(3) Illegally produced beer.

The tax on any beer produced in the United States at any place other than a qualified brewery shall be due and payable immediately upon production.

(4) Unlawfully imported beer.

Beer smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

(b) Tax on returned beer.

Beer which has been removed for consumption or sale and is thereafter returned to the brewery shall be subject to all provisions of this chapter relating to beer prior to removal for consumption or sale, including the tax imposed by section 5051. The tax on any such returned beer which is again removed for consumption or sale shall be determined and paid without respect to the tax which was determined at the time of prior removal of the beer for consumption or sale.

(c) Stamps or other devices as evidence of payment of tax.

When the Secretary or his delegate finds it necessary for the protection of the revenue, he may require stamps, or other devices, evidencing the tax or indicating a compliance with the provisions of this chapter, to be affixed to hogsheads, barrels, or kegs of beer at the time of removal. The Secretary or his delegate shall by regulations prescribe the manner by which such stamps or other devices shall be supplied, affixed, and accounted for.

(d) Applicability of other provisions of law.

All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5051. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1334.)

CODIFICATION

Provisions similar to those comprising subsec. (a)(1) of this section were contained in a prior section 5054, act Aug. 16, 1954, ch. 736, 68A Stat. 613.

Provisions similar to those comprising subsecs. (a)(1), (2) and (b)—(d) of this section were contained in former sections 5055 and 5057(a), act Aug. 16, 1954, ch. 736, 68A Stat. 613, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as an note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5051, 5413, 5676 of this title.

§ 5055. Drawback of tax.

On the exportation of beer, brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax found to have been paid on such beer, to be paid on submission of such evidence, records and certificates indicating exportation, as the Secretary or his delegate may by regulations prescribe. For the purpose of this section, exportation shall include delivery for use as supplies on the vessels and aircraft described in section 309 of the tariff Act of 1930, as amended (19 U. S. C. 1309). (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1335.)

CODIFICATION

A prior section 5055, act Aug. 16, 1954, ch. 736, 68A Stat. 613, related to "determination and collection of tax on beer". See section 5054(a)(1), (2), (c), (d) of this title.

Provisions similar to those comprising this section were contained in former section 5056, act Aug. 16, 1954, ch. 736, 68A Stat. 613, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5056. Refund and credit of tax, or relief from liability.

(a) Beer returned or voluntarily destroyed.

Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary or his delegate may prescribe, if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations. In determining the amount of tax due on beer removed on any day, the quantity of beer returned to the same brewery from which removed shall be allowed, under such regulations as the Secretary or his delegate may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.

(b) Beer lost by fire, theft, casualty, or act of God.

Subject to regulations prescribed by the Secretary or his delegate, the tax paid by any brewer on beer

produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God before the transfer of title thereto to any other person. In any case in which beer is lost or destroyed, whether by theft or otherwise, the Secretary or his delegate may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the first sentence shall not apply unless the brewer establishes to the satisfaction of the Secretary or his delegate that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(c) Limitations.

No claim under this section shall be allowed (1) unless filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable or (2) if the claimant was indemnified by insurance or otherwise in respect of the tax. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1335, and amended Pub. L. 91-673, § 1(a), Jan. 12, 1971, 84 Stat. 2056.)

CODIFICATION

A prior section 5056, act Aug. 16, 1954, ch. 736, 68A Stat. 613, related to "drawback of tax". See section 5055 of this title.

Provisions similar to those comprising this section were contained in former section 5057, act Aug. 16, 1954, ch. 736, 68A Stat. 613, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1971—Subsec. (a). Pub. L. 91-673 added provision permitting credit or refund of tax if the beer is returned to any brewery of the brewer who paid the tax, and provided for the offset or deduction against the amount of beer removed from the brewery on the day of return if the beer is returned to the same brewery from which it was withdrawn.

Subsec. (b). Pub. L. 91-673 added provisions for credit or refund or relief from liability of tax when the beer is lost by theft or otherwise or rendered unmerchantable by fire, casualty or act of God, before the transfer of title to any other party, and required the brewer to file claim for relief from the tax and submit proof of the cause of the loss, and in the case of theft, to further prove that such theft occurred before removal from the brewery and without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

Subsec. (c). Pub. L. 91-673 substantially reenacted subsec. (c) to reflect changes in subsec. (b).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5 of Pub. L. 91-673 provided that: "The amendments made by the first four sections of this Act [enacting section 5417 of this title and amending this section and sections 5052, 5053, 5401, 5402, 5411, 5412, and 5416 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [January 12, 1971]."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SUBPART E.—GENERAL PROVISIONS

Sec.
5061. Method of collecting tax.
5062. Refund and drawback in case of exportation.
5064. Losses caused by disaster.
5065. Territorial extent of law.
5066. Distilled spirits for use of foreign embassies, legations, etc.
5067. Cross reference.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5061—5065.

Section 5064 related to "Territorial extent of law".

Section 5065 related to "Cross references".

AMENDMENTS

1971—Pub. L. 91-659, § 3(b), Jan. 8, 1971, 84 Stat. 1966, added item 5066 and redesignated former item 5066 as 5067.

1965—Pub. L. 89-44, title V, § 501(e), June 21, 1965, 79 Stat. 150, struck out item 5063.

§ 5061. Method of collecting tax.

(a) Collection by return.

The taxes on distilled spirits, wines, rectified distilled spirits and wines, and beer shall be collected on the basis of a return. The Secretary or his delegate shall, by regulation, prescribe the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax. Notwithstanding the preceding sentences of this subsection, the taxes shall continue to be paid by stamp until the Secretary or his delegate shall by regulations provide for the collection of the taxes on the basis of a return.

(b) Discretion method of collection.

Whether or not the method of collecting any tax imposed by this part is specifically provided in this part, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by stamp, coupon, serially-numbered ticket, or the use of tax-stamp machines, or by such other reasonable device or method as may be necessary or helpful in securing collection of the tax.

(c) Applicability of other provisions of law.

All administrative and penalty provisions of this title, insofar as applicable, shall apply to the collection of any tax which the Secretary or his delegate determines or prescribes shall be collected in any manner provided in this section.

(d) Cross reference.

For penalty and forfeiture for tampering with a stamp machine, see section 5689.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1335.)

CODIFICATION

Provisions similar to those comprising subsecs. (a)—(c) of this section were contained in a prior section 5061, act Aug. 16, 1954, ch. 736, 68A Stat. 614.

Provisions similar to those comprising subsec. (d) of this section were contained in former section 5001(c), act Aug. 16, 1954, ch. 736, 68A Stat. 597, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5007, 5026, 5043, 5054, 5689 of this title.

§ 5062. Refund and drawback in case of exportation.

(a) Refund.

Under such regulations as the Secretary or his delegate may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

(b) Drawback.

On the exportation of distilled spirits or wines manufactured or produced in the United States on which an internal revenue tax has been paid or determined, and which are contained in any cask or package, or in bottles packed in cases or other containers, there shall be allowed, under regulations prescribed by the Secretary or his delegate, a drawback equal in amount to the tax found to have been paid or determined on such distilled spirits or wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Secretary or his delegate. The Secretary or his delegate is authorized to prescribe regulations governing the determination and payment or crediting of drawback of internal revenue tax on domestic distilled spirits and wines, including the requirement of such notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation as shall be deemed necessary.

(c) Exportation of imported liquors.

(1) Allowance of tax.

Upon the exportation of imported distilled spirits, wines, and beer upon which the duties and internal revenue taxes have been paid or determined incident to their importation into the United States, and which have been found after entry to be unmerchantable or not to conform to sample or specifications, and which have been returned to customs custody, the Secretary or his delegate shall, under such regulations as he shall prescribe, refund, remit, abate, or credit, without interest, to the importer thereof, the full amount of the internal revenue taxes paid or determined with respect to such distilled spirits, wines, or beer.

(2) Destruction in lieu of exportation.

At the option of the importer, such imported distilled spirits, wines, and beer, after return to customs custody, may be destroyed under customs supervision and the importer thereof granted relief in the same manner and to the same extent as provided in this subsection upon exportation.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1336, and amended Pub. L. 88–539, § 1, Aug. 31, 1964, 78 Stat. 746; Pub. L. 89–44, title VIII, § 805 (f)(6), June 21, 1965, 79 Stat. 161; Pub. L. 90–630, § 2(a), Oct. 22, 1968, 82 Stat. 1328.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5062, act Aug. 16, 1954, ch. 736, 68A Stat. 614.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–630 permitted, under Treasury regulations, drawback of the tax where the stamping, restamping, or marking is done after the spirits have been removed from the original bottling plant.

1965—Subsec. (c)(1). Pub. L. 89–44 struck out "within six months of their release therefrom" following "customs custody".

1964—Subsec. (c). Pub. L. 88–539 added subsec. (c).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–630 applicable only to articles exported on or after the first day of the first calendar month which begins more than 90 days after Oct. 22, 1968, see section 4 of Pub. L. 90–630, set out as a note under section 5008 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (c)(1) by Pub. L. 89–44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89–44, set out as a note under section 5008 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–539 provided that: "The amendment made by the first section of this Act [adding subsec. (c) to this section] shall apply with respect to articles exported or destroyed after the date of the enactment of this Act [Aug. 31, 1964]."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5066 of this title.

§ 5063. Repealed. Pub. L. 89–44, title V, § 501(e), June 21, 1965, 79 Stat. 150.

Section, Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1336; Pub. L. 86–75, § 3(b)(1), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, § 202(b)(1), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, § 3(b)(1), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 3(b)(1), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, § 3(b)(1)(A), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, § 2(b)(1)(A), June 30, 1964, 78 Stat. 237, made provision for floor stocks refunds on distilled spirits, wines, cordials, and beer and set out limitations on the eligibility for such refunds or credits.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

§ 5064. Losses caused by disaster.

(a) Authorization.

Where the President has determined under the Disaster Relief Act of 1970, that a "major disaster" as defined in such Act has occurred in any part of the United States, the Secretary or his delegate shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States after June 30, 1959, if such distilled spirits, wines, rectified products, or beer were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such distilled spirits, wines, rectified products, or beer for sale at the time of such disaster.

(b) Claims.

No claim shall be allowed under this section unless—

(1) filed within 6 months after the date on which the President makes the determination that the disaster referred to in subsection (a) has occurred; and

(2) the claimant furnishes proof to the satisfaction of the Secretary or his delegate that—

(A) he was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer covered by the claim; and

(B) he is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary or his delegate shall prescribe.

(c) Destruction of distilled spirits, wines, rectified products, or beer.

When the Secretary or his delegate has made payment under this section in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer condemned by a duly authorized official or rendered unmarketable, such distilled spirits, wines, rectified products, or beer shall be destroyed under such supervision as the Secretary or his delegate may prescribe, unless such distilled spirits, wines, rectified products, or beer were previously destroyed under supervision satisfactory to the Secretary or his delegate.

(d) Products of Puerto Rico.

The provisions of this section shall not be applicable in respect of distilled spirits, wines, rectified products, and beer of Puerto Rican manufacture brought into the United States and so lost or rendered unmarketable or condemned.

(e) Other laws applicable.

All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, rectified products, and beer shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1337, and amended Pub. L. 91–606, title III, § 301(i), Dec. 31, 1970, 84 Stat. 1759.)

REFERENCES IN TEXT

The Disaster Relief Act of 1970, referred to in subsec. (a), is classified to chapter 58 (section 4401 et seq.) of Title 42, The Public Health and Welfare.

CODIFICATION

A prior section 5064, act Aug. 16, 1954, ch. 736, 68A Stat. 615, related to "territorial extent of law". See section 5065 of this title.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–606 substituted "Disaster Relief Act of 1970" for "Act of September 30, 1950 (42 U.S.C. 1855)".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 4401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

EXCEPTION TO EFFECTIVE DATE

Section 210 (a) (3) of Pub. L. 85–859 provided that: "Provisions having the effect of section 5064 of the Internal Revenue Code of 1954 (as such section is included in chapter 51 of such Code as amended by section 201 of this Act) [this section] shall be deemed to be included in the Internal Revenue Code of 1954, effective on the day following the date of the enactment of this Act [September 2, 1958], and shall apply with respect to disasters occurring after such date of enactment [September 2, 1958], and not later than June 30, 1959."

BEER LOST BY REASON OF FLOODS OF 1951 OR HURRICANES OF 1954

Section 207 of Pub. L. 85–859 provided that:

"(a) AUTHORIZATION.—The Secretary of the Treasury or his delegates shall pay (without interest) to the person specified in subsection (b) an amount equal to the amount of the internal revenue tax paid under section 3150 (a) of the Internal Revenue Code of 1939 on any fermented malt liquor which was lost, rendered unmarketable, or condemned by a duly authorized health official of the United States or of a State, by reason of the floods of 1951 or the hurricanes of 1954.

"(b) CONDITIONS.—The payment provided by subsection (a) shall be made only if—

"(1) such fermented malt liquor was lost, rendered unmarketable, or condemned while in the possession of (A) the person who paid such tax, or (B) a dealer selling fermented malt liquor at wholesale or retail;

"(2) the person paying the tax, or a dealer specified in paragraph (1) (B), files a claim for such payment with the Secretary of the Treasury or his delegate within 6 months after the effective date of this section [September 3, 1958]; and

"(3) the person filing such claim furnishes proof establishing to the satisfaction of the Secretary of the Treasury or his delegate (A) that the internal revenue tax on such fermented malt liquor was fully paid, (B) that such fermented malt liquor was lost, rendered unmarketable, or condemned, by reason of the floods of 1951 or the hurricanes of 1954, (C) in the case of fermented malt liquor rendered unmarketable or condemned, that such liquor has been destroyed, (D) that the claimant was not indemnified against loss of the tax by any valid claim of insurance or otherwise, and (E) if the claimant was not the possessor of the fermented malt liquor at the time it was so lost, rendered unmarketable, or condemned, (i) that such claimant has either reimbursed such possessor for the full cost of such fermented malt liquor, or has replaced for such possessor the full equivalent thereof, without receiving payment or credit of any kind in respect of the tax on such fermented malt liquor, and (ii) that such possessor was not indemnified against loss of the tax by any valid claim of insurance or otherwise (other than by such reimbursement or replacement by the claimant).

"(c) REGULATIONS.—The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the provisions of this section."

LOSSES OF ALCOHOLIC LIQUORS CAUSED BY DISASTER

Section 208 of Pub. L. 85–859 provided that:

"(a) AUTHORIZATION.—Where the President has determined under the Act of September 30, 1950 (42 U. S. C., sec. 1855), that a 'major disaster' as defined in such Act has occurred in any part of the United States, the Secretary of the Treasury or his delegate shall pay (without interest) to the person specified in subsection (b) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States after December 31, 1954, and not later than the date of enactment of this Act [September 2, 1958], if such spirits, wines, rectified products, or beer were at the time of such disaster in the possession of—

"(1) the person paying such tax, or such tax and duty, or obligated to pay a determined tax, on such spirits, wines, rectified products, or beer,

"(2) a bottler of distilled spirits, wines, or rectified products, or a rectifier, or

"(3) a wholesale or retail dealer in distilled spirits, wines, or beer,

all referred to in this section as the possessor or possessors.

"(b) To WHOM MADE.—Any payment authorized by this section may be made—

"(1) to the possessor, or

"(2) to any distiller, winemaker, brewer, rectifier, importer, wholesale liquor dealer, or wholesale beer dealer who replaced (or to any distiller, winemaker, brewer, rectifier, importer, or wholesale dealer who has given credit or made replacement to a wholesale dealer who replaced) for the possessor the full equivalent of distilled spirits, wines, rectified products, or beer so lost or rendered unmarketable or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such spirits, wines, rectified products, or beer.

"(c) CLAIMS.—No claim shall be allowed under this section unless—

"(1) filed within 6 months after the date of enactment of this Act [September 2, 1958], and

"(2) the claimant furnishes proof to the satisfaction of the Secretary of the Treasury or his delegate that—

"(A) neither the claimant nor any possessor was indemnified by any valid claim of insurance or otherwise in respect of the tax or tax and duty on the distilled spirits, wines, rectified products, or beer covered by the claim, and

"(B) the claimant is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary of the Treasury or his delegate shall prescribe.

"(d) DESTRUCTION OF DISTILLED SPIRITS, WINES, RECTIFIED PRODUCTS, OR BEER.—When the Secretary of the Treasury or his delegate has made payment under this section in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer condemned by a duly authorized official or rendered unmarketable, such distilled spirits, wines, rectified products, or beer shall be destroyed under such supervision as the Secretary of the Treasury or his delegate may prescribe, unless such distilled spirits, wines, rectified products, or beer were previously destroyed under supervision satisfactory to the Secretary of the Treasury or his delegate.

"(e) PRODUCTS OF PUERTO RICO.—The provisions of this section shall not be applicable in respect of distilled spirits, wines, rectified products, and beer of Puerto Rican manufacture brought into the United States and so lost or rendered unmarketable or condemned.

"(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, rectified products, and beer shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes."

§ 5065. Territorial extent of law.

The provisions of this part imposing taxes on distilled spirits, wines, and beer shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within an internal revenue district or not. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1337.)

CODIFICATION

A prior section 5065, act Aug. 16, 1954, ch. 736, 68A Stat. 615, was a cross reference to general administrative provisions applicable to assessment, collection, refund, etc., of taxes.

Provisions similar to those comprising this section were contained in former section 5064, act Aug. 16, 1954, ch. 736, 68A Stat. 615, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5066. Distilled spirits for use of foreign embassies, legations, etc.

(a) Entry into customs bonded warehouses.

(1) Distilled spirits bottled in bond for export.

Under such regulations as the Secretary or his delegate may prescribe, distilled spirits bottled in bond for export under the provisions of section 5233 may be withdrawn from bonded premises as provided in section 5214(a)(4) for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry therein pending withdrawal therefrom as provided in subsection (b). For the purposes of this chapter, the withdrawal of distilled spirits from bonded premises under the provisions of this paragraph shall be treated as a withdrawal for exportation and all provisions of law applicable to distilled spirits withdrawn for exportation under the provisions of section 5214(a)(4) shall apply with respect to spirits withdrawn under this paragraph.

(2) Bottled distilled spirits eligible for export with benefit of drawback.

Under such regulations as the Secretary or his delegate may prescribe, distilled spirits stamped or restamped, and marked especially for export under the provisions of section 5062(b) may be shipped to a customs bonded warehouse in which imported distilled spirits are permitted to be stored, and entered in such warehouses pending withdrawal therefrom as provided in subsection (b), and the provisions of this chapter shall apply in respect of such distilled spirits as if such spirits were for exportation.

(3) Time deemed exported.

For the purposes of this chapter, distilled spirits entered into a customs bonded warehouse as provided in this subsection shall be deemed exported at the time so entered.

(b) Withdrawal from customs bonded warehouses.

Notwithstanding any other provisions of law, distilled spirits entered into customs bonded warehouses under the provisions of subsection (a) or domestic distilled spirits transferred to customs bonded warehouses under section 5521(d)(2) may, under such regulations as the Secretary or his delegate may prescribe, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of such foreign governments, organizations, and individuals who are entitled to withdraw imported distilled spirits from such warehouses free of tax. Distilled spirits transferred to customs bonded warehouses under the provisions of this section shall be entered, stored, and accounted for in such warehouses under such regulations and bonds as the Secretary or his delegate may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported distilled spirits.

(c) Withdrawal for domestic use.

Distilled spirits entered into customs bonded warehouses as authorized by this section may be withdrawn therefrom for domestic use, in which event they shall be treated as American goods exported and returned.

(d) Sale or unauthorized use prohibited.

No distilled spirits withdrawn from customs bonded warehouses or otherwise brought into the United States free of tax for the official or family use of such foreign governments, organizations, or individuals as are authorized to obtain distilled spirits free of tax shall be sold, or shall be disposed of or possessed for any use other than an authorized use. The provisions of section 5001(a)(5) are hereby extended and made applicable to any person selling, disposing of, or possessing any distilled spirits in violation of the preceding sentence, and to the distilled spirits involved in any such violation. (Added Pub. L. 91–659, § 3(a), Jan. 8, 1971, 84 Stat. 1965.)

EFFECTIVE DATE

Section 6 of Pub. L. 91–659 provided that: "This Act [enacting this section and amending sections 5008, 5173, 5178, 5215 and 5232 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Jan. 8, 1971]."

§ 5067. Cross reference.

For general administrative provisions applicable to the assessment, collection, refund, etc., of taxes, see subtitle F.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1338, § 5066, renumbered § 5067, Pub. L. 91–659, § 3(a), Jan. 8, 1971, 84 Stat. 1965.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5065, act Aug. 16, 1954, ch. 736, 68A Stat. 615, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART II.—OCCUPATIONAL TAX

Subpart
A. Rectifier.
B. Brewer.
C. Manufacturers of stills.
D. Wholesale dealers.
E. Retail dealers.
F. Nonbeverage domestic drawback claimants.
G. General provisions.

SUBPART A.—RECTIFIER

Sec.
5081. Imposition and rate of tax.
5082. Definition of rectifier.
5083. Exemptions.
5084. Cross references.

§ 5081. Imposition and rate of tax.

Every rectifier of distilled spirits or wines (as defined in section 5082) shall pay a special tax of $220 a year; except that any rectifier of less than 20,000 proof gallons a year shall pay $110 a year. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1338.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5081, act Aug. 16, 1954, ch. 736, 68A Stat. 615.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Due date of tax, see section 5142 (b) of this title.

Method of payment of tax, see section 5142 (c) of this title.

Penalties applicable to occupational taxes, see section 5691 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5025, 5363 of this title.

§ 5082. Definition of rectifier.

Every person who rectifies, purifies, or refines distilled spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or any other substance, through continuous closed vessels and pipes, until the production thereof is complete), and every person who, without rectifying, purifying, or refining distilled spirits, shall by mixing such spirits, wine, or other liquor with any material, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, rum, gin, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1338.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5082, act Aug. 16, 1954, ch. 736, 68A Stat. 616.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5002, 5021, 5025, 5081, 5363, 5391 of this title.

§ 5083. Exemptions.

For exemptions from tax under section 5021 or 5081 in case of—

(1) Absolute alcohol, see section 5025 (a).

(2) Production of gin and vodka, see section 5025 (b).

(3) Refining spirits in course of original distillation, see section 5025 (c).

(4) Redistillation of spirits on bonded premises of a distilled spirits plant, see section 5025 (d).

(5) Mingling of distilled spirits on bonded premises of a distilled spirits plant, see section 5025 (e).

(6) Apothecaries, see section 5025 (h).

(7) Manufacturers of chemicals and flavoring extracts, see section 5025 (i).

(8) Distilled spirits and wines rectified in customs manufacturing bonded warehouses, see section 5523.

(9) Blending beverage brandies or rums on bonded premises of a distilled spirits plant, see section 5025 (e) (4).

(10) Blending of straight whiskies, fruit brandies, rums or wines, see section 5025 (f).

(11) Addition of caramel to brandy or rum, see section 5025 (g).

(12) Winemakers' use or treatment of wines or wine spirits, see section 5391.

(13) Stabilization of distilled spirits, see section 5025 (j).

(14) Other mingling or treatment of distilled spirits, see section 5025(k).

(15) Authorized addition of tracer elements, see section 5025(*l*).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1338, and amended Pub. L. 89–44, title VIII, § 805(f)(7), June 21, 1965, 79 Stat. 161.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5083, act Aug. 16, 1954, ch. 736, 68A Stat. 616.

AMENDMENTS

1965—Par. (14). Pub. L. 89–44 struck out par. (14) making reference to section 5025(k) for authorized addition of tracer elements and inserted in lieu thereof reference to section 5025(k) for other mingling or treatment of distilled spirits. Coverage of tracer elements, with reference to section 5025(*l*), was transferred to par. (15).

Par. (15). Pub. L. 89–44 added par. (15).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective October 1, 1965, see section 805(g)(2) of Pub. L. 89–44, set out as a note under section 5025 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5084. Cross references.

(1) For provisions relating to gallonage tax on rectification, see subpart B of part I of this subchapter.

(2) For provisions relating to qualification of distilled spirits plants to engage in rectification, see subchapter B.

(3) For provisions relating to rectifying operations on the premises of distilled spirits plants, see subchapter C.

(4) For penalties, seizures, and forfeitures relating to rectifying and rectified products, see subchapter J and subtitle F.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5084, act Aug. 16, 1954, ch. 736, 68A Stat. 616.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART B.—BREWER

Sec.
5091. Imposition and rate of tax.
5092. Definition of brewer.
5093. Cross references.

§ 5091. Imposition and rate of tax.

Every brewer shall pay $110 a year in respect of each brewery; except that any brewer of less than 500 barrels a year shall pay the sum of $55 a year. Any beer procured by a brewer in his own hogsheads, barrels, or kegs under the provisions of section 5413 shall be included in calculating the liability to brewers' special tax of both the brewer who produces the same and the brewer who procures the same. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5091, act Aug. 16, 1954, ch. 736, 68A Stat. 616.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Due date of tax, see section 5142 (b) of this title.

Method of payment of tax, see section 5142 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5671 of this title.

§ 5092. Definition of brewer.

Every person who brews or produces beer for sale shall be deemed a brewer. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5092, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5093. Cross references.

(1) For exemption of brewer from special tax as wholesale and retail dealer, see section 5113 (a).

(2) For provisions relating to liability for special tax for carrying on business in more than one location, see section 5143 (c).

(3) For exemption from special tax in case of sales made on purchaser dealers' premises, see section 5113 (d).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5093, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART C.—MANUFACTURERS OF STILLS

Sec.
5101. Imposition and rate of tax.
5102. Definition of manufacturer of stills.
5103. Exemptions.
5104. Method of payment of tax on stills.
5105. Notice of manufacture of and permit to set up still.
5106. Export.

§ 5101. Imposition and rate of tax.

Every manufacturer of stills shall pay a special tax of $55 a year, and $22 for each still or condenser for distilling made by him. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5101, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Due date of tax, see section 5142 (b) of this title.

Method of payment of tax, see section 5142 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5103, 5104, 5106 of this title.

§ 5102. Definition of manufacturer of stills.

Any person who manufactures any still or condenser to be used in distilling shall be deemed a manufacturer of stills. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5102, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5103. Exemptions.

The taxes imposed by section 5101 shall not apply in respect of stills or condensers manufactured by

a proprietor of a distilled spirits plant exclusively for use in his plant or plants. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5103, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

Provisions similar to those comprising this section were contained in former section 5306, act Aug. 16, 1954, ch. 736, 68A Stat. 657, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5104. Method of payment of tax on stills.

The tax imposed on stills or condensers by section 5101 shall be paid by stamp, denoting the tax, under such regulations as the Secretary or his delegate may prescribe. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5104, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5105. Notice of manufacture of and permit to set up still.

(a) Requirement.

Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling shall, before the same is removed from the place of manufacture, notify the Secretary or his delegate, setting forth in writing by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture; and no such still, boiler, or other vessel shall be set up without the permit in writing of the Secretary or his delegate for that purpose. The notice required by this section shall be submitted in such form and manner as the Secretary or his delegate may by regulations prescribe.

(b) Penalty.

(1) For penalty and forfeiture for failure to give notice of manufacture, or for setting up still without permit, see sections 5615 (2) and 5687.

(2) For penalty and forfeiture for failure to register still or distilling apparatus when set up, see sections 5601 (a) (1), 5601 (b) (1), and 5615 (1).

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5105, act Aug. 16, 1954, ch. 736, 68A Stat. 617.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5106. Export

(a) Without payment of tax.

Under regulations prescribed by the Secretary or his delegate, stills or condensers for distilling may be removed from the place of manufacture for export without payment of the tax imposed thereon by section 5101.

(b) Drawback.

Stills and condensers on which the tax has been paid, and which have not been used, may be exported with the privilege of drawback, under such regulations as the Secretary or his delegate may prescribe. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1340.)

CODIFICATION

Provisions similar to those comprising subsec. (b) of this section were contained in a prior section 5106, act Aug. 16, 1954, ch. 736, 68A Stat. 618.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SUBPART D.—WHOLESALE DEALERS

Sec.
5111. Imposition and rate of tax.
5112. Definitions.
5113. Exemptions.
5114. Records.
5115. Sign required on premises.
5116. Packaging distilled spirits for industrial uses.
5117. Prohibited purchases by dealers.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5111—5116.

Section 5115 related to "Marking and stamping packages filled on premises of wholesale dealers".

Section 5116 related to "Sign required on premises".

§ 5111. Imposition and rate of tax.

(a) Wholesale dealers in liquors.

Every wholesale dealer in liquors shall pay a special tax of $255 a year. The Secretary or his delegate may by regulations provide for the issuance of a stamp denoting payment of such special tax as a "wholesale dealer in wines" or a "wholesale dealer in wines and beer" if, as the case may be, wines only, or wines and beer only, are sold by a wholesale dealer in liquors.

(b) Wholesale dealers in beer.

Every wholesale dealer in beer shall pay a special tax of $123 a year. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1340.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5111 (a)(1), (b)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 618.

Provisions similar to those comprising subsec. (a) of this section were contained in former section 5112(a), act Aug. 16, 1954, ch. 736, 68A Stat. 618, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Due date of tax, see section 5142 (b) of this title.

Method of payment of tax, see section 5142 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5113, 5123 of this title.

§ 5112. Definitions.

(a) Dealer.

When used in this subpart, subpart E, or subpart G, the term "dealer" means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

(b) Wholesale dealer in liquors.

When used in this chapter, the term "wholesale dealer in liquors" means any dealer, other than a wholesale dealer in beer, who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

(c) Wholesale dealer in beer.

When used in this chapter, the term "wholesale dealer in beer" means a dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1340.)

CODIFICATION

Provisions similar to those comprising subsecs. (b) and (c) of this section were contained in a prior section 5112, act Aug. 16, 1954, ch. 736, 68A Stat. 618.

Former section 5112(a) also provided for issuance of stamp denoting payment of special tax as "wholesale dealer in wines" or "wholesale dealer in wines and beer". See section 5111(a) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Businesses in more than one location, see section 5143 (c) of this title.

§ 5113. Exemptions.

(a) Sales by proprietors of distilled spirits plants, bonded wine cellars, or breweries.

No proprietor of a distilled spirits plant, bonded wine cellar, or brewery, shall be required to pay special tax under section 5111 or section 5121 on account of the sale at his principal business office as designated in writing to the Secretary or his delegate, or at his distilled spirits plant, bonded wine cellar, or brewery, as the case may be, of distilled spirits, wines, or beer, which, at the time of sale, are stored at his distilled spirits plant, bonded wine cellar, or brewery, as the case may be, or had been removed from such permises to a taxpaid storeroom operated in connection therewith and are stored therein. However, on such proprietor shall have more than one place of sale, as to each distilled spirits plant, bonded wine cellar, or brewery, that shall be exempt from special taxes by reason of the sale of distilled spirits, wines, or beer stored at such premises (or removed therefrom and stored as provided in this section), by reason of this subsection.

(b) Sales by liquor stores operated by states, political subdivisions, etc.

No liquor store engaged in the business of selling to persons other than dealers, which is operated by a State, by a political subdivision of a State or by the District of Columbia, shall be required to pay any special tax imposed under section 5111, by reason of selling distilled spirits, wines, or beer to dealers qualified to do business as such in such State, subdivision, or District, if such State, political subdivision, or District has paid the applicable special tax imposed under section 5121, and if such State, political subdivision, or District has paid special tax under section 5111 at its principal place of business.

(c) Casual sales.

(1) Sales by creditors, fiduciaries, and officers of court.

No person shall be deemed to be a dealer by reason of the sale of distilled spirits, wines, or beer which have been received by him as security for or in payment of a debt, or as an executor, administrator, or other fiduciary, or which have been levied on by any officer under order or process of any court or magistrate, if such distilled spirits, wines, or beer are sold by such person in one parcel only or at public auction in parcels of not less than 20 wine gallons.

(2) Sales by retiring partners or representatives of deceased partners to incoming or remaining partners.

No person shall be deemed to be a dealer by reason of a sale of distilled spirits, wines, or beer made by such person as a retiring partner or the representative of a deceased partner to the incoming, remaining, or surviving partner or partners of a firm.

(3) Return of liquors for credit, refund, or exchange.

No person shall be deemed to be a dealer by reason of the bona fide return of distilled spirits, wines, or beer to the dealer from whom purchased (or to the successor of the vendor's business or line of merchandise) for credit, refund, or exchange, and the giving of such credit, refund, or exchange shall not be deemed to be a purchase within the meaning of section 5117.

(d) Dealers making sales on purchaser dealer's premises.

(1) Wholesale dealers in liquors.

No wholesale dealer in liquors who has paid the special tax as such dealer shall again be required to pay special tax as such dealer on account of sales of wines or beer to wholesale or retail dealers in liquors, or to limited retail dealers, or of beer to wholesale or retail dealers in beer, consummated at the purchaser's place of business.

(2) Wholesale dealers in beer.

No wholesale dealer in beer who has paid the special tax as such a dealer shall again be required to pay special tax as such dealer on account of sales of beer to wholesale or retail dealers in liquors or beer, or to limited retail dealers, consummated at the purchaser's place of business.

(e) Sales by retail dealers in liquidation.

No retail dealer in liquors or retail dealer in beer, selling in liquidation his entire stock of liquors in one parcel or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of beer to any other dealer, shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, by reason of such sale or sales.

(f) Sales to limited retail dealers.

(1) Retail dealers in liquors.

No retail dealer in liquors who has paid special tax as such dealer under section 5121 (a) shall be required to pay special tax under section 5111 on account of the sale at his place of business of wines or beer to limited retail dealers as defined in section 5122 (c).

(2) Retail dealers in beer.

No retail dealer in beer who has paid special tax as such dealer under section 5121 (b) shall be required to pay special tax under section 5111 on

account of the sale at his place of business of beer to limited retail dealers as defined in section 5122 (c).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1340, and amended Pub. L. 87–863, § 4(b), Oct. 23, 1962, 76 Stat. 1142.)

CODIFICATION

Provisions similar to those comprising subsecs. (a) and (c) (1), (2) of this section were contained in a prior section 5113, act Aug. 16, 1954, ch. 736, 68A Stat. 619.

Provisions similar to those comprising subsecs. (a), (d), and (e) of this section were contained in former sections 5123 (a), (b)(3), (c), 5144(c) and 5306, act Aug. 16, 1954, ch. 736, 68A Stat. 621, 624, 657, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–863 substituted "if such State, political subdivision, or District" for "if such liquor store" preceding "has paid the", and eliminated references to Territories wherever appearing.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87–863 provided that: "The amendments made by subsections (a) and (b) of this section [to this section and section 5123 of this title] shall take effect on July 1, 1962."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5681 of this title.

§ 5114. Records.

(a) Requirements.

(1) Distilled spirits.

Every wholesale dealer in liquors who sells distilled spirits to other dealers shall keep daily a record of distilled spirits received and disposed of by him, in such form and at such place and containing such information, and shall submit correct summaries of such records to the Secretary or his delegate at such time and in such form and manner, as the Secretary or his delegate shall by regulations prescribe. Such dealer shall also submit correct extracts from or copies of such records, at such time and in such form and manner as the Secretary or his delegate may by regulations prescribe; however, the Secretary or his delegate may on application by such dealer, in accordance with such regulations, relieve him from this requirement until further notice, whenever the Secretary or his delegate deems that the submission of such extracts or copies serves no useful purpose in law enforcement or in protection of the revenue.

(2) Wines and beer.

Every wholesale dealer in liquors and every wholesale dealer in beer shall provide and keep, at such place as the Secretary or his delegate shall by regulations prescribe, a record in book form of all wines and beer received, showing the quantities thereof and from whom and the dates received, or shall keep all invoices of, and bills for, all wines and beer received.

(b) Exemption of States, political subdivisions, etc.

The provision of subsection (a) shall not apply to a State or Territory, to a political subdivision of a State or Territory, to the District of Columbia, or to liquor stores operated by any of them, if they maintain and make available for inspection by internal revenue officers such records as will enable such officers to trace all distilled spirits, wines, and beer received, and all distilled spirits disposed of by them. Such States, Territories, subdivisions, District, or liquor stores shall, upon the request of the Secretary or his delegate, furnish him such transcripts, summaries and copies of their records with respect to distilled spirits as he shall require.

(c) Cross references.

(1) For provisions requiring proprietors of distilled spirits plants to keep records and submit reports of receipts and dispositions of distilled spirits, see section 5207.

(2) For penalty for violation of subsection (a), see section 5603.

(3) For provisions relating to the preservation and inspection of records, and entry of premises for inspection, see section 5146.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1342.)

CODIFICATION

Provisions similar to those comprising subsecs. (a)(1), (b), and (c) of this section were contained in a prior section 5114, act Aug. 16, 1954, ch. 736, 68A Stat. 619.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5115. Sign required on premises.

(a) Requirements.

Every wholesale dealer in liquors who is required to pay special tax as such dealer shall, in the manner and form prescribed by regulations issued by the Secretary or his delegate, place and keep conspicuously on the outside of the place of such business a sign, exhibiting, in plain and legible letters, the name or firm of the wholesale dealer, with the words: "wholesale liquor dealer." The requirements of this subsection will be met by the posting of a sign of the character prescribed herein, but with words conforming to the designation on the dealer's special tax stamp.

(b) Penalty.

For penalty for failure to post sign, or for posting sign without paying the special tax, see section 5681.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1342.)

CODIFICATION

A prior section 5115, act Aug. 16, 1954, ch. 736, 68A Stat. 620, related to "marking and stamping packages filled on premises of wholesale dealers". See section 5205(d) of this title.

Provisions similar to those comprising this section were contained in former section 5116, act Aug. 16, 1954, ch. 736, 68A Stat. 620, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5681 of this title.

§ 5116. Packaging distilled spirits for industrial uses.

(a) General.

The Secretary or his delegate may, at his discretion and under such regulations as he may prescribe, authorize a dealer engaging in the business of supplying distilled spirits for industrial uses to package distilled spirits, on which the tax has been paid or determined, for such uses in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(b) Cross references.

(1) For provisions relating to stamps for immediate containers, see section 5205 (a) (2).

(2) For provisions relating to containers of distilled spirits, see section 5206.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1343.)

CODIFICATION

A prior section 5116, act Aug. 16, 1954, ch. 736, 68A Stat. 620, related to "sign required on premises". See section 5115 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5117. Prohibited purchases by dealers.

(a) General.

It shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than—

(1) a wholesale dealer in liquors who has paid the special tax as such dealer to cover the place where such purchase is made; or

(2) a wholesale dealer in liquors who is exempt, at the place where such purchase is made, from payment of such tax under any provision of this chapter; or

(3) a person who is not required to pay special tax as a wholesale dealer in liquors.

(b) Penalty and forfeiture.

For penalty and forfeiture provisions applicable to violation of subsection (a), see sections 5687 and 7302.

(Added Pub L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1343.)

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5113 of this title.

SUBPART E.—RETAIL DEALERS

Sec.
5121. Imposition and rate of tax.
5122. Definitions.
5123. Exemptions.
5124. Records.
5125. Cross references.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5121—5124.

§ 5121. Imposition and rate of tax.

(a) Retail dealers in liquors.

Every retail dealer in liquors shall pay a special tax of $54 a year. The Secretary or his delegate may by regulations provide for the issuance of a stamp denoting payment of such special tax as—

(1) a "retail dealer in wines" or a "retail dealer in wines and beer" if wines only, or wines and beer only, as the case may be, are sold by a retail dealer in liquors, or

(2) a "medicinal spirits dealer", in the case of a retail drug store or pharmacy making sales of liquors through a duly licensed pharmacist.

(b) Retail dealers in beer.

Every retail dealer in beer shall pay a special tax of $24 a year.

(c) Limited retail dealers.

Every limited retail dealer shall pay a special tax of $2.20 for each calendar month in which sales are made as such dealer. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1343.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5121(a)(1), (b)(1), and (c), act Aug. 16, 1954, ch. 736, 68A Stat. 621.

Former section 5121(a)(2) regarded wholesale dealers in liquors selling in quantities of less than 5 wine gallons as retail dealers liable to special tax. See section 5122(a) of this title.

Former section 5121(b)(2) regarded wholesale dealers in beer selling in quantities of less than 5 gallons as retail dealers liable to special tax. See section 5122(b) of this title.

Former section 5121(c) also described limited retail dealers. See section 5122(c) of this title.

Provisions similar to those comprising subsec. (a)(1), (2) of this section were contained in former section 5122 (a), (c), act Aug. 16, 1954, ch. 736, 68A Stat. 621, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Due date of tax, see section 5142 (b) of this title.

Method of payment of tax, see section 5142 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5113, 5123 of this title.

§ 5122. Definitions.

(a) Retail dealers in liquors.

When used in this chapter, the term "retail dealer in liquors" means any dealer, other than a retail dealer in beer or a limited retail dealer, who sells, or offers for sale, any distilled spirits, wines, or beer, to any person other than a dealer.

(b) Retail dealer in beer.

When used in this chapter, the term "retail dealer in beer" means any dealer, other than a limited retail dealer, who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

(c) Limited retail dealer.

When used in this chapter, the term "limited retail dealer" means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of beer or wine on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of beer or wine to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1344.)

CODIFICATION

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in a prior section 5122(a) and (b), act Aug. 16, 1954, ch. 736, 68A Stat. 621.

Former section 5122(a) also provided for issuance of stamp denoting payment of special tax as "retail dealer in wines" or "retail dealer in wines and beer". See section 5121(a)(1) of this title.

Former section 5122(c) related to "retail drug stores or pharmacies". See section 5121(a)(2) of this title.

Provisions similar to those comprising subsec. (c) of this section were contained in former section 5121(c), act Aug. 16, 1954, ch. 736, 68A Stat. 620.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Businesses in more than one location, see section 5143 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5113 of this title.

§ 5123. Exemptions.

(a) Wholesale dealers.

(1) Wholesale dealers in liquors.

No special tax shall be imposed under section 5121 (a) or (b) on any dealer by reason of the selling, or selling, or offering for sale, of distilled spirits, wines, or beer at any location where such dealer is required to pay special tax under section 5111 (a).

(2) Wholesale dealers in beer.

No special tax shall be imposed under section 5121 (b) on any dealer by reason of the selling, or offering for sale, of beer at any location where such dealer is required to pay special tax under section 5111 (b).

(b) Business conducted in more than one location.

(1) Retail dealers at large.

Any retail dealer in liquors or retailer dealer in beer whose business is such as to require him to travel from place to place in different States of the United States may, under regulations prescribed by the Secretary or his delegate, procure a special tax stamp "At Large" covering his activities throughout the United States with the payment of but one special tax as a retail dealer in liquors or as a retail dealer in beer, as the case may be.

(2) Dealers on trains, aircraft, and boats.

Nothing contained in this chapter shall prevent the issue, under such regulations as the Secretary or his delegate may prescribe, of special tax stamps to—

(A) persons carrying on the business of retail dealers in liquors, or retail dealers in beer, on trains, aircraft, boats or other vessels, engaged in the business of carrying passengers; or

(B) persons carrying on the business of retail dealers in liquors or retail dealers in beer on boats or other vessels operated by them, when such persons operate from a fixed address in a port or harbor and supply exclusively boats or other vessels, or persons thereon, at such port or harbor.

(3) Liquor stores operated by states, political subdivisions, etc.

A State, a political subdivision of a State, or the District of Columbia shall not be required to pay more than one special tax as a retail dealer in liquors under section 5121(a) regardless of the number of locations at which such State, political subdivision, or District carries on business as a retail dealer in liquors.

(c) Cross references.

(1) For exemption of proprietors of distilled spirits plants, bonded wine cellars, and breweries from special tax as dealers, see section 5113 (a).

(2) For provisions relating to sales by creditors, fiduciaries, and officers of courts, see section 5113 (c) (1).

(3) For provisions relating to sales by retiring partners or representatives of deceased partners to incoming or remaining partners, see section 5113 (c) (2).

(4) For provisions relating to return of liquors for credit, refund, or exchange, see section 5113 (c) (3).

(5) For provisions relating to sales by retail dealers in liquidation, see section 5113 (e).

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1344, and amended Pub. L. 87-863, § 4(a), Oct. 23, 1962, 76 Stat. 1142.)

CODIFICATION

Provisions similar to those comprising subsecs. (b)(1), (2)(A) and (c)(2) of this section were contained in a prior section 5123 (b)(1), (2), (d)(2), act Aug. 16, 1954, ch. 736, 68A Stat. 621.

Former section 5123(a), (b)(3), and (c) related to "exemptions of brewers selling in eighth-barrel packages", "dealers making sales on purchaser dealers' premises" and "sales by retail dealers in liquidation". See section 5113 (a), (d)(1), (2) and (e), respectively, of this title.

AMENDMENTS

1962—Subsec. (b)(3). Pub. L. 87-863 added par. (3).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-863 effective July 1, 1962, see section 4(c) of Pub. L. 87-863, set out as a note under section 5113 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5124. Records.

(a) Receipts.

Every retail dealer in liquors and every retail dealer in beer shall provide and keep in his place of business a record in book form of all distilled spirits, wines, and beer received, showing the quantity thereof and from whom and the dates received, or shall keep all invoices of, and bills for, all distilled spirits, wines, and beer received.

(b) Dispositions.

When he deems it necessary for law enforcement purposes or the protection of the revenue, the Secretary or his delegate may by regulations require retail dealers in liquors and retail dealers in beer to keep records of the disposition of distilled spirits, wines, or beer, in such form or manner and of such quantities as the Secretary or his delegate may prescribe.

(c) Cross references.

For provisions relating to the preservation and inspection of records, and entry of premises for inspection, see section 5146.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1345.)

CODIFICATION

Provisions similar to those comprising subsec. (a) of this section were contained in a prior section 5124(a), act Aug. 16, 1954, ch. 736, 68A Stat. 622.

Former section 5124 (b), (c) related to "inspection and preservation of records". See section 5146(a) of this title.

Former section 5124(d) was a cross reference to a penalty provision relating to retail dealers' records.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5125. Cross references.

(1) For provisions relating to prohibited purchases by dealers, see section 5117.

(2) For provisions relating to presumptions of liability as wholesale dealer in case of sale of 20 wine gallons or more, see section 5691 (b).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1345.)

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART F.—NONBEVERAGE DOMESTIC DRAWBACK CLAIMANTS

Sec.
5131. Eligibility and rate of tax.
5132. Registration and regulation.
5133. Investigation of claims.
5134. Drawback.

§ 5131. Eligibility and rate of tax.

(a) Eligibility for drawback.

Any person using distilled spirits produced in a domestic registered distillery or industrial alcohol plant and withdrawn from bond, or using distilled spirits withdrawn from the bonded premises of a distilled spirits plant, on which the tax has been determined, in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes, on payment of a special tax per annum, shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products as provided for in this subpart.

(b) Rate of tax.

The special tax imposed by subsection (a) shall be graduated in amount as follows: (1) for total annual use not exceeding 25 proof gallons, $25 a year; (2) for total annual use not exceeding 50 proof gallons, $50 a year; (3) for total annual use of more than 50 proof gallons, $100 a year. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1345.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5131, act Aug. 16, 1954, ch. 736, 68A Stat. 622.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Due date of tax, see section 5142(b) of this title.

Method of payment of tax, see section 5142(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5142 of this title.

§ 5132. Registration and regulation.

Every person claiming drawback under this subpart shall register annually with the Secretary or his delegate; keep such books and records as may be necessary to establish the fact that distilled spirits received by him and on which the tax has been determined were used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for use for beverage purposes; and be subject to such rules and regulations in relation thereto as the Secretary or his delegate shall prescribe to secure the Treasury against frauds. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1345.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5132, act Aug. 16, 1954, ch. 736, 68A Stat. 623.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5133. Investigation of claims.

For the purpose of ascertaining the correctness of any claim filed under this subpart, the Secretary or his delegate is authorized to examine any books, papers, records, or memoranda bearing upon the matters required to be alleged in the claim, to require the attendance of the person filing the claim or of any officer or employee of such person or the attendance of any other person having knowledge in the premises, to take testimony with reference to any matter covered by the claim, and to administer oaths to any person giving such testimony. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1346.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5133, act Aug. 16, 1954, ch. 736, 68A Stat. 623.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Authority to administer oaths, see section 7622 (a) of this title.

§ 5134. Drawback.

(a) Rate of drawback.

In the case of distilled spirits on which the tax has been paid or determined, and which have been used as provided in this subpart, a drawback shall be allowed on each proof gallon at a rate of $1 less than the rate at which the distilled spirits tax has been paid or determined.

(b) Claims.

Such drawback shall be due and payable quarterly upon filing of a proper claim with the Secretary or his delegate; except that, where any person entitled to such drawback shall elect in writing to file monthly claims therefor, such drawback shall be due and payable monthly upon filing of a proper claim with the Secretary or his delegate. The Secretary or his delegate may require persons electing to file monthly drawback claims to file with him a bond or other security in such amount and with such conditions as he shall by regulations prescribe. Any such election may be revoked on filing of notice thereof with the Secretary or his delegate. No claim under this subpart shall be allowed unless filed with the Secretary or his delegate within the 6 months next succeeding the quarter in which the distilled spirits covered by the claim were used as provided in this subpart. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1346, and amended Pub. L. 90–615, § 2(a), Oct. 21, 1968, 82 Stat. 1210.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5134, act Aug. 16, 1954, ch. 736, 68A Stat. 623, as amended by acts Mar. 30, 1955, ch.

18, § 3(b)(2), 69 Stat. 15; Mar. 29, 1956, ch. 115, § 3(b)(2), 70 Stat. 67; Mar. 29, 1957, Pub. L. 85-12, § 3(b)(2), 71 Stat. 10; June 30, 1958, Pub. L. 85-475, § 3(b)(2), 72 Stat. 259.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90-615 substituted "6 months" for "3 months" in the last sentence.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2(b) of Pub. L. 90-615 provided that: "The amendment made by subsection (a) [to subsec. (b) of this section] shall apply to claims filed on or after the date of the enactment of this Act [Oct. 21, 1968]."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SUBPART G.—GENERAL PROVISIONS

Sec.
5141. Registration.
5142. Payment of tax.
5143. Provisions relating to liability for occupational taxes.
5144. Supply of stamps.
5145. Application of State laws.
5146. Preservation and inspection of records, and entry of premises for inspection.
5147. Application of subpart.
5148. Cross references.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subpart consisted of sections 5141—5149.

Section 5143 related to "Returns".

Section 5144 related to "Provisions relating to liability for occupational taxes".

Section 5145 related to "Supply of stamps".

Section 5146 related to "Posting stamp in place of business".

Section 5147 related to "List of special taxpayers for public inspection".

Section 5148 related to "Application of State laws".

Section 5149, act Aug. 16, 1954, ch. 736, 68A Stat. 626, related to "Application of subpart". See section 5147 of this title.

§ 5141. Registration.

For provisions relating to registration in the case of persons engaged in any trade or business on which a special tax is imposed, see section 7011(a).

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1346.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5141, act Aug. 16, 1954, ch. 736, 68A Stat. 624.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5142. Payment of tax.

(a) Condition precedent to carrying on business.

No person shall be engaged in or carry on any trade or business subject to tax under this part (except the tax imposed by section 5131) until he has paid the special tax therefor.

(b) Computation.

All special taxes under this part (except the tax imposed by section 5131) shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid.

(1) Stamp.

All special taxes imposed by this part shall be paid by stamps denoting the tax.

(2) Assessment.

For authority of the Secretary or his delegate to make assessments where the special taxes have not been duly paid by stamp at the time and in the manner provided by law, see subtitle F.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1346.)

CODIFICATION

Provisions similar to those comprising subsecs. (a), (b), and (c)(1) of this section were contained in a prior section 5142 (a)—(c), act Aug. 16, 1954, ch. 736, 68A Stat. 624.

Former section 5142(d) was a cross reference to a penalty and forfeiture provision for nonpayment of special taxes. See section 5148(1) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5143. Provisions relating to liability for occupational taxes.

(a) Partners.

Any number of persons doing business in partnership at any one place shall be required to pay but one special tax.

(b) Different businesses of same ownership and location.

Whenever more than one of the pursuits or occupations described in this part are carried on in the same place by the same person at the same time, except as otherwise provided in this part, the tax shall be paid for each according to the rates severally prescribed.

(c) Businesses in more than one location.

(1) Liability for tax.

The payment of a special tax imposed by this part shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district.

(2) Storage.

Nothing contained in paragraph (1) shall require a special tax for the storage of liquors at a location other than the place where liquors are sold or offered for sale.

(3) Definition of place.

The term "place" as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises, shall not be deemed sufficient separation to require additional special tax, if the various divisions are otherwise contiguous.

(d) Death or change of location.

Certain persons, other than the person who has paid the special tax under this part for the carrying

on of any business at any place, may secure the right to carry on, without incurring additional special tax, the same business at the same place for the remainder of the taxable period for which the special tax was paid. The persons who may secure such right are:

(1) the surviving spouse or child, or executor or administrator or other legal representative, of a deceased taxpayer;

(2) a husband or wife succeeding to the business of his or her living spouse;

(3) a receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and

(4) the partner or partners remaining after death or withdrawal of a member of a partnership.

When any person moves to any place other than the place for which special tax was paid for the carrying on of any business, he may secure the right to carry on, without incurring additional special tax, the same business at his new location for the remainder of the taxable period for which the special tax was paid. To secure the right to carry on the business without incurring additional special tax, the successor, or the person relocating his business, must register the succession or relocation with the Secretary or his delegate in accordance with regulations prescribed by the Secretary or his delegate.

(e) Federal agencies or instrumentalities.

Any tax imposed by this part shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1347.)

CODIFICATION

A prior section 5143, act Aug. 16, 1954, ch. 736, 68A Stat. 624, related to time for filing returns and cross-referred to penalty provisions for failure to file returns or for making false or fraudulent returns. See subtitle F of this title.

Provisions similar to those comprising this section were contained in former section 5144, act Aug. 16, 1954, ch. 736, 68A Stat. 624, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5144. Supply of stamps.

The Secretary or his delegate is required to procure appropriate stamps for the payment of all special taxes imposed by this part, including the tax on stills or condensers; and all provisions of law relating to the preparation and issue of stamps shall, so far as applicable, extend to and include such stamps for special taxes; and the Secretary or his delegate shall have authority to make all needful regulations relative thereto. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1348.)

CODIFICATION

A prior section 5144, act Aug. 16, 1954, ch. 736, 68A Stat. 624, related to liability for occupational taxes. See sections 5113(a) and 5143 of this title.

Provisions similar to those comprising this section were contained in former section 5145, act Aug. 16, 1954, ch. 736, 68A Stat. 625, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 601 of this title.

§ 5145. Application of State laws.

The payment of any tax imposed by this part for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on such trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1348.)

CODIFICATION

A prior section 5145, act Aug. 16, 1954, ch. 736, 68A Stat. 625, related to "supply of stamps". See section 5144 of this title.

Provisions similar to those comprising this section were contained in former section 5148, act Aug. 16, 1954, ch. 736, 68A Stat. 626, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5146. Preservation and inspection of records, and entry of premises for inspection.

(a) Preservation and inspection of records.

Any records or other documents required to be kept under this part or regulations issued pursuant thereto shall be preserved by the person required to keep such records or documents, as the Secretary or his delegate may by regulations prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(b) Entry of premises for inspection.

The Secretary or his delegate may enter during business hours the premises (including places of storage) of any dealer for the purpose of inspecting or examining any records or other documents required to be kept by such dealer under this chapter or regulations issued pursuant thereto and any distilled spirits, wines, or beer kept or stored by such dealer on such premises. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1348.)

CODIFICATION

A prior section 5146, act Aug. 16, 1954, ch. 736, 68A Stat. 625, contained cross references to provisions respecting posting stamp in place of business. See sections 6806(a) and 7273(a) of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in former sections 5114(a) and 5124 (b), (c), act Aug. 16, 1954, ch. 736, 68A Stat. 619, 622, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5147. Application of subpart.

The provisions of this subpart shall extend to and apply to the special taxes imposed by the other subparts of this part and to the persons on whom such taxes are imposed. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1348.)

CODIFICATION

A prior section 5147, act Aug. 16, 1954, ch. 736, 68A Stat. 626, was a cross reference to provision respecting keeping of list of special taxpayers for public inspection. See section 6107 of this title.

Provisions similar to those comprising this section were contained in former section 5149, act Aug. 16, 1954, ch. 736, 68A Stat. 626, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5148. Cross references.

(1) For penalties for willful nonpayment of special taxes, see section 5691.

(2) For penalties applicable to this part generally, see subchapter J.

(3) For penalties and other general and administrative provisions applicable to this part, see subtitle F.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1348.)

CODIFICATION

A prior section 5148, act Aug. 16, 1954, ch. 736, 68A Stat. 626, related to "Application of State laws". See section 5145 of this title.

Provisions similar to those comprising subd. (1) of this section were contained in former section 5142(d), act Aug. 16, 1954, ch. 736, 68A Stat. 624, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

Subchapter B.—Qualification Requirements for Distilled Spirits Plants

Sec.
5171. Establishment.
5172. Application.
5173. Qualification bonds.
5174. Withdrawal bonds.
5175. Export bonds.
5176. New or renewed bonds.
5177. Other provisions relating to bonds.
5178. Premises of distilled spirits plants.
5179. Registration of stills.
5180. Signs.
5181. Cross references.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part I, Establishment" and "Part II, Operation" of "Subchapter B—Distilleries" consisted of sections 5171—5180 and 5191—5197, respectively.

Section 5171 related to "Premises prohibited for distilling".

Section 5172 related to "Conditions precedent to carrying on business of distilling".

Section 5173 related to "Distillery fixtures and equipment".

Section 5174 related to "Registry of stills".

Section 5175 related to "Notice of business of distiller".

Section 5176 related to "Distiller's bond".

Section 5177 related to "Conditions of approval of distiller's bond".

Section 5178 related to "Plan of distillery".

Section 5179 related to "Survey of distillery".

Section 5180 related to "Sign required on premises".

Sections 5191—5197, act Aug. 16, 1954, ch. 736, 68A Stat. 632–637, related to operation of distilleries, as follows:

Section 5191 related to "Commencement, suspension, and resumption of operations". See section 5221(a) of this title.

Section 5192 related to "Supervision of operations by storekeeper-gaugers". See sections 5202 (a), (b) and 7803 of this title and section 301 of Title 5, Government Organization and Employees.

Section 5193 related to "Drawing, gauging, and marking of distilled spirits". See sections 5201(a), 5202(f), 5204 (a), (c), 5205(b), 5206 (a)—(c), 5211 and 5214(a)(4) of this title.

Section 5194 related to "Transfer of spirits at registered distilleries". See section 5005(c)(1), 5201(a), 5204(a), 5206 (a), (c), 5211(4), 5212, 5213, 5214(a), and 5223 (a), (d) of this title.

Section 5195 related to "Restrictions relating to operations". See section 5201(c) of this title.

Section 5196 related to "Entry and examination of distillery and premises". See section 5203 of this title.

Section 5197 related to "Distiller's records and returns". See section 5207 of this title.

§ 5171. Establishment.

(a) General requirements.

Every person shall, before commencing or continuing the business of a distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, and at such other times as the Secretary or his delegate may by regulations prescribe, make application to the Secretary or his delegate for and receive notice of the registration of his plant. No plant shall be registered under this section until the applicant has complied with the requirements of law and regulations in relation to the qualification of such business (or businesses).

(b) Permits.

(1) Requirements.

Every person required to file application for registration under subsection (a) whose distilling, warehousing, or bottling operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978, 27 U. S. C. 203, 204) shall, before commencing any such operations, apply for and obtain a permit under this subsection from the Secretary or his delegate to engage in such operations. Section 5271 (b), (c), (d), (e), (f), (g), and (h), and section 5274 are hereby made applicable to applications, to persons filing applications, and to permits required by or issued under this subsection.

(2) Exceptions for agency of a State or political subdivision.

Paragraph (1) shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a permit thereunder.

(3) Continuance of business.

Every person required by paragraph (1) to obtain a permit (covering operations not required to be covered by a basic permit under the Federal Alcohol Administration Act) who, on June 30, 1959, is qualified to perform such operations under the internal revenue laws, and who complies with the provisions of this chapter (other than this subsection) relating to qualification of such business or businesses, shall be entitled to continue such

operations pending reasonable opportunity to make application for permit, and final action thereon.

(c) Cross references.

For penalty for failure of a distiller or rectifier to file application for registration as required by this section, see section 5601 (a) (2), and for penalty for the filing of a false application by a distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, see section 5601 (a) (3).

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1349.)

CODIFICATION

A prior section 5171, act Aug. 16, 1954, ch. 736, 68A Stat. 627, related to "premises prohibited for distilling". See sections 5178(a)(1)(B), (b), (c)(2), and 5505(b) of this title.

Provisions similar to those comprising subsecs. (a), (b)(1) and (c) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	*Former sections*
(a)	5172, 5175(a), 5177(a), 5178, 5231, 5243(a), 5271(a), 5301—5303, 5305, 5331(a)(1).
(b)(1)	5301—5303, 5304(a)(1).
(c)	5175(b), 5271(b).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627—631, 643, 645, 650, 654, 655.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5002, 5172, 5178, 5601, 5681 of this title.

§ 5172. Application.

The application for registration required by section 5171 (a) shall, in such manner and form as the Secretary or his delegate may by regulations prescribe, identify the applicant and persons interested in the business (or businesses) covered by the application, show the nature, location and extent of the premises, show the specific type or types of operations to be conducted on such premises, and show any other information which the Secretary or his delegate may by regulations require for the purpose of carrying out the provisions of this chapter.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1349.)

CODIFICATION

A prior section 5172, act Aug. 16, 1954, ch. 736, 68A Stat. 627, related to "conditions precedent to carrying on business of distilling" and is now covered in part by this section. See also sections 5171(a), 5173(a), 5178 (a)(1)(A) and 5601(a) (2), (4) of this title.

Provisions similar to those comprising this section were contained in former sections 5175(a), 5178, 5231, 5243(a), 5271, 5301—5303, 5305 and 5331(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 628, 631, 643, 645, 650, 654, 655, 657, 661, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5173. Qualification bonds.

(a) General provisions.

Every person intending to commence or to continue the business of a distiller, bonded warehouseman, or rectifier, on filing with the Secretary or his delegate an application for registration of his plant, and before commencing or continuing such business, shall file bond in the form prescribed by the Secretary or his delegate, conditioned that he shall faithfully comply with all the provisions of law and regulations relating to the duties and business of a distiller, bonded warehouseman, or rectifier, as the case may be (including the payment of taxes imposed by this chapter), and shall pay all penalties incurred or fines imposed on him for violation of any of the said provisions.

(b) Distiller's bond.

Every person intending to commence or continue the business of a distiller shall give bond in a penal sum not less than the amount of tax on spirits that will be produced in his distillery during a period of 15 days, except that such bond shall be in a sum of not less than $5,000 nor more than $100,000.

(1) Conditions of approval.

In addition to the requirements of subsection (a), the distiller's bond shall be conditioned that he shall not suffer the property, or any part thereof, subject to lien under section 5004 (b) (1) to be encumbered by mortgage, judgment, or other lien during the time in which he shall carry on such business (except that this condition shall not apply during the term of any bond given under subparagraph (C) or to any judgment or other lien covered by a bond given under paragraph (4)), and no bond of a distiller shall be approved unless the Secretary or his delegate is satisfied that the situation of the land and buildings which will constitute his bonded premises (as described in his application for registration) is not such as would enable the distiller to defraud the United States, and unless—

(A) the distiller is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land subject to lien under section 5004 (b) (1); or

(B) the distiller files with the officer designated for the purpose by the Secretary or his delegate, in connection with his application for registration, the written consent of the owner of the fee, and of any mortgage, judgment creditor, or other person having a lien thereon, duly acknowledged, that such premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States, for taxes on distilled spirits produced thereon and penalties relating thereto, shall have priority of such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of such premises, or any part thereof, the title to the same shall vest in the United States, discharged from such mortgage, judgment, or other encumbrance; or

(C) the distiller files a bond, approved by the Secretary or his delegate, in the penal sum equal to the appraised value of the property subject to lien under section 5004 (b) (1), except that such bond shall not exceed the sum of $300,000. Such value shall be determined, and such bond shall be executed in such form and with such sureties and filed with the officer designated by

the Secretary or his delegate, under such regulations as the Secretary or his delegate shall prescribe.

(2) Cancellation of indemnity bond.

When the liability for which an indemnity bond given under paragraph (1) (C) or (4) ceases to exist, such bond may be cancelled upon application to the Secretary or his delegate.

(3) Judicial sale.

In the case of any distillery sold at judicial or other sale in favor of the United States, a bond in lieu of consent under paragraph (1) (B) may be taken at the discretion of the Secretary or his delegate, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law.

(4) Involuntary lien.

In the case of a judgment, or other lien imposed on the property subject to lien under section 5004(b)(1) without the consent of the distiller, the distiller may file bond, approved by the Secretary or his delegate, in the amount of such judgment or other lien to indemnify the United States for any loss resulting from such encumbrance.

(c) Bonded warehouseman's bonds.

(1) General requirements.

Every person intending to commence or continue the business of a bonded warehouseman shall give bond in a penal sum not less than the amount of tax on distilled spirits stored on such premises and in transit thereto, except that such bond shall not exceed the sum of $200,000. In addition to the requirements in subsection (a), such bond shall be conditioned—

(A) on the withdrawal of the spirits from storage on bonded premises within the time prescribed for the determination of tax under section 5006 (a) (2), and

(B) on payment of the tax, except as otherwise provided by law, on all spirits withdrawn from storage on the bonded premises.

(2) Exception.

The Secretary or his delegate may by regulations specify bonded warehousing operations, other than the storage of more than 500 casks or packages of distilled spirits in wooden containers, for which a bond in a maximum sum of less than $200,000 will be approved, and in such cases the Secretary or his delegate shall by regulations prescribe the maximum penal sum of such bonds.

(d) Rectifier's bond.

Every person intending to commence or continue the business of a rectifier shall give bond in a penal sum not less than the amount of tax the rectifier will be liable to pay in a period of 30 days under sections 5021 and 5022, except that such bond shall not exceed the sum of $100,000, and shall not be less than $1,000.

(e) Combined operations.

(1) Distilled spirits plants.

Except as provided in paragraph (2), any person intending to commence or continue business as proprietor of a distilled spirits plant who would otherwise be required to give more than one bond under the provisions of subsections (b) (other than indemnity bonds), (c), and (d), shall, in lieu thereof, give bond in a penal sum equal to the combined penal sums which would have been required under such subsections; but in no case shall the combined operations bond be in a penal sum in excess of $200,000 if all operations are to be conducted on bonded premises, or in excess of $250,000 for the distilled spirits plant. Bonds given under this paragraph shall contain the terms and conditions of the bonds in lieu of which they are given.

(2) Distilled spirits plants and adjacent bonded wine cellars.

Any person intending to commence or continue business as proprietor of a bonded wine cellar and an adjacent distilled spirits plant qualified for the production of distilled spirits shall, in lieu of the bonds which would otherwise be required under the provisions of subsection (b) (other than indemnity bonds), (c), and (d), and section 5354 (other than supplemental bonds to cover additional liability arising as a result of deferral of payment of tax), give bond in a penal sum equal to the combined penal sums which would have been required under such provisions; but in no case shall the combined operations bond be in a penal sum in excess of $150,000 if the distilled spirits plant is qualified solely for the production of distilled spirits, in excess of $250,000 if the distilled spirits plant is qualified only for production and bonded warehousing or for production and rectification and bottling, or in excess of $300,000 for the distilled spirits plant and bonded wine cellar. Bonds given under this paragraph shall contain the terms and conditions of the bonds in lieu of which they are given.

(f) Blanket bonds.

The Secretary or his delegate may by regulations authorize any person (including, in the case of a corporation, controlled or wholly owned subsidiaries) operating more than one distilled spirits plant in a geographical area designated in regulations prescribed by the Secretary or his delegate to give a blanket bond covering the operation of any two or more of such plants and any bonded wine cellars which are adjacent to such plants and which otherwise could be covered under a combined operations bond as provided for in subsection (e) (2). The penal sum of such blanket bond shall be calculated in accordance with the following table:

Total penal sums as determined under subsections (b), (c), (d), and (e)	*Requirement for penal sum of blanket bond*
First $300,000 or any part thereof	100%
Next $300,000 or any part thereof	70%
Next $400,000 or any part thereof	50%
Next $1,000,000 or any part thereof	35%
All over $2,000,000	25%

Bonds given under this subsection shall be in lieu of the bonds required under subsections (b) (other

than indemnity bonds), (c), (d), and (e), as the case may be, and shall contain the terms and conditions of such bonds.

(g) Liability under combined operations and blanket bonds.

The total amount of any bond given under subsection (e) or (f) shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1349, and amended Pub. L. 91–659, § 4, Jan. 8, 1971, 84 Stat. 1966.)

CODIFICATION

A prior section 5173, act Aug. 16, 1954, ch. 736, 68A Stat. 628, related to "distillery fixtures and equipment". See sections 5178 (a) (1)(A), (2)(B)(C), (c) (1) and 5202(b) of this title.

Provisions similar to those comprising subsecs. (a), (b), (b)(1), (b)(1) (A)—(C), (b)(3), (c), (c)(1), (d) and (e)(1) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5172, 5176(a), 5231, 5232(a), 5272(a), 5301—5303, 5304(a)(5), 5305, 5311(a)(3).
(b)	5176 (a), (d).
(b)(1)	5176(a), 5177(c).
(b)(1) (A)—(C)	5177(b) (1)—(3).
(b)(3)	5177(b)(4).
(c)	5232(a), 5302, 5303, 5306, 5331(a)(3).
(c)(1)	5232(a).
(d)	5272(a).
(e)(1)	5304(a)(5).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 629—631, 643, 650, 654, 655, 657, 662.

AMENDMENTS

1971—Subsec. (b)(1). Pub. L. 91–659, § 4(b), extended the exception clause in the parenthetical part of this paragraph by making reference to cl. (4) of this subsection.

Subsec. (b)(2). Pub. L. 91–659, § 4(c), added reference to paragraph (4).

Subsec. (b)(4). Pub. L. 91–659, § 4(a), added subsec. (b)(4).

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on the first day of the first calendar month which begins more than 90 days after January 8, 1971, see section 6 of Pub. L. 91–659, set out under section 5066 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5004, 5006, 5174, 5176, 5177 of this title.

§ 5174. Withdrawal bonds.

(a) Requirements.

No distilled spirits, other than distilled spirits withdrawn under section 5214 or section 7510, shall be withdrawn from bonded premises except on payment of tax unless—

(1) the proprietor of the bonded premises has furnished such bond (in addition to that required in section 5173) to secure payment of the tax on such spirits, under such regulations and conditions, and in such form and penal sum, as the Secretary or his delegate may prescribe; or

(2) the proprietor of a distilled spirits plant authorized to rectify or bottle distilled spirits has—

(A) made application to the Secretary or his delegate to withdraw such spirits and has assumed liability at the receiving plant for payment of the tax thereon;

(B) furnished bond (in addition to any bond required by section 5173) to secure payment of the tax on such spirits, under such regulations and conditions, and in such form and penal sum, as the Secretary or his delegate may prescribe; and

(C) complied with such other requirements as the Secretary or his delegate may by regulations prescribe.

(b) Release of other bonds.

When a bond has been filed under subsection (a) and distilled spirits have been withdrawn from bonded premises thereunder, bonds of proprietors covering operations on bonded premises, and bonds given under prior provisions of internal revenue law to cover similar operations, shall no longer cover liability for payment of the tax on such spirits. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1352.)

CODIFICATION

A prior section 5174, act Aug. 16, 1954, ch. 736, 68A Stat. 630, related to "registry of stills". See sections 5179 and 5505(d) of this title.

Provisions similar to those comprising subsec. (a)(1) of this section were contained in former sections 5176(b) and 5232(b), act Aug. 16, 1954, ch. 736, 68A Stat. 629, 643, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5005, 5007, 5176, 5177, 5213 of this title.

§ 5175. Export bonds.

(a) Requirements.

No distilled spirits shall be withdrawn from bonded promises for exportation without payment of tax unless the exporter has furnished bond to cover such withdrawal, under such regulations and conditions, and in such form and penal sum, as the Secretary or his delegate may prescribe.

(b) Exception.

In case of distilled spirits withdrawn for exportation without payment of tax on application of the proprietor of bonded premises, the bond of such proprietor covering such bonded premises shall cover such exportation and subsection (a) shall not be applicable.

(c) Cancellation or credit of export bonds.

The bonds given under subsection (a) shall be cancelled or credited and the bonds liable under subsection (b) credited on the submission of such evidence, records, and certification indicating exportation as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1352.)

CODIFICATION

A prior section 5175, act Aug. 16, 1954, ch. 736, 68A Stat. 628, related to "notice of business of distiller". See section 5171 (a), (c) and 5172 of this title.

Provisions similar to those comprising this section were contained in former section 5247(a), act Aug. 16, 1954, ch. 736, 68A Stat. 647, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CONTINUATION OF DISTILLER'S NOTICE AND BOND

Section 210 (f) of Pub. L. 85-859 provided that: "Notwithstanding any provision of section 5175 or 5176 (a) of the Internal Revenue Code of 1954, the Secretary of the Treasury or his delegate may waive, as to registered distillers or registered fruit distillers qualified to operate under bond on April 30, 1959, requirements for filing notice and executing new bond on May 1, 1959, if the distiller and the surety have executed consent to continuation of the terms of the existing bond to cover operations from May 1, 1959, to June 30, 1959, both dates inclusive. Nothing in this subsection shall be construed as limiting the authority of the Secretary of the Treasury or his delegate under section 5176 (b) or (c) of the Internal Revenue Code of 1954."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5176, 5177, 5214 of this title.

§ 5176. New or renewed bonds.

(a) General.

New bonds shall be required under sections 5173, 5174, and 5175 in case of insolvency or removal of any surety, and may, at the discretion of the Secretary or his delegate, be required in any other contingency affecting the validity or impairing the efficiency of such bond.

(b) Bonded warehouseman's bonds.

In case the proprietor of a distilled spirits plant fails or refuses—

(1) to give a warehouseman's bond required under section 5173 (c) or to renew the same, and neglects to immediately withdraw the spirits and pay the tax thereon; or

(2) to withdraw any spirits from storage on bonded premises before the expiration of the time limited in the bond and, except as otherwise provided by law, pay the tax thereon;

the Secretary or his delegate shall proceed to collect the tax. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1353.)

CODIFICATION

Provisions similar to those comprising subsec. (a) of this section were contained in a prior section 5176(c), act Aug. 16, 1954, ch. 736, 68A Stat. 629.

Former section 5176 (a), (b), (d), (e) related to distiller's bond: form and approval; additional bond; exemption from survey requirements; and cross references. See sections 5173 (a), (b), 5174(a)(1) and 5177 of this title.

Provisions similar to those comprising this section were contained in former section 5232(c), act Aug. 16, 1954, ch. 736, 68A Stat. 643, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CONTINUATION OF DISTILLER'S NOTICE AND BOND

Authority to waive requirements for filing notice and executing new bond on May 1, 1959, if distiller and surety have executed consent to continuation of the terms of existing bond to cover operations from May 1, 1959 to June 30, 1959, see section 210 (f) of Pub. L. 85-859, set out as a note under section 5175 of this title.

§ 5177. Other provisions relating to bonds.

(a) General provisions relating to bonds.

The provisions of section 5551 shall be applicable to the bonds required by or given under sections 5173, 5174, and 5175.

(b) Cross references.

(1) For deposit of United States bonds or notes in lieu of sureties, see 6 U. S. C. 15.

(2) For penalty and forfeiture for failure or refusal to give bond, or for giving false, forged, or fraudulent bond, or or carrying on the business of a distiller without giving bond, see sections 5601 (a) (4), 5601 (a) (5), 5601 (b) (2), and 5615 (3).

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1353.)

CODIFICATION

A prior section 5177, act Aug. 16, 1954, ch. 736, 68A Stat. 628, related to "conditions of approval of distiller's bond". See section 5173(b)(1) of this title.

Former section 5177(a) was a general provision. See section 5171(a) of this title.

Former section 5177(b) (1)—(3) related to ownership, consent of owner, or indemnity bond. See section 5173 (b)(1) (A)—(C) of this title.

Former section 5177(b)(4) related to judicial sale. See section 5173(b)(3) of this title.

Former section 5177(c) related to situation of distillery. See sections 5173(b)(1) and 5551(c) of this title.

Former section 5177(d) was a cross reference to penalty for improper approval of distiller's bond, and to general provisions relating to approval, disapproval and appeal on bonds, now covered by subsec. (a) of this section and section 5551 of this title.

Provisions similar to those comprising subsec. (b) of this section were contained in former sections 5176(e) and 5232(d), act Aug. 16, 1954, ch. 736, 68A Stat. 630, 644, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub L. 85-859, set out as a note under section 5001 of this title.

§ 5178. Premises of distilled spirits plants.

(a) Location, construction, and arrangement.

(1) General.

(A) The premises of a distilled spirits plant shall be as described in the application required by section 5171(a). The Secretary or his delegate shall prescribe such regulations relating to the location, construction, arrangement, and protection of distilled spirits plants as he deems necessary to facilitate inspection and afford adequate security to the revenue.

(B) No distilled spirits plant for the production of distilled spirits shall be located in any dwelling house, in any shed, yard, or inclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is made or produced, or liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under subsection (b)).

(C) Notwithstanding any other provision of this chapter relating to distilled spirits plants the Secretary or his delegate may approve the location, construction, arrangement, and method of operation of any establishment which was qualified to operate on the date preceding the effective date of this section if he deems that

such location, construction, arrangement, and method of operation will afford adequate security to the revenue.

(2) **Production facilities.**

(A) Any person establishing a distilled spirits plant may, as described in his application for registration, provide facilities which may be used for the production of distilled spirits from any source or substance.

(B) The distilling system shall be continuous and closed at all points where potable or readily recoverable spirits are present and the distilling apparatus shall be so designed and constructed and so connected as to prevent the unauthorized removal of such spirits prior to their production gauge.

(C) The Secretary or his delegate is authorized to order and require such identification of, changes of, or additions to, distilling apparatus, connecting pipes, pumps, tanks, or any machinery connected with or used in or on the bonded premises, or require to be put on any of the stills, tubs, pipes, tanks, or other equipment, such fastenings, locks or seals as he may deem necessary to facilitate inspection and afford adequate security to the revenue.

(3) **Bonded warehousing facilities.**

(A) Any person establishing a distilled spirits plant for the production of distilled spirits may, as described in his application for registration, establish warehousing facilities on the bonded premises of such plant.

(B) Distilled spirits plants for the bonded warehousing of distilled spirits elsewhere than as described in subparagraph (A) may be established at the discretion of the Secretary or his delegate, by proprietors referred to in subparagraph (A) or by other persons, under such regulations as the Secretary or his delegate shall prescribe.

(C) Facilities for the storage on bonded premises of distilled spirits in casks, packages, cases, or similar portable approved containers shall be established in a room or building used exclusively for the storage, bottling, or packaging of distilled spirits, and activities related thereto.

(4) **Bottling facilities.**

(A) The proprietor of a distilled spirits plant authorized to store distilled spirits in casks, packages, cases, or similar portable approved containers on bonded premises—

(i) may establish a separate portion of such premises for the bottling in bond of distilled spirits under section 5233 prior to payment or determination of tax, or

(ii) may elect to use facilities on his bottling premises established under subparagraph (B) or (C) for bottling in accordance with the conditions and requirements of section 5233 and under the supervision provided for in section 5202(g), but after determination of tax.

Distilled spirits bottled after determination of the internal revenue tax under clause (ii) shall be stamped and labeled in the same manner as distilled spirits bottled before determination of tax under clause (i).

(B) Facilities for rectification of distilled spirits or wines upon which the tax has been paid or determined, may be established as a separate distilled spirits plant or as a part of a distilled spirits plant qualified for the production or bonded warehousing of distilled spirits. Such facilities, when qualified, may be used for the rectification of distilled spirits or wines, or the bottling or packaging of rectified or unrectified distilled spirits or wines on which the tax has been paid or determined.

(C) Facilities for bottling or packaging any distilled spirits upon which the tax has been paid or determined (other than bottling facilities established under subparagraph (B)), may be established and maintained only by a State or political subdivision thereof, or by the proprietor of a distilled spirits plant qualified for the production or bonded warehousing of distilled spirits, as a part of such plant or as a separate distilled spirits plant. Such facilities, when qualified, may be used for the bottling or packaging of rectified or unrectified distilled spirits or wines but may not be used for the rectification of distilled spirits or wines.

(D) Bottling premises established under subparagraphs (B) or (C) may not be located on bonded premises, and if the distilled spirits plant contains both bonded premises and bottling premises they shall be separated by such means or in such manner as the Secretary or his delegate may by regulations prescribe.

(5) **Denaturing facilities.**

The Secretary or his delegate may by regulations require such arrangement and segregation of denaturing facilities as he deems necessary.

(b) **Use of premises for other businesses.**

The Secretary or his delegate may authorize the carrying on of such other businesses (not specifically prohibited by section 5601 (a) (6)) on premises of distilled spirits plants, as he finds will not jeopardize the revenue. Such other businesses shall not be carried on until an application to carry on such business has been made to and approved by the Secretary or his delegate.

(c) **Cross references.**

(1) For provisions authorizing the Secretary or his delegate to require installation of meters, tanks, and other apparatus, see section 5552.

(2) For penalty for distilling on prohibited premises, see section 5601 (a) (6).

(3) For provisions relating to the bottling of distilled spirits labeled as alcohol, see section 5235.

(4) For provisions relating to the unauthorized use of distilled spirits in any manufacturing process, see section 5601 (a) (9).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1353, and amended Pub. L. 91–659, § 5, Jan. 8, 1971, 84 Stat. 1966.)

CODIFICATION

A prior section 5178, act Aug. 16, 1954, ch. 736, 68A Stat. 631, related to plan of distillery. See sections 5171(a) and 5172 of this title.

Provisions similar to those comprising subsecs. (a)(1)(A) (B), (2) (A)—(C), (3), (4) (A) (B) (D), (5), (b), (c) (1), (2), (4) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	*Former sections*
(a)(1)(A)	5172, 5173(a), 5231, 5271(a), 5273(a), 5305.
(a)(1)(B)	5171(a).
(a)(2)(A)	5307.
(a)(2)(B)	5173(b).
(a)(2)(C)	5173(a), (c).
(a)(3)	5231, 5243(a), 5302.
(a)(4)(A)	5243(a).
(a)(4)(B)(D)	5271(a), 5273(a).
(a)(5)	5303, 5305, 5331(a)(1).
(b)	5171(a).
(c)(1)	5173(d)(1), 5273(b)(1).
(c)(2)	5171(b).
(c)(4)	5216(b).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 628, 641, 643, 645, 650, 654, 655, 657, 661.

AMENDMENTS

1971—Subsec. (a)(4)(A). Pub. L. 91-659 substantially reenacted existing provisions and added cl. (ii) and the following sentence.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-659 effective on the first day of the first calendar month which begins more than 90 days after January 8, 1971, see section 6 of Pub. L. 91-659, set out under section 5066 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5202, 5233, 5235, 5511, 5601 of this title.

§ 5179. Registration of stills.

(a) Requirements.

Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register such still or apparatus with the Secretary or his delegate immediately on its being set up, by subscribing and filing with the Secretary or his delegate a statement, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its capacity, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used (except that stills or distilling apparatus not used or intended to be used for the distillation, redistillation, or recovery of distilled spirits are not required to be registered under this section).

(b) Cross references.

(1) For penalty and forfeiture provisions relating to unregistered stills, see sections 5601 (a) (1), 5601 (b) (1), and 5615 (1).

(2) For provisions requiring permit to set up still, boiler or other vessel for distilling, see section 5105.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1355.)

CODIFICATION

A prior section 5179, act Aug. 16, 1954, ch. 736, 68A Stat. 631, related to "survey of distillery" and has been omitted from the Code as obsolete.

Provisions similar to those comprising this section were contained in former sections 5174 and 5275(2), act Aug. 16, 1954, ch. 736, 68A Stat. 630, 651, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5505, 5511, 5601, 5615 of this title.

§ 5180. Signs.

(a) Requirements.

Every person engaged in distilling, bonded warehousing, rectifying, or bottling of distilled spirits shall place and keep conspicuously on the outside of his place of business a sign showing the name of such person and denoting the business, or businesses, in which engaged. The sign required by this subsection shall be in such form and contain such information as the Secretary or his delegate shall by regulations prescribe.

(b) Penalty.

For penalty and forfeiture relating to failure to post sign or improperly posting such sign, see section 5681.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1355.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5180, act Aug. 16, 1954, ch. 736, 68A Stat. 632.

Provisions similar to those comprising this section were contained in former section 5274, act Aug. 16, 1954, ch. 736, 68A Stat. 651, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5681 of this title.

§ 5181. Cross references.

For provisions requiring payment of special (occupational) tax as rectifier, see section 5081, or as wholesale liquor dealer, see section 5111, or as retail liquor dealer, see section 5121.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1356.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5275(3), act Aug. 16, 1954, ch. 736, 68A Stat. 651, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter C.—Operation of Distilled Spirits Plants

Part
I. General provisions.
II. Operations on bonded premises.
III. Operations on bottling premises.

PART I.—GENERAL PROVISIONS

Sec.
5201. Regulation of operations.
5202. Supervision of operations.
5203. Entry and examination of premises.
5204. Gauging.
5205. Stamps.
5206. Containers.
5207. Records and reports.

§ 5201. Regulation of operations.

(a) General.

Proprietors of distilled spirits plants shall conduct their operations relating to the production, storage, denaturing, rectification, and bottling of distilled spirits, and all other operations authorized to be conducted on the premises of such plants, under such regulations as the Secretary or his delegate shall prescribe.

(b) Distilled spirits for industrial uses.

The regulations of the Secretary or his delegate under this chapter respecting the production, warehousing, denaturing, distribution, sale, export, and use of distilled spirits for industrial purposes shall be such as he deems necessary, advisable, or proper to secure the revenue, to prevent diversion to illegal uses, and to place the distilled spirits industry and other industries using such distilled spirits as a chemical raw material or for other lawful industrial purposes on the highest possible plane of scientific and commercial efficiency and development consistent with the provisions of this chapter. Where nonpotable chemical mixtures containing distilled spirits are produced for transfer to the bonded premises of a distilled spirits plant for completion of processing, the Secretary or his delegate may waive any provision of this chapter with respect to the production of such mixtures, and the processing of such mixtures on the bonded premises shall be deemed to be production of distilled spirits for purposes of this chapter.

(c) Hours of operations.

The Secretary or his delegate may prescribe regulations relating to hours for distillery operations and to hours for removal of distilled spirits from distilled spirits plants; however, such regulations shall not be more restrictive, as to any operation or function, that the provisions of internal revenue law and regulations relating to such operation or function in effect on the day preceding the effective date of this section.

(d) Identification of distilled spirits.

The Secretary or his delegate may provide by regulations for the addition of tracer elements to distilled spirits to facilitate the enforcement of this chapter. Tracer elements to be added to distilled spirits at any distilled spirits plant under provisions of this subsection shall be of such character and in such quantity as the Secretary or his delegate may authorize or require, and such as will not impair the quality of the distilled spirits for their intended use. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1356.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a)—(c) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	*Former sections*
(a)	5193(a), 5194(g), 5241(a), 5281, 5282(a), 5302, 5305—5307, 5319(6).
(b)	5305.
(c)	5195, 5215, 5306.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 633, 636, 640, 644, 651, 654, 657, 661.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5202. Supervision of operations.

(a) General.

The operations on the premises of distilled spirits plants shall be conducted under such supervision as the Secretary or his delegate shall by regulation prescribe. The Secretary or his delegate shall assign such number of internal revenue officers to distilled spirits plants as he deems necessary to maintain supervision of the operations conducted on such premises.

(b) Removal of distilled spirits from distilling system.

The removal of distilled spirits from the closed distilling system shall be controlled by Government locks or seals, or by meters or other devices or methods as the Secretary or his delegate may prescribe.

(c) Storage tanks.

Approved containers for the storage of distilled spirits on bonded premises (other than containers required by subsection (d) to be in a locked room or building or those containing distilled spirits denatured as authorized by law) shall be kept securely closed, and the flow of distilled spirits into and out of such containers shall be controlled by Government locks or seals, or by meters or other devices or methods as the Secretary or his delegate may prescribe.

(d) Storage rooms or buildings.

Distilled spirits (other than denatured distilled spirits) on bonded premises in casks, packages, cases, or similar portable approved containers must be stored in a room or building provided as required by section 5178 (a) (3) (C), which room or building shall be in the joint custody of the internal revenue officer assigned to such premises and the proprietor thereof, and shall be kept securely locked with Government locks and at no time be unlocked or opened, or remain open, except when such officer or person who may be designated to act for him is on the premises. Deposits of distilled spirits in, or removals of distilled spirits from, such room or building shall be under such supervision by internal revenue officers as the Secretary or his delegate shall by regulations prescribe.

(e) Denaturation of distilled spirits.

The denaturation of distilled spirits on bonded premises shall be conducted under such supervision and controlled by such meters or other devices or methods as the Secretary or his delegate shall prescribe.

(f) Gauging.

The gauge of production of distilled spirits, gauge for determination of the tax imposed under section 5001 (a) (1), and gauge for tax-free removal of other than denatured distilled spirits from bonded premises, shall be made or supervised by internal revenue officers, under such regulations as the Secretary or his delegate shall prescribe.

(g) Bottling in bond.

The bottling of distilled spirits in bond shall be supervised by the internal revenue officer assigned to the premises in such manner as the Secretary or his delegate shall by regulations prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1357.)

PRIOR PROVISIONS

Section effective July 1, 1959, see section 210(a)(1) contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5192(a), (c), 5241 (a), (b), 5282 (b).
(b)	5173 (b), 5192 (b), (c).
(c)	5241 (a), (b).
(d)	5241(b).
(e)	5331(a)(1).
(f)	5193(a), 5250 (a), (b).
(g)	5243(b).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 628, 633, 644, 646, 649, 652, 661.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5178, 5204 of this title.

§ 5203. Entry and examination of premises.

(a) Keeping premises accessible.

Every proprietor of a distilled spirits plant shall furnish the Secretary or his delegate such keys as may be required for internal revenue officers to gain access to the premises and any structures thereon, and such premises shall always be kept accessible to any officer having such keys.

(b) Right of entry and examination.

It shall be lawful for any internal revenue officer at all times, as well by night as by day, to enter any distilled spirits plant, or any other premises where distilled spirits are produced or rectified, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, it shall be lawful for such officer, at all times, as well by night as by day, to use such force as is necessary for him to gain entry to such premises.

(c) Furnishing facilities and assistance.

On the demand of any internal revenue officer or agent, every proprietor of a distilled spirits plant shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on such premises. Such proprietor shall also, on demand of such officer or agent, open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels not under the control of the internal revenue officer in charge.

(d) Authority to break up grounds or walls.

It shall be lawful for any internal revenue officer, and any person acting in his aid, to break up the ground on any part of a distilled spirits plant or any other premises where distilled spirits are produced or rectified, or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or therto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any distilled spirits, mash, wort, or beer, or other liquor, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

(e) Penalty.

For penalty for violation of this section, see section 5687.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1357.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5196(a).
(b)	5196 (b), (e).
(c)	5196 (c), (e), 5283, 5615.
(d)	5196(d), 5283.
(e)	5615, 5687.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 636, 652, 686, 700.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5505, 5511 of this title.

§ 5204. Gauging.

(a) General.

The Secretary or his delegate may by regulations require the gauging of distilled spirits for such purposes, in addition to those specified in section 5202 (f), as he may deem necessary, and all required gauges shall be made at such times and under such conditions as he may by regulations prescribe.

(b) Gauging instruments.

For the determination of tax and the prevention and detection of frauds, the Secretary or his delegate may prescribe for use such hydrometers, saccharometers, weighing and gauging instruments, or other means or methods for ascertaining the quantity, gravity, and producing capacity of any mash, wort, or beer used, or to be used, in the production of distilled spirits, and the strength and quantity of spirits subject to tax, as he may deem necessary; and he may prescribe regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits.

(c) Gauging, stamping, marking, and branding by proprietors.

The Secretary or his delegate may by regulations require the proprietor of a distilled spirits plant, at the proprietor's expense and under such supervision as the Secretary or his delegate may require, to do

such gauging, stamping, marking, and branding and such mechanical labor pertaining thereto as the Secretary or his delegate deems proper and determines may be done without danger to the revenue. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1358.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former sections of I.R.C., 1954, prior to the general revision of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	*Former sections*
(a)	5193(a), 5194(g), 5245, 5282(b).
(b)	5212.
(c)	5193(d), 5250(b), 5282(b), 5306.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 633, 634, 636, 639, 647, 649, 652, 657.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5205. Stamps.

(a) Stamps for containers of distilled spirits.

(1) Containers of distilled spirits bottled in bond.

Every container of distilled spirits bottled in bond, under section 5233, when filled shall be stamped by a stamp evidencing the bottling of such spirits in bond under the provisions of this paragraph and section 5233.

(2) Containers of other distilled spirits.

No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof is stamped by a stamp evidencing the determination of the tax or indicating compliance with the provisions of this chapter. The provisions of this paragraph shall not apply to—

(A) distilled spirits, lawfully withdrawn from bond, placed in containers for immediate consumption on the premises or for preparation for such consumption;

(B) distilled spirits in bond or in customs custody;

(C) distilled spirits, lawfully withdrawn from bond, in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto;

(D) distilled spirits, lawfully withdrawn from bond, in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;

(E) distilled spirits on which no internal revenue tax is required to be paid;

(F) distilled spirits lawfully withdrawn from bond and not intended for sale or for use in the manufacture or production of any article intended for sale; or

(G) any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

(3) Stamp regulations.

The Secretary or his delegate shall prescribe regulations with respect to the supplying or procuring of stamps required under this subsection or section 5235, the time and manner of applying for, issuing, affixing, and destroying such stamps, the form of such stamps and the information to be shown thereon, applications for the stamps, proof that applicants are entitled to such stamps, and the method of accounting for such stamps, and such other regulations as he may deem necessary for the enforcement of this subsection. In the case of a container of a capacity of 5 wine gallons or less, the stamp shall be affixed in such a manner as to be broken when the container is opened, unless the container is one that cannot again be used after opening.

(b) Stamps for containers of distilled spirits withdrawn from bonded premises on determination of tax.

Containers of all distilled spirits withdrawn from bonded premises on determination of tax under section 5006 (a) shall be stamped by a stamp under such regulations as the Secretary or his delegate shall prescribe. This subsection shall not be construed to require stamps on cases of bottled distilled spirits filled and stamped on bonded premises.

(c) Stamps for containers of distilled spirits withdrawn for exportation.

(1) Exportation without payment of tax.

Every container of distilled spirits withdrawn for exportation under section 5214 (a) (4) shall be stamped by a stamp under such regulations as the Secretary or his delegate shall prescribe. This paragraph shall not be construed to require stamps on cases of bottled distilled spirits filled and stamped on bonded premises.

(2) Exportation with benefit of drawback.

The Secretary or his delegate may require any container of distilled spirits bottled or packaged especially for export with benefit of drawback to be stamped by a stamp under such regulations as he may prescribe.

(d) Stamps for containers of 5 wine gallons or more of distilled spirits filled on bottling premises.

All containers of distilled spirits containing 5 wine gallons or more, which are filled on bottling premises of a distilled spirits plant for removal therefrom, shall be stamped by a stamp under such regulations as the Secretary or his delegate shall prescribe.

(e) Issue for restamping.

The Secretary or his delegate, under regulations prescribed by him, may authorize restamping of containers of distilled spirits which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

(f) Accountability.

All stamps relating to distilled spirits shall be used and accounted for under such regulations as the Secretary or his delegate may prescribe.

(g) Effacement of stamps, marks, and brands on emptied containers.

Every person who empties, or causes to be emptied, any immediate container of distilled spirits bearing any stamp, mark, or brand required by law or regulations prescribed pursuant thereto (other than containers stamped under subsection (a) or section 5235) shall at the time of emptying such container

efface and obliterate such stamp, mark, or brand, except that the Secretary or his delegate may, by regulations, waive any requirement of this subsection as to the effacement or obliteration of marks or brands (or portions thereof) where he determines that no jeopardy to the revenue will be involved.

(h) Form of stamp.

Any stamp required by or prescribed pursuant to the provisions of this section or section 5235 may consist of such coupon, serially-numbered ticket, imprint, design, or other form of stamp as the Secretary or his delegate shall by regulations prescribe.

(i) Cross references.

(1) For general provisions relating to stamps, see chapter 69.

(2) For provisions relating to the stamping, marking, and branding of containers of distilled spirits by proprietors, see section 5204 (c).

(3) For provisions relating to the stamping of bottled alcohol, see section 5235.

(4) For authority of the Secretary or his delegate to prescribe regulations regarding stamps for distilled spirits withdrawn to manufacturing bonded warehouses, see section 5522 (a).

(5) For penalties and forfeitures relating to stamps, marks, and brands, see sections 5604, 5613, 7208, and 7209.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1358.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a)—(g) and (i) (2), (4) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)(1)	5008(a)(1).
(a)(2)	5008(b)(1).
(a)(3)	5008(a), (b).
(b)	5193(a), 5250.
(c)(1)	5009(a).
(c)(2)	5008(b)(1).
(d)	5115(a), 5282 (b), (c).
(e)	5010(a).
(f)	5009(a), 5010(b).
(g)	5010(c).
(i)(2)	5010(d)(3).
(i)(4)	5009(b)(2).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 602—604, 620, 633, 649, 652.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5235, 5604 of this title.

§ 5206. Containers.

(a) Authority to prescribe.

The Secretary or his delegate shall by regulations prescribe the types or kinds of containers which may be used to contain, store, transfer, convey, remove, or withdraw distilled spirits.

(b) Standards of fill.

The Secretary or his delegate may by regulations prescribe the standards of fill for approved containers.

(c) Marking, branding, or identification.

Containers of distilled spirits (and cases containing bottles or other containers of such spirits) shall be marked, branded, or identified in such manner as the Secretary or his delegate shall by regulations prescribe.

(d) Applicability.

This section shall be applicable exclusively with respect to containers of distilled spirits for industrial use, with respect to containers of distilled spirits of a capacity of more than one gallon for other than industrial use, and with respect to cases containing bottles or other containers of distilled spirits.

(e) Cross references.

(1) For other provisions relating to regulation of containers of distilled spirits, see section 5301.

(2) For provisions relating to labeling containers of distilled spirits of one gallon or less for nonindustrial uses, see section 5 (e) of the Federal Alcohol Administration Act (27 U. S. C. 205 (e)).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1360.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a)—(c) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5193 (a), (b), 5194, 5247 (a), (d), 5302.
(b)	5193(c).
(c)	5009(a), 5193(a), 5194, 5243 (d), (e), 5250(a), 5282(b).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 603, 633—635, 646—649, 652, 654.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5207. Records and reports.

(a) Records of distillers and bonded warehousemen.

Every distiller and every bonded warehouseman shall keep records in such form and manner as the Secretary or his delegate shall by regulations prescribe of—

(1) the receipt of materials intended for use in the production of distilled spirits, and the use thereof,

(2) the receipt and use of distilled spirits received for redistillation,

(3) the kind and quantity of distilled spirits produced,

(4) the kind and quantity of distilled spirits entered into storage,

(5) the bottling of distilled spirits in bond,

(6) the kind and quantity of distilled spirits removed from bonded premises, and from any taxpaid storeroom operated in connection therewith, and the purpose for which removed,

(7) the kind and quantity of denaturants received and used or otherwise disposed of,

(8) the kind and qauntity of distilled spirits denatured,

(9) the kind and quantity of denatured distilled spirits removed, and

(10) such additional information as may by regulations be required.

(b) Records of rectifiers and bottlers.

Every rectifier and every bottler of distilled spirits shall keep records in such form and manner as the Secretary or his delegate shall by regulations prescribe of—

(1) all distilled spirits and wines received,

(2) the kind and quantity of distilled spirits and wines rectified and packaged or bottled, or packaged or bottled without rectification,

(3) the kind and quantity of distilled spirits and wines removed from his premises,

(4) the receipt, use, and balance on hand of all stamps required by law or regulations to be used by him, and

(5) such additional information as may by regulations be required.

(c) Reports.

Every person required to keep records under subsection (a) or (b) shall render such reports covering his operations, at such times and in such form and manner and containing such information, as the Secretary or his delegate shall by regulation prescribe.

(d) Preservation and inspection.

The records required by subsection (a) and (b), and a copy of each report required by subsection (c) shall be kept on the premises where the operations covered by the record are carried on and shall be available for inspection by any internal revenue officer during business hours, and shall be preserved by the person required to keep such records and reports for such period as the Secretary or his delegate shall by regulations prescribe.

(e) Penalty.

For penalty and forfeiture for refusal or neglect to keep records required under this section, or for false entries therein, see sections 5603 and 5615 (5).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1361.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5197 (a)(1)(A), (a)(2), 5305, 5331 (a)(3).
(b)	5285, 5555(a).
(c)	5197(b), 5285, 5305, 5331(a)(3), 5555(a).
(d)	5197(a)(1)(B), 5285, 5305, 5331(a)(3), 5555(a).
(e)	5197(c)(2), 5285.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 637, 638, 652, 657, 662, 681.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5615 of this title.

PART II.—OPERATIONS ON BONDED PREMISES

Subpart A. General.
B. Production.
C. Storage.
D. Denaturation.

SUBPART A.—GENERAL

Sec.
5211. Production and entry of distilled spirits.
5212. Transfer of distilled spirits between bonded premises.
5213. Withdrawal of distilled spirits from bonded premises on determination of tax.
5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax.
5215. Return of tax determined distilled spirits to bonded premises.
5216. Regulation of operations.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part III, General provisions relating to distilleries and distilled spirits" of "Subchapter B—Distilleries" consisted of sections 5211—5217.

Section 5211 related to "Detention of cases, packages, or containers on suspicion."

Section 5212 related to "Prevention and detection of fraud".

Section 5213 related to "Return of materials used in the manufacture of distilled spirits".

Section 5214 related to "Regulation of traffic in containers of distilled spirits."

Section 5215 related to "Exemption of distillers of fruit brandy from certain requirements".

Section 5216 related to "Mash, wort, and vinegar; vinegar factories".

Section 5217, act Aug. 16, 1954, ch. 736, 68A Stat. 641, as amended by acts July 11, 1956, ch. 573, § 1, 70 Stat. 530; July 11, 1958, Pub. L. 85–517, 72 Stat. 357, related to "Exemptions relating to national emergency transfers". See sections 5005(c) (1), (2), 5025 (d), (e)(2), 5212, 5234(b) and 5561 of this title.

§ 5211. Production and entry of distilled spirits.

Distilled spirits in the process of production in a distilled spirits plant may be held prior to the production gauge only for so long as is reasonably necessary to complete the process of production. Under such regulations as the Secretary or his delegate shall prescribe, all distilled spirits produced in a distilled spirits plant shall be gauged and a record made of such gauge within a reasonable time after the production thereof has been completed. The proprietor shall, pursuant to such production gauge and in accordance with such regulations as the Secretary or his delegate shall prescribe, make appropriate entry for—

(1) deposit of such spirits in storage on bonded premises;

(2) withdrawal upon determination of tax as authorized by law;

(3) withdrawal under the provisions of section 5214;

(4) transfer for redistillation under the provisions of section 5223; or

(5) immediate denaturation.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1362.)

CODIFICATION

A prior section 5211, act Aug. 16, 1954, ch. 736, 68A Stat. 638, related to detention of casks, packages, or containers on suspicion. See section 5311 of this title.

Provisions similar to those comprising this section were contained in former sections 5193(a), 5194(a), (e)—(g), 5242(a), 5305, act Aug. 16, 1954, ch. 736, 68A Stat. 633—636, 645, 657, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5231 of this title.

§ 5212. Transfer of distilled spirits between bonded premises.

Distilled spirits on which the internal revenue tax has not been paid or determined as authorized by law may, under such regulations as the Secretary or his delegate shall prescribe, be transferred in bond

between bonded premises in any approved container. For the purposes of this chapter, the removal of distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1362.)

CODIFICATION

A prior section 5212(a), act Aug. 16, 1954, ch. 736, 68A Stat. 639, related to prevention and detection of fraud. See section 5204(b) of this title.

Former section 5212(b) was a cross reference to provisions relating to gauging and marking of spirits.

Provisions similar to those comprising this section were contained in former sections 5194 (a), (e)—(g), 5217(a), 5246, 5308, act Aug. 16, 1954, ch. 736, 68A Stat. 634—636, 641, 647, 657, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5005 of this title.

§ 5213. Withdrawal of distilled spirits from bonded premises on determination of tax.

On application to the Secretary or his delegate and subject to the provisions of section 5174 (a), distilled spirits may be withdrawn from the bonded premises of a distilled spirits plant on payment or determination of tax thereon, in approved containers, under such regulations as the Secretary or his delegate shall prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1362.)

CODIFICATION

A prior section 5213, act Aug. 16, 1954, ch. 736, 68A Stat. 639, related to return of materials used in the manufacture of distilled spirits. See sections 5002(a)(6) and 5291 of this title.

Provisions similar to those comprising this section were contained in former sections 5194 (a), (e) and 5244, act Aug. 16, 1954, ch. 736, 68A Stat. 634, 647, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5007 of this title.

§ 5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax.

(a) Purposes.

Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary or his delegate shall prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers—

(1) free of tax after denaturation of such spirits in the manner prescribed by law for—

(A) exportation;

(B) use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(C) any other use in the arts and industries (except for uses prohibited by section 5273 (b) or (d)) and for fuel, light, and power; or

(2) free of tax by, and for the use of, the United States or any governmental agency thereof, any State or Territory, any political subdivision of a State or Territory, or the District of Columbia, for nonbeverage purposes; or

(3) free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale—

(A) for the use of any educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501 (a), or for the use of any scientific university or college of learning;

(B) for any laboratory for use exclusively in scientific research;

(C) for use at any hospital, blood bank, or sanitarium (including use in making any analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(D) for the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof); or

(4) without payment of tax for exportation, after making such application and entries, filing such bonds as are required by section 5175, and complying with such other requirements as may by regulations be prescribed; or

(5) without payment of tax for use in wine production, as authorized by section 5373; or

(6) without payment of tax for transfer to manufacturing bonded warehouses, as authorized by section 5522 (a); or

(7) without payment of tax for use of certain vessels and aircraft, as authorized by law; or

(8) without payment of tax for transfer to foreign-trade zones, as authorized by law; or

(9) free of tax for use as samples in making tests or laboratory analyses.

(b) Cross references.

(1) For provisions relating to denaturation, see sections 5241 and 5242.

(2) For provisions requiring permit for users of distilled spirits withdrawn free of tax and for users of specially denatured distilled spirits, see section 5271.

(3) For provisions relating to withdrawal of distilled spirits without payment of tax for use of certain vessels and aircraft, as authorized by law, see 19 U. S. C. 1309.

(4) For provisions relating to foreign-trade zones, see 19 U. S. C. 81c.

(5) For provisions authorizing regulations for withdrawal of distilled spirits free of tax for use of the United States, see section 7510.

(6) For provisions authorizing removal of distillates to bonded wine cellars for use in the production of distilling material, see section 5373 (c).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1362, and amended Pub. L. 91–172, title I, § 101(j)(29), Dec. 30, 1969, 83 Stat. 529.)

CODIFICATION

A prior section 5214, act Aug. 16, 1954, ch. 736, 68A Stat. 639, related to regulation of traffic in containers of distilled spirits. See section 5301 (a), (c), (d) of this title.

Provisions similar to those comprising subsecs. (a), (a) (1)—(4), (9), (b) (3)—(5) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5243(e), 5247, 5310(a)—(c), 5331 (a)(1), (b), 5373(b)(4), 5522(a)
(a)(1)	5310(a), 5331(a)(1), (b).
(a)(2), (3)	5310 (b), (c).
(a)(4)	5243(e), 5247.
(a)(9)	5373(b)(4).
(b)(3)	5248(2).
(b)(4)	5248(4).
(b)(5)	5248(3).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 646–648, 658, 661, 662, 667.

AMENDMENTS

1969—Subsec. (a)(3)(A). Pub. L. 91–172 substituted "section 170(b)(1)(A)(ii)" for "section 503(b)(2)".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 5002, 5004, 5005, 5008, 5023, 5025, 5066, 5174, 5205, 5211, 5271, 5273, 5275, 5314, 5315, 5607 of this title.

§ 5215. Return of tax determined distilled spirits to bonded premises.

(a) General.

On such application and under such regulations as the Secretary or his delegate may prescribe, distilled spirits withdrawn from bonded premises on payment or determination of tax (other than products to which any alcoholic ingredients other than such distilled spirits have been added) may be returned to the bonded premises of a distilled spirits plant. Such returned distilled spirits shall be destroyed, denatured, or redistilled, or shall be mingled as authorized in section 5234(a)(1) (other than subparagraph (C) thereof). All provisions of this chapter applicable to distilled spirits in bond shall be applicable to distilled spirits returned to bonded premises under the provisions of this section on such return.

(b) Cross reference.

For provisions relating to the remission, abatement, credit, or refund of tax on distilled spirits returned to bonded premises under provisions of this section, see section 5008 (d).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1364, and amended Pub. L. 89–44, title VIII, § 805(c), June 21, 1965, 79 Stat. 161; Pub. L. 91–659, § 2(c), Jan. 8, 1971, 84 Stat. 1964.)

CODIFICATION

A prior section 5215, act Aug. 16, 1954, ch. 736, 68A Stat. 640, related to exemption of distillers of fruit brandy from certain requirements. See sections 5201(c), 5312 (a), (c), 5373(a) and 5562 of this title.

AMENDMENTS

1971—Subsec. (a). Pub. L. 91–659, § 2(c)(1), eliminated requirements that withdrawn distilled spirits be returned when found unsuitable, in bulk containers, before processing and before removal from the original container and permitted return of withdrawn distilled spirits other than products to which any alcoholic ingredients other than such distilled spirits have been added and made additional authorization under section 5234 (a)(1)(B) for mingling returned distilled spirits.

Subsec. (b). Pub. L. 91–659, § 2(c)(2), (3), repealed subsec. (b) which provided for the definition of "original container in which such distilled spirits were withdrawn from bonded premises" in the case of distilled spirits withdrawn by pipeline. Former subsec. (c) redesignated subsec. (b).

1965—Pub. L. 89–44 added destruction to redistillation, denaturation, and mingling in the second sentence on the list of options which might be used in disposing of returned distilled spirits.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on the first day of the first calendar month which begins more than 90 days after January 8, 1971, see section 6 of Pub. L. 91–659, set out under section 5066 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89–44, set out as a note under section 5008 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5223 of this title.

§ 5216. Regulation of operations.

For general provisions relating to operations on bonded premises see part I of this subchapter.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1364.)

CODIFICATION

A prior section 5216, act Aug. 16, 1954, ch. 736, 68A Stat. 640, related to "mash, wort and vinegar; vinegar factories". See sections 5178(c)(4), 5222 (a)(1), (2)(D), (d), 5501, 5502(a), 5503, 5504 (a), (b), 5505 (a), (c) and 5601 (a)(7), (8), (9)(A) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART B—PRODUCTION

Sec.
5221. Commencement, suspension, and resumption of operations.
5222. Production, receipt, removal, and use of distilling materials.
5223. Redistillation of spirits, articles, and residues.

AMENDMENTS

1965—Pub. L. 89–44, title VIII, § 805(f)(9), June 21, 1965, 79 Stat. 161, inserted articles and residues in item 5223.

§ 5221. Commencement, suspension, and resumption of operations.

(a) Commencement, suspension, and resumption.

The proprietor of a distilled spirits plant authorized to produce distilled spirits shall not commence production operations until an internal revenue officer has been assigned to the premises. Any proprietor of a distilled spirits plant desiring to suspend production of distilled spirits shall give notice in writing to the Secretary or his delegate, stating when he will suspend such operations. Pursuant to such notice, an internal revenue officer shall take such action as the Secretary or his delegate shall prescribe to prevent the production of distilled spirits. No proprietor, after having given such notice, shall, after the time stated therein, produce distilled spirits on such premises until he again gives notice in writing to the Secretary or his delegate stating the time when he will resume operations. At the time stated in the notice of resuming such operations an internal revenue officer shall take such action as is necessary to permit operations to be resumed. The notices submitted under this section

shall be in such form and submitted in such manner as the Secretary or his delegate may by regulations require. Nothing in this section shall apply to suspensions caused by unavoidable accidents; and the Secretary or his delegate shall prescribe regulations to govern such cases of involuntary suspension.

(b) Penalty.

For penalty and forfeiture for carrying on the business of distiller after having given notice of suspension, see sections 5601 (a) (14) and 5615 (3).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1364.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in former section 5191(a), act Aug. 16, 1954, ch. 736, 68A Stat. 632, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5601, 5615 of this title.

§ 5222. Production, receipt, removal, and use of distilling materials.

(a) Production, removal, and use.

(1) No mash, wort, or wash fit for distillation or for the production of distilled spirits shall be made or fermented in any building or on any premises other than on the bonded premises of a distilled spirits plant duly authorized to produce distilled spirits according to law; and no mash, wort, or wash so made or fermented shall be removed from any such premises before being distilled, except as authorized by the Secretary or his delegate; and no person other than an authorized distiller shall, by distillation or any other process, produce distilled spirits from any mash, wort, wash, or other material.

(2) Nothing in this subsection shall be construed to apply to—

(A) authorized operations performed on the premises of vinegar plants established under part I of subchapter H;

(B) authorized production and removal of fermented materials produced on authorized brewery or bonded wine cellar premises as provided by law;

(C) products exempt from tax under the provisions of section 5042; or

(D) fermented materials used in the manufacture of vinegar by fermentation.

(b) Receipt.

Under such regulations as the Secretary or his delegate may prescribe, fermented materials to be used in the production of distilled spirits may be received on the bonded premises of a distilled spirits plant authorized to produce distilled spirits as follows—

(1) from the premises of a bonded wine cellar authorized to remove such material by section 5362 (c) (6);

(2) conveyed without payment of tax from contiguous brewery premises where produced; or

(3) cider exempt from tax under the provisions of section 5042 (a) (1).

(c) Processing of distilled spirits containing extraneous substances.

The Secretary or his delegate may by regulations provide for the removal from the distilling system, and the addition to the fermented or unfermented distilling material, in the production facilities of a distilled spirits plant, of distilled spirits containing substantial quantities of fusel oil or aldehydes, or other extraneous substances.

(d) Penalty.

For penalty and forfeiture for unlawful production, removal, or use of material fit for distillation or for the production of distilled spirits, and for penalty and forfeiture for unlawful production of distilled spirits, see sections 5601 (a) (7), 5601 (a) (8), 5601 (b) (3), 5601 (b) (4), and 5615 (4).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1365.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) (1), (2)(D), (b), and (d) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a) (1), (2) (D)	5216(a)(1), (4).
(b)	5309, 5362(7), 5412.
(d)	5216(b).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 640, 641, 658, 665, 675.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5223. Redistillation of spirits, articles, and residues.

(a) Spirits on bonded premises.

The proprietor of a distilled spirits plant authorized to produce distilled spirits may, under such regulations as the Secretary or his delegate shall prescribe, redistill any distilled spirits which have not been withdrawn from bonded premises.

(b) Distilled spirits returned for redistillation.

Distilled spirits which have been lawfully removed from bonded premises free of tax or without payment of tax may, under such regulations as the Secretary or his delegate may prescribe, be returned for redistillation to the bonded premises of a distilled spirits plant authorized to produce distilled spirits.

(c) Redistillation of articles and residues.

Articles, containing denatured distilled spirits, which were manufactured under the provisions of subchapter D, and the spirits residues of manufacturing processes related thereto, may be received, and the distilled spirits therein recovered by redistillation, on the bonded premises of a distilled spirits plant authorized to produce distilled spirits, under such regulations as the Secretary or his delegate may prescribe.

(d) Denatured distilled spirits, articles, and residues.

Distilled spirits recovered by the redistillation of denatured distilled spirits, or by the redistillation of the articles or residues described in subsection (c), may not be withdrawn from bonded premises except for industrial use or after denaturation thereof in the manner prescribed by law.

(e) Products of redistillation.

All distilled spirits redistilled on bonded premises subsequent to production gauge shall be treated the same as if such spirits had been originally produced

by the redistiller and all provisions of this chapter applicable to the original production of distilled spirits shall be applicable thereto. Any prior obligation as to taxes, liens, and bonds with respect to such distilled spirits shall be extinguished on redistillation. Nothing in this subsection shall be construed as affecting any provision of law relating to the labeling of distilled spirits or as limiting the authority of the Secretary or his delegate to regulate the marking, branding, or identification of distilled spirits redistilled under this section. The processing of distilled spirits, subsequent to production gauge, in the manufacture of vodka in the production facilities of a distilled spirits plant shall be treated for the purposes of this subsection, subsection (a), and sections 5025 (d) and 5215 as redistillation of the spirits. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1365, and amended Pub. L. 89-44, title VIII, § 805(d), (f)(8), (10), June 21, 1965, 79 Stat. 161, 162.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) and (d) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	*Former sections*
(a)	5194(f), 5217(a), 5305, 5308.
(d)	5194(f).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 635, 641, 657.

AMENDMENTS

1965—Pub. L. 89-44, § 805(f)(8), struck out "spirits" from the section heading and inserted in lieu thereof "spirits, articles, and residues".

Subsec. (c). Pub. L. 89-44, § 805(d), added subsec. (c). Former subsecs. (c) redesignated (d).

Subsec. (d). Pub. L. 89-44, § 805(d), (f)(10), redesignated subsec. (c) as (d), inserted ", articles, and residues" following "distilled spirits" in the catchline, and inserted ", or by the redistillation of the articles or residues described in subsection (c)," after "denatured distilled spirits" in the text. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 89-11, § 805(d), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 effective October 1, 1965, see section 805(g)(2) of Pub. L. 89-44, set out as a note under section 5025 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5025, 5211, 5607 of this title.

SUBPART C.—STORAGE

Sec.
5231. Entry for deposit in storage.
5232. Imported distilled spirits.
5233. Bottling of distilled spirits in bond.
5234. Mingling and blending of distilled spirits.
5235. Bottling of alcohol for industrial purposes.
5236. Discontinuance of storage facilities and transfer of distilled spirits.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part I, Establishment" of "Subchapter C—Internal Revenue Bonded Warehouses" consisted of sections 5231—5233.

Section 5231 related to "Authority to establish".

Section 5232 related to "Bond requirements".

Section 5233 related to "Establishment of bottling in bond department."

§ 5231. Entry for deposit in storage.

(a) General.

All distilled spirits entered for deposit in storage under section 5211 shall, under such regulations as the Secretary or his delegate shall prescribe, be deposited in storage facilities on the bonded premises designated in the entry for deposit.

(b) Cross reference.

For provisions requiring that all distilled spirits entered for deposit be withdrawn within 20 years from date of orignial entry for deposit, see section 5006 (a) (2).

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1366.)

CODIFICATION

A prior section 5231, act Aug. 16, 1954, ch. 736, 68A Stat. 643, related to authority to establish internal revenue bonded warehouses. See sections 5171(a), 5172, 5173(a), and 5178(a) (1)(A)(B), (3)(A)(B) of this title.

Provisions similar to those comprising this section were contained in former section 5242(a), (b)(5), act Aug. 16, 1954, ch. 736, 68A Stat. 645, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5232. Imported distilled spirits.

(a) Transfer to distilled spirits plant without payment of tax.

Distilled spirits imported or brought into the United States in bulk containers may, under such regulations as the Secretary shall prescribe, be withdrawn from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of a distilled spirits plant without payment of the internal revenue tax imposed on such distilled spirits. The person operating the bonded premises of the distilled spirits plant to which such spirits are transferred shall become liable for the tax on distilled spirits withdrawn from customs custody under this section upon release of the spirits from customs custody, and the importer shall thereupon be relieved of his liability for such tax.

(b) Withdrawals, etc.

Distilled spirits transferred pursuant to subsection (a)—

(1) may not be bottled in bond under section 5233,

(2) may be redistilled or denatured only if of 185 degrees or more of proof, and

(3) may be withdrawn for any purpose authorized by this chapter, in the same manner as domestic distilled spirits.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1366, and amended Pub. L. 90-630, § 3(a), Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91-659, § 7, Jan. 8, 1971, 84 Stat. 1967.)

CODIFICATION

A prior section 5232, act Aug. 16, 1954, ch. 736, 68A Stat. 643, as amended by Pub. L. 85-859, title II, § 206(b), Sept. 2, 1958, 72 Stat. 1431, related to bond requirements of internal revenue bonded warehouses. See sections 5005(c)(1), 5006(a)(2), 5173 (a), (c)(1), 5174(a)(1), 5176 (a), (b), and 5177(b)(1) of this title.

Provisions similar to those comprising this section were contained in former section 5311, act Aug. 16, 1954, ch. 736, 68A Stat. 658, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1971—Subsec. (a). Pub. L. 91–659, § 7(a), extended the privilege of transfer of distilled spirits to the plant without payment of tax to distilled spirits imported, or brought into the United States, and eliminated reference to section 5001.

Subsec. (b). Pub. L. 91–659, § 7(b), struck out "Imported", preceding "distilled spirits" and thus applied the subsection to all distilled spirits.

1968—Pub. L. 90–630 permitted withdrawal in bulk containers or by pipeline from customs custody to internal revenue bond without payment of internal revenue taxes of all imported distilled spirits in bulk containers, regardless of proof, extended to all such imported distilled spirits the withdrawal privileges already available to imported distilled spirits of at least 185 proof, whether or not they have been redistilled or denatured, provided that the transferor's liability for the internal revenue tax ceases when the transferee's liability attaches, and established that imported bulk spirits are not eligible for the bottled in bond privileges available to domestic spirits.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on the first day of the first calendar month which begins more than 90 days after January 8, 1971, see section 6 of Pub. L. 91–659, set out under section 5066 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–630 applicable only to withdrawals from customs custody on or after the first day of the first calendar month which begins more than 90 days after Oct. 22, 1968, see section 4 of Pub. L. 90–630, set out as a note under section 5008 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 5007 of this title.

§ 5233. Bottling of distilled spirits in bond.

(a) General.

Distilled spirits stored on bonded premises which have been duly entered for bottling in bond before determination of tax or for bottling in bond for export, shall be dumped, gauged, bottled, packed, and cased in the manner which the Secretary or his delegate shall by regulations prescribe. Such bottling, packing, and casing shall be conducted in the separate facilities provided therefor under section 5178 (a) (4) (A).

(b) Bottling requirements.

(1) The proprietor of a distilled spirits plant who has made entry for withdrawal of distilled spirits for bottling in bond may, under such regulations as the Secretary or his delegate shall prescribe,

(A) remove extraneous insoluble materials, and effect minor changes in the soluble color or soluble solids solely by filtrations or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the completed product), as may be necessary or desirable to produce a stable product, provided such changes shall not exceed maximum limitations prescribed under regulations issued by the Secretary or his delegate, and

(B) reduce the proof of such spirits by the addition of pure water only to 100 proof for spirits for domestic use, or to not less than 80 proof for spirits for export purposes, and

(C) mingle, when dumped for bottling, distilled spirits of the same kind, differing only in proof, produced in the same distilling season by the same distiller at the same distillery.

(2) Nothing in this section shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition or subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as authorized in this section.

(3) Distilled spirits (except gin and vodka for export) shall not be bottled in bond until they have remained in bond in wooden containers for at least 4 years.

(4) Nothing in this section shall authorize the labeling of spirits in bottles contrary to regulations issued pursuant to the Federal Alcohol Administration Act (49 Stat. 977; 27 U. S. C., chapter 8), or any amendment thereof.

(c) Trademarks on bottles.

No trademarks shall be put on any bottle unless the real name of the actual bona fide distiller, or the name of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused, shall also be placed conspicuously on such bottle.

(d) Return of bottled distilled spirits for rebottling, relabeling, or restamping.

Under such regulations as the Secretary or his delegate shall prescribe, distilled spirits which have been bottled under this section and removed from bonded premises may, on application to the Secretary or his delegate, be returned to bonded premises for rebottling, relabeling, or restamping, and tax under section 5001 (a) (1) shall not again be collected on such spirits.

(e) Cross references.

(1) For provisions relating to stamps and stamping of distilled spirits bottled in bond, see section 5205.

(2) For provisions relating to marking or branding of cases of distilled spirits bottled in bond, see section 5206.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1366.)

CODIFICATION

A prior section 5233, act Aug. 16, 1954, ch. 736, 68A Stat. 644, was a cross reference provision to establishment of bottling in bond department.

Provisions similar to those comprising subsecs. (a)—(d) and (e)(1) of this section were contained in former section 5243 (a)—(c), (g), act Aug. 16, 1954, ch. 736, 68A Stat. 645, as amended by Pub. L. 85–859, title II, § 206(c), Sept. 2, 1958, 72 Stat. 1431.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5066, 5178, 5205, 5232, 5235, 5612 of this title.

§ 5234. Mingling and blending of distilled spirits.

(a) Mingling of distilled spirits on bonded premises.

(1) In general.

Under such regulations as the Secretary or his delegate shall prescribe, distilled spirits may be mingled on bonded premises if such spirits—

(A) were distilled at 190 degrees or more of proof;

(B) are heterogeneous and are being dumped for gauging in bulk gauging tanks for immediate removal to bottling premises for use exclusively in taxable rectification, or for blending under section 5025(f), or for other mingling or treatment under section 5025(k);

(C) are homogeneous;

(D) are for immediate denaturation or immediate removal for an authorized tax-free purpose; or

(E) are for immediate redistillation.

(2) Consolidation of packages for further storage in bond.

Under such regulations as the Secretary or his delegate shall prescribe, distilled spirits—

(A) of the same kind,

(B) distilled at the same distillery,

(C) distilled by the same proprietor (under his own or any trade name), and

(D) which have been stored in internal revenue bond in the same kind of cooperage for not less than 4 years (or 2 years in the case of rum or brandy),

may, within 8 years of the date of original entry for deposit of the spirits, be mingled on bonded premises for further storage in bond in as many as necessary of the same packages in which the spirits were stored before consolidation. Where distilled spirits produced in different distilling seasons are mingled under this paragraph, the mingled spirits shall consist of not less than 10 percent of spirits of each such season. No spirits mingled under the provisions of this paragraph shall be again mingled under the provisions thereof until at least one year has elapsed since the last prior mingling. For purposes of this chapter, the date of original entry for deposit of the spirits mingled under the provisions of this paragraph shall be the date of original entry for deposit of the youngest spirits contained in the mingled spirits, and the distilling season of such mingled spirits shall be the distilling season of the youngest spirits contained therein. Notwithstanding any other provisions of law, distilled spirits mingled under this paragraph may be bottled and labeled the same as if such spirits had not been so mingled. No statement claiming or implying age in excess of that of the youngest spirits contained in the mingled spirits shall be made on any stamp or label or in any advertisement.

(b) Mingling of distilled spirits for national defense.

Under such regulations as the Secretary or his delegate shall prescribe, distilled spirits may be mingled on bonded premises or in the course of removal therefrom, for any purpose incident to the national defense.

(c) Blending of beverage rums or brandies.

Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, on bonded premises. Rums may, for the sole purpose of perfecting them according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, on bonded premises. Such rums or brandies so mixed or blended may be packaged, stored, transported, transferred in bond, withdrawn free of tax, withdrawn upon payment or determination of tax, or be otherwise disposed of, in the same manner as rums or brandies not so mixed or blended. The Secretary or his delegate may make such rules or regulations as he may deem necessary to carry this subsection into effect.

(d) Cross reference.

For provisions imposing a tax on the blending of beverage rums or brandies under subsection (c), see section 5023.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1367, and amended Pub. L. 89–44, title VIII, § 805(f)(11), June 21, 1965, 79 Stat. 162.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a)(1)(A) and (b)—(d) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)(1)(A)	5306.
(b)	5217(a).
(c)	5023.
(d)	5251.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 606, 641, 649, 657.

AMENDMENTS

1965—Subsec. (a)(1)(B). Pub. L. 89–44 struck out "or rectification under section 5025(f);" and inserted in lieu thereof ", or for blending under section 5025(f), or for other mingling or treatment under section 5025(k);".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a)(1)(B) by Pub. L. 89–44 effective October 1, 1965, see section 805(g)(2) of Pub. L. 89–44, set out as a note under section 5025 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

EXCEPTION TO EFFECTIVE DATE

Subsec. (a)(2) of this section deemed to be included in the Internal Revenue Code of 1954, effective on Sept. 3, 1958, see section 210(a)(2) of Pub. L. 85–859, set out as a note under section 5025 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5023, 5025, 5215 of this title.

§ 5235. Bottling of alcohol for industrial purposes.

Alcohol for industrial purposes may be bottled, stamped, labeled, and cased on bonded premises of a distilled spirits plant prior to payment or determination of tax, under such regulations as the Secretary or his delegate may prescribe. The provisions of sections 5178(a)(4)(A), 5205(a)(1), and 5233 (relating to the bottling of distilled spirits in bond)

shall not be applicable to alcohol bottled, stamped, and labeled as such under this section. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1369.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5305, act Aug. 16, 1954, ch. 736, 68A Stat. 657, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5205, 5604 of this title.

§ 5236. Discontinuance of storage facilities and transfer of distilled spirits.

When the Secretary or his delegate finds any facilities for the storage of distilled spirits on bonded premises to be unsafe or unfit for use, or the spirits contained therein subject to great loss or wastage he may require the discontinuance of the use of such facilities and require the spirits contained therein to be transferred to such other storage facilities as he may designate. Such transfer shall be made at such time and under such supervision as the Secretary or his delegate may require and the expense of the transfer shall be paid by the owner or the warehouseman of the distilled spirits. Whenever the owner of such distilled spirits or the warehouseman fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Secretary or his delegate, such distilled spirits may be seized and sold by the Secretary or his delegate in the same manner as goods are sold on distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such distilled spirits. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1369.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5252, act Aug. 16, 1954, ch. 736, 68A Stat. 649, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SUBPART D—DENATURATION

Sec.
5241. Authority to denature.
5242. Denaturing materials.
5243. Sale of abandoned spirits for denaturation without collection of tax.
5244. Cross references.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part II. Operation" of "Subchapter C—Internal Revenue Bonded Warehouses" consisted of sections 5241—5252.

Section 5241 related to "Supervision of operations".

Section 5242 related to "Deposit of spirits in warehouses".

Section 5243 related to "Bottling of distilled spirits in bond".

Section 5244 related to "Withdrawal of spirits on determination of tax".

Sections 5245—5250, act Aug. 16, 1954, ch. 736, 68A Stat. 647—649, related to operation of internal revenue bonded warehouses, as follows:

Section 5245 related to "Withdrawal of spirits on original gauge". See section 5204(a) of this title.

Section 5246 related to "Transfers of spirits in bond". See section 5212 of this title.

Section 5247 related to "Withdrawal of spirits for exportation". See sections 5008(f)(1), 5175, 5206(a), and 5214(a)(4) of this title.

Section 5248 related to "Withdrawal of spirits without payment of tax". See section 5214(b)(3)—(5) of this title.

Section 5249 was a cross reference provision to "Prohibited hours for removal of spirits".

Section 5250 related to "Gauging, stamping and branding of spirits removed from warehouse". See sections 5204(c), 5205(b), and 5206(c) of this title.

For disposition of sections 5251 and 5252, see note preceding section 5251 of this title.

§ 5241. Authority to denature.

Under such regulations as the Secretary or his delegate shall prescribe, distilled spirits may be denatured on the bonded premises of any distilled spirits plant operated by a proprietor who is authorized to produce distilled spirits at such plant or on other bonded premises. Any other person operating bonded premises may, at the discretion of the Secretary or his delegate and under such regulations as he may prescribe, be authorized to denature distilled spirits on such bonded premises. Distilled spirits to be denatured under this section shall be of such kind and of such degree of proof as the Secretary or his delegate shall by regulations prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1369.)

CODIFICATION

A prior section 5241, act Aug. 16, 1954, ch. 736, 58A Stat. 644, related to supervision of operations of internal revenue bonded warehouses. See sections 5201(a), 5202 (a), (c), (d), and 7803 of this title and section 22 of Title 5, Executive Departments and Government Officers and Employees.

Provisions similar to those comprising this section were contained in former sections 5194 (c), 5303, 5310(a), 5331(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 635, 655, 658, 661, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5242. Denaturing materials.

Methanol or other denaturing materials suitable to the use for which the denatured distilled spirits are intended to be withdrawn shall be used for the denaturation of distilled spirits. Denaturing materials shall be such as to render the spirits with which they are admixed unfit for beverage or internal human medicinal use. The character and the quantity of denaturing materials used shall be as prescribed by the Secretary or his delegate by regulations. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1369.)

CODIFICATION

A prior section 5242, act Aug. 16, 1954, ch. 736, 68A Stat. 645, as amended by Pub. L. 85–859, title II, § 206(e), Sept. 2, 1958, 72 Stat. 1431, related to "deposit of spirits in warehouses". See sections 5211 and 5231 of this title.

Provisions similar to those comprising this section were contained in former sections 5303, 5310(a) and 5331(a)(1), (2), act Aug. 16, 1954, ch. 736, 68A Stat. 655, 658, 661, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5243. Sale of abandoned spirits for denaturation without collection of tax.

Notwithstanding any other provision of law, any distilled spirits abandoned to the United States may be sold, in such cases as the Secretary or his delegate may by regulation provide, to the proprietor of any distilled spirits plant for denaturation, or redistillation and denaturation, without the payment of the internal revenue tax thereon. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1370.)

CODIFICATION

A prior section 5243, act Aug. 16, 1954, ch. 736, 68A Stat. 645, as amended by Pub. L. 85-859, § 206(c), Sept. 2, 1958, 72 Stat. 1431, related to "bottling of distilled spirits in bond". See sections 5171, 5172, 5175, 5178 (a) (3)(C), (4)(A), 5202(g), 5206(c), 5214(a)(4), and 5233 (a)—(c), (e)(1) of this title and section 121 of Title 27, Intoxicating Liquors.

Provisions similar to those comprising this section were contained in former section 5333, act Aug. 16, 1954, ch. 736, 68A Stat. 662, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5688 of this title.

§ 5244. Cross references.

(1) For provisions authorizing the withdrawal from the bonded premises of a distilled spirits plant of denatured distilled spirits, see section 5214 (a) (1).

(2) For provisions requiring a permit to procure specially denatured distilled spirits, see section 5271.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1370.)

CODIFICATION

A prior section 5244, act Aug. 16, 1954, ch. 736, 68A Stat. 647, related to withdrawal of spirits from bonded warehouse on determination of tax. See section 5213 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

PART III.—OPERATIONS ON BOTTLING PREMISES

Sec.
5251. Notice of intention to rectify.
5252. Regulation of operations.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part II. Operation" of "Subchapter C—Internal Revenue Bonded Warehouses" consisted of sections 5241—5252.

For disposition of sections 5241—5250, see note preceding section 5241 of this title.

Section 5251 related to "Blending of beverage brandies in internal revenue bonded warehouses".

Section 5252 related to "Discontinuance of warehouse and transfer of merchandise".

§ 5251. Notice of intention to rectify.

The Secretary or his delegate may by regulations require the proprietor of any distilled spirits plant authorized to recify distilled spirits or wines to give notice of his intention to rectify or compound any distilled spirits or wines. Any notice so required shall be in such form, shall be submitted at such time, and shall contain such information as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1370.)

CODIFICATION

A prior section 5251, act Aug. 16, 1954, ch. 736, 68A Stat. 649, was a cross reference provision to "blending of beverage brandies in internal revenue bonded warehouses". See section 5234(d) of this title.

Provisions similar to those comprising this section were contained in former section 5282(a), act Aug. 16, 1954, ch. 736, 68A Stat. 651, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5252. Regulation of operations.

(1) For general provisions relating to operations on bottling premises, see part I of this subchapter.

(2) For provisions relating to bottling and packaging of wines on bottling premises, see section 5363.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1370.)

CODIFICATION

A prior section 5252, act Aug. 16, 1954, ch. 736, 68A Stat. 649, related to "discontinuance of warehouse and transfer of merchandise". See section 5236 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter D.—Industrial Use of Distilled Spirits

Sec.
5271. Permits.
5272. Bonds.
5273. Sale, use, and recovery of denatured distilled spirits.
5274. Applicability of other laws.
5275. Records and reports.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part I. Establishment" and "Part II. Operation" of "Subchapter D—Rectifying Plants" consisted of sections 5271—5275 and 5281—5285, respectively.

Section 5271 related to "Notice of business of distiller".

Section 5272 related to "Bond".

Section 5273 related to "Premises".

Section 5274 related to "Sign required on premises".

Section 5275 related to "Cross References".

Sections 5281—5285, act Aug. 16, 1954, ch. 736, 68A Stat. 651, 652, related to operation of rectifying plants, as follows:

Section 5281 related to "regulation of business of rectifier". See section 5201(a) of this title.

Section 5282 related to "rectification of spirits". See sections 5201(a), 5202(a), 5204 (a), (c), 5205(d), 5206(c), and 5251 of this title.

Section 5283 related to "examination of [rectifying] premises". See section 5203 (c), (d) of this title.

Section 5284 related to "prohibited hours for removal of distilled spirits".

Section 5285 related to "records and returns". See section 5207 (b), (c) of this title.

§ 5271. Permits.

(a) Requirements.

No person shall—

(1) procure or use distilled spirits free of tax under the provisions of section 5214 (a) (2) or (3); or

(2) procure, deal in, or use specially denatured distilled spirits; or

(3) recover specially or completely denatured distilled spirits, until he has filed an application with and received a permit to do so from the Secretary or his delegate.

(b) Form of application and permit.

(1) The application required by subsection (a) shall be in such form, shall be submitted at such times, and shall contain such information, as the Secretary or his delegate shall by regulations prescribe.

(2) Permits under this section shall, under such regulations as the Secretary or his delegate shall prescribe, designate and limit the acts which are permitted, and the place where and time when such acts may be performed. Such permits shall be issued in such form and under such conditions as the Secretary or his delegate may by regulations prescribe.

(c) Disapproval of application.

Any application submitted under this section may be disapproved and the permit denied if the Secretary or his delegate, after notice and opportunity for hearing, finds that—

(1) in case of an application to withdraw and use distilled spirits free of tax, the applicant is not authorized by law or regulations issued pursuant thereto to withdraw or use such distilled spirits; or

(2) the applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with this chapter; or

(3) the applicant has failed to disclose any material information required, or made any false statement as to any material fact, in connection with his application; or

(4) the premises on which it is proposed to conduct the business are not adequate to protect the revenue.

(d) Changes after issuance of permit.

With respect to any change relating to the information contained in the application for a permit issued under this section, the Secretary or his delegate may by regulations require the filing of written notice of such change and, where the change affects the terms of the permit, require the filing of an amended application.

(e) Suspension or revocation.

If, after notice and hearing, the Secretary or his delegate finds that any person holding a permit issued under this section—

(1) has not in good faith complied with the provisions of this chapter or regulations issued thereunder; or

(2) has violated the conditions of such permit; or

(3) has made any false statement as to any material fact in his application therefor; or

(4) has failed to disclose any material information required to be furnished; or

(5) has violated or conspired to violate any law of the United States relating to intoxicating liquor, or has been convicted of any offense under this title punishable as a felony or of any conspiracy to commit such offense; or

(6) is, in the case of any person who has a permit under subsection (a) (1) or (a) (2), by reason of his operations, no longer warranted in procuring or using the distilled spirits or specially dematured distilled spirits authorized by his permit; or

(7) has, in the case of any person who has a permit under subsection (a) (2), manufactured articles which do not correspond to the descriptions and limitations prescribed by law and regulations; or

(8) has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

such permit may, in whole or in part, be revoked or be suspended for such period as the Secretary or his delegate deems proper.

(f) Duration of permits.

Permits issued under this section, unless terminated by the terms of the permit, shall continue in effect until suspended or revoked as provided in this section, or until voluntarily surrendered.

(g) Posting of permits.

Permits issued under this section, to use distilled spirits free of tax, to deal in or use specially denatured distilled spirits, or to recover specially or completely denatured distilled spirits, shall be kept posted available for inspection on the premises covered by the permit.

(h) Regulations.

The Secretary or his delegate shall prescribe all necessary regulations relating to issuance, denial, suspension, or revocation, of permits under this section, and for the disposition of distilled spirits (including specially denatured distilled spirits) procured under permit pursuant to this section which remain unused when such permit is no longer in effect. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1370.)

CODIFICATION

A prior section 5271, act Aug. 16, 1954, ch. 736, 68A Stat. 650, related to "notice of business of rectifier". See sections 5171 (a), (c), 5172, and 5178(a) (1)(A), (4) (B)—(D) of this title.

Provisions similar to those comprising subsecs. (a)—(f) and (h) of this section were contained in former section 5304(a) (1)—(4), (b), (c), act Aug. 16, 1954, ch. 736, 68A Stat. 655, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5171, 5272 of this title.

§ 5272. Bonds.

(a) Requirements.

Before any permit required by section 5271 (a) is granted, the Secretary or his delegate may require a bond, in such form and amount as he may prescribe, to insure compliance with the terms of the permit and the provisions of this chapter.

(b) Exceptions.

No bond shall be required in the case of permits issued to the United States or any governmental agency thereof, or to the several States and Territories or any political subdivision thereof, or to the District of Columbia. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1372.)

CODIFICATION

A prior section 5272, act Aug. 16, 1954, ch. 736, 68A Stat. 650, related to requirement and approval of bond as condition to commencing business of rectifier of spirits. See section 5173 (a), (d) of this title.

Provisions similar to those comprising this section were contained in former sections 5304(a)(5) and 5310(d), act Aug. 16, 1954, ch. 736, 68A Stat. 655, 658, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5273. Sale, use, and recovery of denatured distilled spirits.

(a) Use of specially denatured distilled spirits.

Any person using specially denatured distilled spirits in the manufacture of articles shall file such formulas and statements of process, submit such samples, and comply with such other requirements, as the Secretary or his delegate shall by regulations prescribe, and no person shall use specially denatured distilled spirits in the manufacture or production of any article until approval of the article, formula, and process has been obtained from the Secretary or his delegate.

(b) Internal medicinal preparations and flavoring extracts.

(1) Manufacture.

No person shall use denatured distilled spirits in the manufacture of medicinal preparations or flavoring extracts for internal human use where any of the spirits remains in the finished product.

(2) Sale.

No person shall sell or offer for sale for internal human use any medicinal preparations or flavoring extracts manufactured from denatured distilled spirits where any of the spirits remains in the finished product.

(c) Recovery of spirits for reuse in manufacturing.

Manufacturers employing processes in which denatured distilled spirits withdrawn under section 5214 (a) (1) are expressed, evaporated, or otherwise removed, from the articles manufactured shall be permitted to recover such distilled spirits and to have such distilled spirits restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Secretary or his delegate may prescribe.

(d) Prohibited withdrawal or sale.

No person shall withdraw or sell denatured distilled spirits, or sell any article containing denatured distilled spirits for beverage purposes.

(e) Cross references.

(1) For penalty and forfeiture for unlawful use or concealment of denatured distilled spirits, see section 5607.

(2) For applicability of all provisions of law relating to distilled spirits that are not denatured, including those requiring payment of tax, to denatured distilled spirits or articles produced, withdrawn, sold, transported, or used in violation of law or regulations, see section 5001 (a) (6).

(3) For definition of "articles", see section 5002 (a) (11).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1372.)

CODIFICATION

A prior section 5273, act Aug. 16, 1954, ch. 736, 68A Stat. 650, related to premises of rectifier. See section 5178 (a) (1) (A), (4) (B) (D) and (c) (1) of this title.

Provisions similar to those comprising this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.	*Former sections*
(a)	5331 (a), (b).
(b)	5303, 5305, 5310(a), 5331 (a) (1), (2), (b), 5647.
(c)	5332.
(d)	5303, 5305, 5310(a), 5331(a), 5647.
(e) (1), (2)	5334.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 655, 657, 658, 661, 662, 693.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5214, 5607 of this title.

§ 5274. Applicability of other laws.

The provisions, including penalties, of sections 9, and 10 of the Federal Trade Commission Act (15 U. S. C., secs. 49, 50), as now or hereafter amended, shall apply to the jurisdiction, powers, and duties of the Secretary or his delegate under this subtitle, and to any person (whether or not a corporation) subject to the provisions of this subtitle. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1372.)

CODIFICATION

A prior section 5274, act Aug. 16, 1954, ch. 736, 68A Stat. 651, related to sign required on rectifying premises. See section 5180 of this title.

Provisions similar to those comprising this section were contained in former section 5317(b), act Aug. 16, 1954, ch. 736, 68A Stat. 660, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5171 of this title.

§ 5275. Records and reports.

Every person procuring or using distilled spirits withdrawn under section 5214 (a) (2) or (3), or procuring, dealing in, or using specially denatured distilled spirits, or recovering specially denatured or completely denatured distilled spirits, shall keep such records and file such reports of the receipt and use of distilled spirits withdrawn free of tax, of the receipt, disposition, use, and recovery of denatured distilled spirits, the manufacture and disposition

of articles, and such other information as the Secretary or his delegate may by regulations require. The Secretary or his delegate may require any person reprocessing, bottling or repackaging articles, or dealing in completely denatured distilled spirits or articles, to keep such records, submit such reports, and comply with such other requirements as he may by regulations prescribe. Records required to be kept under this section and a copy of all reports required to be filed shall be preserved as regulations shall prescribe and shall be kept available for inspection by any internal revenue officer during business hours. Such officer may also inspect and take samples of distilled spirits, denatured distilled spirits, or articles (including any substances for use in the manufacture thereof), to which such records or reports relate. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1373.)

CODIFICATION

A prior section 5275, act Aug. 16, 1954, ch. 736, 68A Stat. 651, related to cross references. See sections 5179(2) and 5181 of this title.

Provisions similar to those comprising this section were contained in former sections 5305, 5313(b), and 5331 (a)(3), act Aug. 16, 1954, ch. 736, 68A Stat. 657, 659, 662, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter E.—General Provisions Relating to Distilled Spirits

Part

I. Return of materials used in the manufacture or recovery of distilled spirits.

II. Regulation of traffic in containers of distilled spirits.

III. Miscellaneous provisions.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, Stat. 1313, of the provisions of former chapter 51, as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, "Part I. Industrial alcohol plants, bonded warehouses, and denaturing plants" and "Part II. Denaturation" of "Subchapter E—Industrial Alcohol Plants, Bonded Warehouses, Denaturing Plants, and Denaturation" consisted of sections 5301—5320 and 5331—5334, respectively.

Sections 5301—5320, 5331—5334, act Aug. 16, 1954, ch. 736, 68A Stat. 654—662, pertained to the following subject matter:

Section 5301 related to "Establishment of industrial alcohol plants". See sections 5171 (a), (b)(1), 5172, and 5173(a) of this title.

Section 5302 related to "Establishment of industrial alcohol bonded warehouses". See sections 5171(a), (b)(1), 5172, 5173 (a), (c), 5178(a)(3)(A)(B), 5201(a), and 5206(a) of this title.

Section 5303 related to "Establishment of industrial alcohol denaturing plants". See sections 5171(a), (b)(1), 5172, 5173 (a), (c), 5178(a)(5), 5241, 5242, and 5273 (b)(1)(2), (d) of this title.

Section 5304 related to "Alcohol permits". See sections 5171(b)(1), 5173 (a), (e)(1), 5271 (a)—(c), (e), (f), (h), and 5272(a) of this title.

Section 5305 related to "Regulations for establishing, bonding, and operation of plants and warehouses". See sections 5171, 5172, 5173(a), 5178(a)(1)(A), (5), 5201 (a), (b), 5207 (a), (c), (d), 5211, 5223(a), 5235, 5273 (b)(1)(2), (d), 5275, and 5312(b) of this title.

Section 5306 related to "Exemption of industrial alcohol plants and warehouses from certain laws". See sections 5025 (d), (e)(1), 5103, 5113(a), 5173(c), 5201 (a), (c), 5204(c), 5234(a)(1)(A), 5306, and 5312(c) of this title.

Section 5307 related to "Production, use, or sale of alcohol". See sections 5178(a)(2)(A) and 5201(a) of this title.

Section 5308 related to "Transfer of alcohol to other plants or warehouses". See sections 5212 and 5223(a) of this title.

Section 5309 related to "Withdrawal of fermented liquors to industrial alcohol plants". See section 5222(b) of this title.

Section 5310 related to "Withdrawal of alcohol free of tax". See sections 5214 (a), (a) (1)—(3), 5241, 5242, 5272(b), 5273 (b)(1)(2), (d), and 5313 of this title.

Section 5311 related to "Importation of alcohol for industrial purposes". See section 5232 of this title.

Section 5312 related to "Remission and refund of tax on alcohol for loss or leakage".

Section 5313 related to "Powers and duties of persons enforcing this part". See section 5275 of this title.

Section 5314 related to "Officers and agents authorized to investigate, issue search warrants, and prosecute for violations". See section 5557 of this title.

Section 5315 related to "Compliance with court subpoena as to testifying or producing records".

Section 5316 related to "Form of affidavit, information, or indictment". See Fed. Rules Cr. Proc., rules 7 (c), (f), and 8(a), Title 18, Appendix, Crimes and Criminal Procedure.

Section 5317 related to "Applicability of other laws". See section 5274 of this title.

Section 5318 related to "Application of part to Puerto Rico and Virgin Islands". See section 5314(a)(2) of this title.

Section 5319 related to "Definitions, etc.". See sections 5002(a)(6)(A), (9), (11), and 5201(a) of this title.

Section 5320 related to "Cross references".

Section 5331 related to "Withdrawal from bond free of tax". See sections 5171(a), 5172, 5173 (a), (c), 5178 (a)(5), 5202(e), 5207 (a), (c), (d), 5214 (a), (a)(1), 5241, 5242, 5273(a), (b)(1)(2), (d), and 5275 of this title.

Section 5332 related to "Recovery of spirits for reuse in manufacturing". See section 5273(c) of this title.

Section 5333 related to "Sale of abandoned spirits for denaturation without collection of tax". See section 5243 of this title.

Section 5334 related to "Cross references". See section 5273(e)(1)(2) of this title.

PART I.—RETURN OF MATERIALS USED IN THE MANUFACTURE OR RECOVERY OF DISTILLED SPIRITS

Sec.
5291. General.

§ 5291. General.

(a) Requirement.

Every person disposing of any substance of the character used in the manufacture of distilled spirits, or disposing of denatured distilled spirits or articles from which distilled spirits may be recovered, shall, when required by the Secretary or his delegate, render a correct return, in such form and manner as the Secretary or his delegate may by regulations prescribe, showing the name and address of the person to whom each disposition was made, with such details, as to the quantity so disposed of or other information which the Secretary or his delegate may require as to each such disposition, as will enable the Secretary or his delegate to determine whether all taxes due with respect to any distilled spirits manufactured or recovered from any such substance, denatured, distilled spirits, or articles, have been paid. Every person required to render a return under this section shall keep such records as will enable such person to render a correct return. Such records shall be preserved for such period as the Secretary or his delegate shall by regulations

prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(b) Cross references.

(1) For the definition of distilled spirits, see section 5002 (a) (6).

(2) For the definition of articles, see section 5002 (a) (11).

(3) For penalty for violation of subsection (a), see section 5605.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1373.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5213, act Aug. 16, 1954, ch. 736, 68A Stat. 639, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5002, 5605 of this title.

PART II.—REGULATION OF TRAFFIC IN CONTAINERS OF DISTILLED SPIRTIS

Sec.
5301. General.

§ 5301. General.

(a) Requirements.

Whenever in his judgment such action is necessary to protect the revenue, the Secretary or his delegate is authorized, by the regulations prescribed by him and permits issued thereunder if required by him—

(1) to regulate the kind, size, branding, marking, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits (within the meaning of such term as it is used in section 5002 (a) (6)) for other than industrial use; and

(2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith.

Any requirements imposed under this section shall be in addition to any other requirements imposed by, or pursuant to, law and shall apply as well to persons not liable for tax under the internal revenue laws as to persons so liable.

(b) Disposition.

Every person disposing of containers of the character used for the packaging of distilled spirits shall, when required by the Secretary or his delegate, for protection of the revenue, render a correct return, in such form and manner as the Secretary or his delegate may by regulations prescribe, showing the name and address of the person to whom each disposition was made, with such details as to the quantities so disposed of or other information which the Secretary or his delegate may require as to each such disposition. Every person required to render a return under this section shall keep such records as will enable such person to render a correct return. Such records shall be preserved for such period as the Secretary or his delegate shall by regulations prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(c) Refilling of liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall—

(1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of stamping under the provisions of this chapter; or

(2) possess any liquor bottle in which any distilled spirits have been placed in violation of the provisions of paragraph (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping under the provisions of this chapter; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of paragraph (3);

except that the Secretary or his delegate may by regulations authorize the reuse of liquor bottles, under such conditions as he may by regulations prescribe, if the liquor bottles are to be again stamped under the provisions of this chapter. When used in this subsection the term "liquor bottle" shall mean a liquor bottle or other container which has been used for the bottling or packaging of distilled spirits under regulations issued pursuant to subsection (a).

(d) Penalty.

For penalty for violation of this section, see section 5606.

(Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1374.)

CODIFICATION

A prior section 5301, act Aug. 16, 1954, ch. 736, 68A Stat. 654, related to establishment of industrial alcohol plants. See sections 5171 (a), (b)(1), 5172, 5173 (a), (b) of this title.

Provisions similar to those comprising subsecs. (a), (c), and (d) of this section were contained in former section 5214, act Aug. 16, 1954, ch. 736, 68A Stat. 639, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5606 of this title.

PART III.—MISCELLANEOUS PROVISIONS

Sec.
5311. Detention of containers.
5312. Production and use of distilled spirits for experimental research.
5313. Withdrawal of distilled spirits from customs custody free of tax for use of the United States.
5314. Special applicability of certain provisions.
5315. Status of certain distilled spirits on July 1, 1959.

§ 5311. Detention of containers.

It shall be lawful for any internal revenue officer to detain any container, containing or supposed to contain, distilled spirits, wines, or beer, when he has reason to believe that the tax imposed by law on such distilled spirits, wines, or beer has not been paid or determined as required by law, or that such container is being removed in violation of law; and

every such container may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the officer to whom such detention is to be reported. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1375.)

CODIFICATION

A prior section 5311, act Aug. 16, 1954, ch. 736, 68A Stat. 658, related to importation of alcohol for industrial purposes. See section 5232 of this title.

Provisions similar to those comprising this section were contained in former section 5211, act Aug. 16, 1954, ch. 736, 68A Stat. 638, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5312. Production and use of distilled spirits for experimental research.

(a) Scientific institutions and colleges of learning.

Under such regulations as the Secretary or his delegate may prescribe and on the filing of such bonds and applications as he may require, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, test, and store distilled spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in such quantities as may be reasonably necesssary for such purposes.

(b) Experimental distilled spirits plants.

Under such regulations as the Secretary or his delegate may prescribe and on the filing of such bonds and applications as he may require, experimental distilled spirits plants may, at the discretion of the Secretary or his delegate, be established and operated for specific and limited periods of time solely for experimentation in, or development of—

(1) sources of materials from which distilled spirits may be produced;

(2) processes by which distilled spirits may be produced or refined; or

(3) industrial uses of distilled spirits.

(c) Authority to exempt.

The Secretary or his delegate may by regulations provide for the waiver of any provision of this chapter (other than this section) to the extent he deems necessary to effectuate the purposes of this section, except that he may not waive the payment of any tax on distilled spirits removed from any such university, college, institution, or plant. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1375.)

CODIFICATION

A prior section 5312, act Aug. 16, 1954, ch. 736, 68A Stat. 659, was a cross reference to remission and refund of tax on alcohol for loss or leakage.

Provisions similar to those comprising this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5215.
(b)	5305.
(c)	5215, 5306.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 640, 657.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5313. Withdrawal of distilled spirits from customs custody free of tax for use of the United States.

Distilled spirits may be withdrawn free of tax from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, under such regulations as may be prescribed by the Secretary or his delegate. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1375.)

CODIFICATION

A prior section 5313, act Aug. 16, 1954, ch. 736, 68A Stat. 659, related to powers and duties of persons enforcing provisions respecting industrial alcohol plants, bonded warehouses, and denaturing plants. See section 5275 of this title.

Provisions similar to those comprising this section were contained in former section 5310(b), act Aug. 16, 1954, ch. 736, 68A Stat. 658, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5314. Special applicability of certain provisions.

(a) Puerto Rico

(1) Applicability.

The provisions of this subsection shall not apply to the Commonwealth of Puerto Rico unless the Legislative Assembly of the Commonwealth of Puerto Rico expressly consents thereto in the manner prescribed in the constitution of the Commonwealth of Puerto Rico, for the enactment of a law.

(2) In general.

Distilled spirits for the purposes authorized in section 5214 (a) (2) and (3), denatured distilled spirits, and articles, as described in this paragraph, produced or manufactured in Puerto Rico, may be brought into the United States free of any tax imposed by section 5001 (a) (4) or 7652 (a) (1) for disposal under the same conditions as like spirits, denatured spirits, and articles, produced or manufactured in the United States; and the provisions of this chapter and regulations promulgated thereunder (and all other provisions of the internal revenue laws applicable to the enforcement thereof, including the penalties of special application thereto) relating to the production, bonded warehousing, and denaturation of distilled spirits, to the withdrawal of distilled spirits or denatured distilled spirits, and to the manufacture of articles from denatured distilled spirits, shall, insofar as applicable, extend to and apply in Puerto Rico in respect of—

(A) distilled spirits for shipment to the United States for the purposes authorized in section 5214 (a) (2) and (3);

(B) distilled spirits for denaturation;

(C) denatured distilled spirits for shipment to the United States;

(D) denatured distilled spirits for use in the manufacture of articles for shipment to the United States; and

(E) articles, manufactured from denatured distilled spirits, for shipment to the United States.

(3) Withdrawals authorized by Puerto Rico.

Distilled spirits (including denatured distilled spirits) may be withdrawn from the bonded premises of a distilled spirits plant in Puerto Rico pursuant to authorization issued under the laws of the Commonwealth of Puerto Rico; such spirits so withdrawn, and products containing such spirits so withdrawn, may not be brought into the United States free of tax.

(4) Costs of administration.

Any expenses incurred by the Treasury Department in connection with the enforcement in Puerto Rico of the provisions of this subtitle and section 7652 (a), and regulations promulgated thereunder, shall be charged against and retained out of taxes collected under this title in respect of commodities of Puerto Rican manufacture brought into the United States. The funds so retained shall be deposited as a reimbursement to the appropriation to which such expenses were originally charged.

(b) Virgin Islands.

(1) In general.

Distilled spirits for the purposes authorized in section 5214 (a) (2) and (3), denatured distilled spirits, and articles, as described in this paragraph, produced or manufactured in the Virgin Islands, may be brought into the United States free of any tax imposed by section 7652 (b) (1) for disposal under the same conditions as like spirits, denatured spirits, and articles, produced or manufactured in the United States; and the provisions of this chapter and regulations promulgated thereunder (and all other provisions of the internal revenue laws applicable to the enforcement thereof, including the penalties of special application thereto) relating to the production, bonded warehousing, and denaturation of distilled spirits, to the withdrawal of distilled spirits or denatured distilled spirits, and to the manufacture of articles from denatured distilled spirits, shall, insofar as applicable, extend to and apply in the Virgin Islands in respect of—

(A) distilled spirits for shipment to the United States for the purposes authorized in section 5214 (a) (2) and (3);

(B) distilled spirits for denaturation;

(C) denatured distilled spirits for shipment to the United States;

(D) denatured distilled spirits for use in the manufacture of articles for shipment to the United States; and

(E) articles, manufactured from denatured distilled spirits, for shipment to the United States.

(2) Advance of funds.

The insular government of the Virgin Islands shall advance to the Treasury of the United States such funds as may be required from time to time by the Secretary or his delegate for the purpose of defraying all expenses incurred by the Treasury Department in connection with the enforcement in the Virgin Islands of paragraph (1) and regulations promulgated thereunder. The funds so advanced shall be deposited in a separate trust fund in the Treasury of the United States and shall be available to the Treasury Department for the purposes of this subsection.

(3) Regulations issued by Virgin Islands.

The Secretary or his delegate may authorize the Governor of the Virgin Islands, or his duly authorized agents, to issue or adopt such regulations, to approve such bonds, and to issue, suspend, or revoke such permits, as are necessary to carry out the provisions of this subsection. When regulations have been issued or adopted under this paragraph with concurrence of the Secretary or his delegate he may exempt the Virgin Islands from any provisions of law and regulations otherwise made applicable by the provisions of paragraph (1), except that denatured distilled spirits, articles, and distilled spirits for tax-free purposes which are brought into the United States from the Virgin Islands under the provisions of this subsection shall in all respects conform to the requirements of law and regulations imposed on like products of domestic manufacture.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1375.)

CODIFICATION

A prior section 5314, act Aug. 16, 1954, ch. 736, 68A Stat. 659, related to officers and agents authorized to investigate, issue search warrants, and prosecute for violations. See sections 5557 of this title.

Provisions similar to those comprising subsec. (a) (2) of this section were contained in former section 5318, act Aug. 16, 1954, ch. 736, 68A Stat. 660, prior to the general revisions of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 7652 of this title.

§ 5315. Status of certain distilled spirits on July 1, 1959.

(a) In registered distilleries, fruit distilleries, and industrial alcohol plants.

All distilled spirits which, at the close of June 30, 1959, are in registered distilleries, registered fruit distilleries, and industrial alcohol plants (including spirits received for redistillation) and which have not been entered for deposit in storage in internal revenue bond or for withdrawal (including transfer or withdrawal for denaturation) as provided by law, shall be treated as if in the process of production in a distilled spirits plant.

(b) Produced at registered distilleries, fruit distilleries, and industrial alcohol plants.

All distilled spirits produced at registered distilleries, registered fruit distilleries, or industrial alcohol plants, which before July 1, 1959, have been entered for deposit in storage in internal revenue bond (including distilled spirits withdrawn for denaturation), and which immediately prior to such date are

in registered distilleries, registered fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, and distillery denaturing bonded warehouses, or in transit thereto, shall be stored, transferred, withdrawn, and used under the same conditions as like distilled spirits or denatured distilled spirits produced in a distilled spirits plant.

(c) Withdrawn from customs custody.

All imported distilled spirits which before July 1, 1959, have been withdrawn from customs custody without payment of the internal revenue tax for transfer to an industrial alcohol plant, industrial alcohol bonded warehouse or industrial alcohol denaturing plant, and which immediately prior to such date are in registered distilleries, registered fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, and industrial alcohol denaturing plants, or in transit thereto, shall be stored, transferred, withdrawn, and used under the same conditions as like spirits withdrawn from customs without payment of tax and transferred to the bonded premises of a distilled spirits plant.

(d) Withdrawn free of tax.

Distilled spirits which before July 1, 1959, have been withdrawn free of tax for purposes similar to those authorized under section 5214 (a) (1), (a) (2), or (a) (3), as provided by law, by any person holding a permit for such withdrawal, and which immediately prior to such data are lawfully in the possession of, or in transit to, any person holding a permit to procure or use distilled spirits (including specially denatured distilled spirits) free of tax or to deal in or recover specially denatured distilled spirits, shall be treated as if withdrawn from the bonded premises of a distilled spirits plant under the applicable provisions of section 5214 (a) (1), (a) (2), or (a) (3).

(e) Withdrawn for use in the production of wine.

Distilled spirits which before July 1, 1959, have been withdrawn without payment of tax by the proprietor of a bonded wine cellar, as authorized by law, for use in the production of wine, and which before such date had not been used in the production of wine, shall be considered for the purposes of section 5373 the same as if produced in a distilled spirits plant and withdrawn under the provisions of section 5214 (a) (5). (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1377.)

CODIFICATION

A prior section 5315, act Aug. 16, 1954, ch. 736, 68A Stat. 660, related to compliance with court subpoena as to testifying or producing records.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

Subchapter F.—Bonded and Taxpaid Wine Premises

Part
I. Establishment.
II. Operations.
III. Cellar treatment and classification of wine.
IV. General.

PART I.—ESTABLISHMENT

Sec.
5351. Bonded wine cellar.
5352. Taxpaid wine bottling house.
5353. Bonded wine warehouse.
5354. Bond.
5355. General provisions relating to bonds.
5356. Application.
5357. Premises.

§ 5351. Bonded wine cellar.

Any person establishing premises for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxpaid wine (other than wine produced exempt from tax under section 5042), including the use of wine spirits in wine production, shall, before commencing operations, make application to the Secretary or his delegate and file bond and receive permission to operate. Such premises shall be known as "bonded wine cellars"; except that any such premises engaging in production operations may, in the discretion of the Secretary or his delegate, be designated as a "bonded winery". (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1378.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5351, act Aug. 16, 1954, ch. 736, 68A Stat. 663.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Operations, see section 5361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5361 of this title.

§ 5352. Taxpaid wine bottling house.

Any person bottling, packaging, or repackaging taxpaid wines at premises other than the bottling premises of a distilled spirits plant shall, before commencing such operations, make application to the Secretary or his delegate and receive permission to operate. Such premises shall be known as "taxpaid wine bottling houses." (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1378.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5352, act Aug. 16, 1954, ch. 736, 68A Stat. 663.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Taxpaid wine bottling house operations, see section 5363 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5363 of this title.

§ 5353. Bonded wine warehouse.

Any responsible warehouse company or other responsible person may, upon filing application with the Secretary or his delegate and consent of the proprietor and the surety on the bond of any bonded wine cellar, under regulations prescribed by the Secretary or his delegate, establish on such premises facilities for the storage of wines and allied products for credit purposes, to be known as a "bonded wine warehouse". The proprietor of the bonded

wine cellar shall remain responsible in all respects for operations in the warehouse and the tax on the wine or wine spirit stored therein. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1379.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5353, act Aug. 16, 1954, ch. 736, 68A Stat. 663.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5354. Bond.

The bond for a bonded wine cellar shall be in such form, on such conditions, and with such adequate surety, as regulations issued by the Secretary or his delegate shall prescribe, and shall be in a penal sum not less than the tax on any wine or wine spirits possessed or in transit at any one time, but not less than $1,000 nor more than $50,000; except that where the tax on such wine and on such wine spirits exceeds $250,000, the penal sum of the bond shall be not more than $100,000. Where additional liability arises as a result of deferral of payment of tax payable on any return, the Secretary or his delegate may require the proprietor to file a supplemental bond in such amount as may be necessary to protect the revenue. The liability of any person on any such bond shall apply whether the transaction or operation on which the liability of the proprietor is based occurred on or off the proprietor's premises. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1379.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5354, act Aug. 16, 1954, ch. 736, 68A Stat. 663.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5173, 5355 of this title.

§ 5355. General provisions relating to bonds.

The provisions of section 5551 (relating to bonds) shall be applicable to the bonds required under section 5354. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1379.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5355, act Aug. 16, 1954, ch. 736, 68A Stat. 664.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5356. Application.

The application required by this part shall disclose, as regulations issued by the Secretary or his delegate shall provide, such information as may be necessary to enable the Secretary or his delegate to determine the location and extent of the premises, the type of operations to be conducted on such premises, and whether the operations will be in conformity with law and regulations. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1379.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5356, act Aug. 16, 1954, ch. 736, 68A Stat. 664.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5357. Premises.

Bonded wine cellar premises, including noncontiguous portions thereof, shall be so located, constructed, and equipped, as to afford adequate protection to the revenue, as regulations prescribed by the Secretary or his delegate may provide. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1379.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5357, act Aug. 16, 1954, ch. 736, 68A Stat. 664.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART II.—OPERATIONS

Sec.
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CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, section 5362 read: "Removals of wine from bonded premises" and section 5371 read "Insurance coverage".

§ 5361. Bonded wine cellar operations.

In addition to the operations described in section 5351, the proprietor of a bonded wine cellar may, subject to regulations prescribed by the Secretary or his delegate, on such premises receive unmerchantable taxpaid wine for return to bond, reconditioning, or destruction; prepare for market and store commercial fruit products and by-products not taxable as wines; produce or receive distilling material or vinegar stock; produce (with or without added wine spirits, and without added sugar) or receive on standard wine premises only, subject to tax as wine but not for sale or consumption as beverage wine, (1) heavy bodied blending wines and Spanish-type blending sherries, and (2) other wine products made from natural wine for nonbeverage purposes; and such other operations as may be conducted in a manner that will not jeopardize the revenue or conflict with wine operations. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1380.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5361, act Aug. 16, 1954, ch. 736, 68A Stat. 664.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Refund of tax on unmerchantable wine, see section 5044 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5044 of this title.

§ 5362. Removals of wine from bonded wine cellars.

(a) Withdrawals on determination of tax.

Wine may be withdrawn from bonded wine cellars on payment or determination of the tax thereon, under such regulations as the Secretary or his delegate shall prescribe.

(b) Transfers of wine between bonded wine cellars.

Wine on which the internal revenue tax has not been paid or determined may, under such regulations as the Secretary or his delegate shall prescribe, be transferred in bond between bonded wine cellars. For the purposes of this chapter, the removal of wine for transfer in bond between bonded wine cellars shall not be construed to be a removal for consumption or sale.

(c) Withdrawals of wine free of tax or without payment of tax.

Wine on which the tax has not been paid or determined may, under such regulations and bonds as the Secretary or his delegate may deem necessary to protect the revenue, be withdrawn from bonded wine cellars—

(1) without payment of tax for export by the proprietor or by any authorized exporter;

(2) without payment of tax for transfer to any foreign-trade zone;

(3) without payment of tax for use of certain vessels and aircraft as authorized by law;

(4) without payment of tax for transfer to any class 6 customs manufacturing warehouse;

(5) without payment of tax for use in the production of vinegar;

(6) without payment of tax for use in distillation in any distilled spirits plant authorized to produce distilled spirits;

(7) free of tax for experimental or research purposes by any scientific university, college of learning, or institution of scientific research;

(8) free of tax for use by or for the account of the proprietor or his agents for analysis or testing, organoleptic or otherwise; and

(9) free of tax for use by the United States or any agency thereof, and for use for analysis, testing, research, or experimentation by the governments of the several States and Territories and the District of Columbia or of any political subdivision thereof or by any agency of such governments. No bond shall be required of any such government or agency under this paragraph.

(d) Withdrawal free of tax of wine and wine products unfit for beverage use.

Under such regulations as the Secretary or his delegate may deem necessary to protect the revenue, wine, or wine products made from wine, when rendered unfit for beverage use, on which the tax has not been paid or determined, may be withdrawn from bonded wine cellars free of tax. The wine or wine products to be so withdrawn may be treated with methods or materials which render such wine or wine products suitable for their intended use. No wine or wine products so withdrawn shall contain more than 21 percent of alcohol by volume, or be used in the compounding of distilled spirits or wine for beverage use or in the manufacture of any product intended to be used in such compounding. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1380, and amended Pub. L. 90–73, § 1(a), Aug. 29, 1967, 81 Stat. 175.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5362, act Aug. 16, 1954, ch. 736, 68A Stat. 665.

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–73 added subsec. (d).

EFFECTIVE DATE OF 1967 AMENDMENT

Section 1(b) of Pub. L. 90–73 provided that: "The amendment made by subsection (a) [adding subsec. (d) to this section] shall become effective on the first day of the first month which begins 90 days or more after the date of the enactment of this Act [Aug. 29, 1967]."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Collection of taxes on wines, see section 5043 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5043, 5222 of this title.

§ 5363. Taxpaid wine bottling house operations.

In addition to the operations described in section 5352, the proprietor of a taxpaid wine bottling house may, subject to regulations issued by the Secretary or his delegate, on such premises mix wine of the same kind and taxable grade to facilitate handling; preserve, filter, or clarify wine; and conduct operations not involving wine where such operations will not jeopardize the revenue or conflict with wine operations. This subchapter shall apply to any wine received on the bottling premises of any distilled spirits plant for bottling, packaging, or repackaging, and to all operations relative thereto. Sections 5021, 5081, and 5082 shall not apply to the mixing or treatment of taxpaid wine under this section. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5363, act Aug. 16, 1954, ch. 736, 68A Stat. 665.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5364. Standard wine premises.

Except as otherwise specifically provided in this subchapter, no proprietor of a bonded wine cellar or taxpaid wine bottling house engaged in producing, receiving, storing or using any standard wine, shall produce, receive, store, or use any wine other than standard wine. The limitation contained in the preceding sentence shall not prohibit the produc-

tion or receipt of high fermentation wines, distilling material, or vinegar stock in any bonded wine cellar. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5364, act Aug. 16, 1954, ch. 736, 68A Stat. 665.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5365. Segregation of operations.

The Secretary or his delegate may require by regulations such segregation of operations within the premises, by partitions or otherwise, as may be necessary to prevent jeopardy to the revenue, to prevent confusion between untaxpaid wine operations and such other operations as are authorized in this subchapter, or to prevent substitution with respect to the several methods of producing effervescent wines. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5365, act Aug. 16, 1954, ch. 736, 68A Stat. 665.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5366. Supervision.

The Secretary or his delegate may by regulations require that operations at a bonded wine cellar or taxpaid wine bottling house be supervised by an internal revenue officer where necessary for the protection of the revenue or for the proper enforcement of this subchapter. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5366, act Aug. 16, 1954, ch. 736, 68A Stat. 666.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5367. Records.

The proprietor of a bonded wine celler or a taxpaid wine bottling house shall keep such records and file such returns, in such form and containing such information, as the Secretary or his delegate may by regulations provide. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5367, act Aug. 16, 1954, ch. 736, 68A Stat. 666.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5368. Gauging, marking, and stamping.

(a) Gauging and marking.

All wine or wine spirits shall be locked, sealed, and gauged, and shall be marked, branded, labeled, or otherwise identified, in such manner as the Secretary or his delegate may by regulations prescribe.

(b) Stamping.

Wines shall be removed in such containers (including vessels, vehicles, and pipelines) bearing such marks, labels, and stamps, evidencing compliance with this chapter, as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5368, act Aug. 16, 1954, ch. 736, 68A Stat. 666.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5369. Inventories.

Each proprietor of premises subject to the provisions of this subchapter shall take and report such inventories as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5369, act Aug. 16, 1954, ch. 736, 68A Stat. 666.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5370. Losses.

(a) General.

No tax shall be collected in respect of any wines lost or destroyed while in bond, except that tax shall be collected—

(1) Theft.

In the case of loss by theft, unless the Secretary or his delegate shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor or other person responsible for the tax, or the owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(2) Voluntary destruction.

In the case of voluntary destruction, unless the wine was destroyed under Government supervision, or on such adequate notice to, and approval by, the Secretary or his delegate as regulations shall provide.

(b) Proof of loss.

In any case in which the wine is lost or destroyed, whether by theft or otherwise, the Secretary or his delegate may require by regulations the proprietor of the bonded wine cellar or other person liable for the tax to a file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the Secretary or his delegate, that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1381.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5370, act Aug. 16, 1954, ch. 736, 68A Stat. 666.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5371. Insurance coverage, etc.

Any remission, abatement, refund, or credit of, or other relief from, taxes on wines or wine spirits authorized by law shall be allowed only to the extent that the claimant is not indemnified or recompensed for the tax. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1382.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5371, act Aug. 16, 1954, ch. 736, 68A Stat. 667.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5372. Sampling.

Under regulations prescribed by the Secretary or his delegate, wine may be utilized in any bonded wine cellar for testing, tasting, or sampling, free of tax. (Added Pub. L. 85–859, title II. § 201, Sept. 2, 1958, 72 Stat. 1382.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5372, act Aug. 16, 1954, ch. 736, 68A Stat. 667.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5373. Wine spirits.

(a) In general.

The wine spirits authorized to be used in wine production shall be brandy or wine spirits produced in a distilled spirits plant (with or without the use of water to facilitate extraction and distillation) exclusively from—

(1) fresh or dried fruit, or their residues,

(2) the wine or wine residues therefrom, or

(3) special natural wine under such conditions as the Secretary or his delegate may by regulations prescribe;

except that where, in the production of natural wine or special natural wine, sugar has been used, the wine or the residuum thereof may not be used if the unfermented sugars therein have been refermented. Such wine spirits shall not be reduced with water from distillation proof, nor be distilled, unless regulations otherwise provide, at less than 140 degrees of proof (except that commercial brandy aged in wood for a period of not less than 2 years, and barreled at not less than 100 degrees of proof, shall be deemed wine spirits for the purpose of this subsection).

(b) Withdrawal of wine spirits.

(1) The proprietor of any bonded wine cellar may withdraw and receive wine spirits without payment of tax from the bonded premises of any distilled spirits plant, or from any bonded wine cellar as provided in paragraph (2), for use in the production of natural wine, for addition to concentrated or unconcentrated juice for use in wine production, or for such other uses as may be authorized in this subchapter.

(2) Wine spirits so withdrawn, and not used in wine production or as otherwise authorized in this subchapter, may, as provided by regulations prescribed by the Secretary or his delegate, be transferred to the bonded premises of any distilled spirits plant or bonded wine cellar, or may be taxpaid and removed as provided by law.

(3) On such use, transfer, or taxpayment, the Secretary or his delegate shall credit the proprietor with the amount of wine spirits so used or transferred or taxpaid and, in addition, with such portion of wine spirits so withdrawn as may have been lost either in transit or on the bonded wine cellar premises, to the extent allowable under section 5008 (a). Where the proprietor has used wine spirits in actual wine production but in violation of the requirements of this subchapter, the Secretary or his delegate shall also extend such credit to the wine spirits so used if the proprietor satisfactorily shows that such wine spirits were not knowingly used in violation of law.

(4) Suitable samples of brandy or wine spirits may, under regulations prescribed by the Secretary or his delegate, be withdrawn free of tax from the bonded premises of any distilled spirits plant, bonded wine cellar, or authorized experimental premises, for analysis or testing.

(c) Distillates containing aldehydes.

When the Secretary or his delegate deems such removal and use will not jeopardize the revenue nor unduly increase administrative supervision, distillates containing aldehydes may, under such regulations as the Secretary or his delegate may prescribe, be removed without payment of tax from the bonded premises of a distilled spirits plant to an adjacent bonded wine cellar and used therein in fermentation of wine to be used as distilling material at the distilled spirits plant from which such unfinished distilled spirits were removed. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1382, and amended Pub. L. 90–619, § 1, Oct. 22, 1968, 82 Stat. 1236.)

CODIFICATION

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in a prior section 5373, act Aug. 16, 1954, ch. 736, 68A Stat. 667.

AMENDMENTS

1968—Subsec. (a). Pub. 90–619 added special natural wine, under conditions prescribed by regulations, as one of the materials from which wine spirits may be produced and extended to special natural wines the existing prohibition on the use of natural wine whose sugars have been refermented.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–619 provided that: "The amendments made by this Act [amending this section and sections 5382, 5383, 5384, 5385, 5386, and 5387 of this title] shall take effect on the first day of the first month which begins 90 days or more after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5214, 5315 of this title.

PART III.—CELLAR TREATMENT AND CLASSIFICATION OF WINE

Sec.
5381. Natural wine.
5382. Cellar treatment of natural wine.
5383. Amelioration and sweetening limitations for natural grape wines.
5384. Amelioration and sweetening limitations for natural fruit and berry wines.
5385. Specially sweetened natural wines.
5386. Special natural wines.
5387. Agricultural wines.
5388. Designation of wines.

§ 5381. Natural wine.

Natural wine is the product of the juice or must of sound, ripe grapes or other sound, ripe fruit, made with such cellar treatment as may be authorized under section 5382 and containing not more than 21 percent by weight of total solids. Any wine conforming to such definition except for having become substandard by reason of its condition shall be deemed not to be natural wine and shall, unless the condition is corrected, be removed in due course for distillation, destroyed under Government supervision, or transferred to premises in which wines other than natural wine may be stored or used. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1383.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5381, act Aug. 16, 1954, ch. 736, 68A Stat. 668.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Definitions, see section 5392 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5392 of this title.

§ 5382. Cellar treatment of natural wine.

(a) General.

Proper cellar treatment of natural wine constitutes those practices and procedures in the United States and elsewhere, whether historical or newly developed, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice. Where a particular treatment has been used in customary commercial practice, it shall continue to be recognized as a proper cellar treatment in the absence of regulations prescribed by the Secretary or his delegate finding such treatment not to be a proper cellar treatment within the meaning of this subsection.

(b) Specifically authorized treatments.

The practices and procedures specifically enumerated in this subsection shall be deemed proper cellar treatment for natural wine:

(1) The preparation and use of pure concentrated or unconcentrated juice or must. Concentrated juice or must reduced with water to its original density or to not less than 22 degrees Brix or unconcentrated juice or must reduced with water to not less than 22 degrees Brix shall be deemed to be juice or must, and shall include such amounts of water to clear crushing equipment as regulations prescribed by the Secretary or his delegate may provide.

(2) The addition to natural wine, or to concentrated or unconcentrated juice or must, from one kind of fruit, of wine spirits (whether or not tax-paid) distilled in the United States from the same kind of fruit; except that (A) the wine, juice, or concentrate shall not have an alcoholic content in excess of 24 percent by volume after the addition of wine spirits, and (B) in the case of still wines, wine spirits may be added in any State only to natural wines produced by fermentation in bonded wine cellars located within the same State.

(3) Amelioration and sweetening of natural grape wines in accordance with section 5383.

(4) Amelioration and sweetening of natural wines from fruits other than grapes in accordance with section 5384.

(5) In the case of effervescent wines, such preparations for refermentation and for dosage as may be acceptable in good commercial practice, but only if the alcoholic content of the finished product does not exceed 14 percent by volume.

(6) The natural darkening of the sugars or other elements in juice, must, or wine due to storage, concentration, heating processes, or natural oxidation.

(7) The blending of natural wines with each other or with heavy-bodied blending wine or with concentrated or unconcentrated juice, whether or not such juice contains wine spirits, if the wines, juice, or wine spirits are from the same kind of fruit.

(8) Such use of acids to correct natural deficiencies and stabilize the wine as may be acceptable in good commercial practice.

(9) The addition—

(A) to natural grape or berry wine of the winemaker's own production, of volatile fruit-flavor concentrate produced from the same kind and variety of grape or berry at a plant qualified under section 5511, or

(B) to natural fruit wine (other than grape or berry) of the winemaker's own production, of volatile fruit-flavor concentrate produced from the same kind of fruit at such a plant,

so long as the proportion of the volatile fruit-flavor concentrate to the wine does not exceed the proportion of the volatile fruit-flavor concentrate to the original juice or must from which it was produced. The transfer of volatile fruit-flavor concentrate from a plant qualified under section 5511 to a bonded wine cellar and its storage and use in such a cellar shall be under such applications and bonds, and under such other requirements, as may be provided in regulations prescribed by the Secretary or his delegate.

(c) Other authorized treatment.

The Secretary or his delegate may by regulations prescribe limitations on the preparation and use of clarifying, stabilizing, preserving, fermenting, and corrective methods or materials, to the extent that such preparation or use is not acceptable in good commercial practice.

(d) Use of juice or must from which volatile fruit flavor has been removed.

For purposes of this part, juice, concentrated juice, or must processed at a plant qualified under section 5511 may be deemed to be pure juice, concentrated juice, or must even though volatile fruit flavor has been removed if, at a plant qualified under section 5511 or at the bonded wine cellar, there is added to such juice, concentrated juice, or must, or (in the case of a bonded wine cellar) to wine of the winemaker's own production made therefrom, either the identical volatile flavor removed or—

(1) in the case of natural grape or berry wine of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate produced at such a plant and derived from the same kind and variety of grape or berry, or

(2) in the case of natural fruit wine (other than grape or berry wine) of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate produced at such a plant and derived from the same kind of fruit.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1383, and amended Pub. L. 88–653, §§ 1, 2, Oct. 13, 1964, 78 Stat. 1085; Pub. L. 89–44, title VIII, § 806(c)(1), June 21, 1965, 79 Stat. 164; Pub. L. 90–619, § 2, Oct. 22, 1968, 82 Stat. 1237.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5382, act Aug. 16, 1954, ch. 736, 68A Stat. 668.

AMENDMENTS

1968—Subsec. (b)(2)(B). Pub. L. 90–619 permitted wine spirits to be added to natural wine produced by fermentation in any bonded wine cellars located within the same State in which the addition is to take place.

1965—Subsec. (b)(2). Pub. L. 89–44 struck out "made without added sugar or reserved as provided in sections 5383(b) and 5384(b)" following "winemaker's own production".

1964—Subsec. (b). Pub. L. 88–653, § 1, added par. (9).

Subsec. (d). Pub. L. 88–653, § 2, added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on the first day of the first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b)(2) by Pub. L. 89–44 effective January 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of Pub. L. 88–653 provided that: "The amendments made by the first section [adding subsec. (b)(9) of this section] and sections 2 and 3 of this Act [adding subsec. (d) of this section and section 5511(2) of this title] shall take effect on the first day of the second month which begins more than 10 days after the date on which this Act is enacted [Oct. 13, 1964]."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5381, 5385–5387, 5511 of this title.

§ 5383. Amelioration and sweetening limitations for natural grape wines.

(a) Sweetening of grape wines.

Any natural grape wine may be sweetened after fermentation and before taxpayment with pure dry sugar or liquid sugar if the total solids content of the finished wine does not exceed 12 percent of the weight of the wine and the alcoholic content of the finished wine after sweetening is not more than 14 percent by volume; except that the use under this subsection of liquid sugar shall be limited so that the resultant volume will not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

(b) High acid wines.

(1) Amelioration.

Before, during, and after fermentation, ameliorating materials consisting of pure dry sugar or liquid sugar, water, or a combination of sugar and water, may be added to natural grape wines of a winemaker's own production when such wines are made from juice having a natural fixed acid content of more than five parts per thousand (calculated before fermentation and as tartaric acid). Ameliorating material so added shall not reduce the natural fixed acid content of the juice to less than five parts per thousand, nor exceed 35 percent of the volume of juice (calculated exclusive of pulp) and ameliorating material combined.

(2) Sweetening.

Any wine produced under this subsection may be sweetened by the producer thereof, after amelioration and fermentation, with pure dry sugar or liquid sugar if the total solids content of the finished wine does not exceed (A) 17 percent by weight if the alcoholic content is more than 14 percent by volume, or (B) 21 percent by weight if the alcoholic content is not more than 14 percent by volume. The use under this paragraph of liquid sugar shall be limited to cases where the resultant volume does not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

(3) Wine spirits.

Wine spirits may be added (whether or not wine spirits were previously added) to wine produced under this subsection only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1384, and amended Pub. L. 89–44, title VIII, § 806(b)(1), June 21, 1965, 79 Stat. 162; Pub. L. 90–619, § 3, Oct. 22, 1968, 82 Stat. 1237.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5383, act Aug. 16, 1954, ch. 736, 68A Stat. 669.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–619, § 3(b), substituted "not more than 14 percent" for "less than 14 percent".

Subsec. (b). Pub. L. 90–619, § 3(a), simplified production procedures and calculations, provided that the limitation on sweetening high acid wine is to be based upon the total solids content of the finished wine, authorized the use of liquid sugar but only to the extent that it did

not increase the total volume of the finished wine above what it would be if the maximum authorized use had been made of dry sugar only, and added provisions making it clear that wine spirits may be added at more than one stage in the process of wine production.

1965—Pub. L. 89–44 divided subsec. (b) relating to high acid wines into pars. (1) and (2) and par. (2) into subpars. (A)—(E), deleted the reserve inventory requirement with respect to the amelioration and sweetening of wines, authorized the use of other than pure, dry sugar, and allowed the limited use of liquid sugar at appropriate points where the use of pure dry sugar had formerly been prescribed.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on the first day of the first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 806(d)(2) of Pub. L. 89–44 provided that: "The amendments made by subsections (b) and (c) [to this section and sections 5382(b)(2), 5384 (a), (b), 5385(a), and 5392 (c), (g)] shall take effect on January 1, 1966."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5382, 5384 of this title.

§ 5384. Amelioration and sweetening limitations for natural fruit and berry wines.

(a) In general.

To natural wine made from berries or fruit other than grapes, pure dry sugar or liquid sugar may be added to the juice in the fermenter, or to the wine after fermentation; but only if such wine has not more than 14 percent alcohol by volume after complete fermentation, or after complete fermentation and sweetening, and a total solids content not in excess of 21 percent by weight; and except that the use under this subsection of liquid sugar shall be limited so that the resultant volume will not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

(b) Ameliorated fruit and berry wines.

(1) Any natural fruit or berry wine (other than grape wine) of a winemaker's own production may, if not made under subsection (a) of this section, be ameliorated to correct high acid content. Ameliorating material calculations and accounting shall be separate for wines made from each different kind of fruit.

(2) Pure dry sugar or liquid sugar may be used in the production of wines under this subsection for the purpose of correcting natural deficiencies, but not to such an extent as would reduce the natural fixed acid in the corrected juice or wine to five parts per thousand. The quantity of sugar so used shall not exceed the quantity which would have been required to adjust the juice, prior to fermentation, to a total solids content of 25 degrees (Brix). Such sugar shall be added prior to the completion of fermentation of the wine. After such addition of the sugar, the wine or juice shall be treated and accounted for as provided in section 5383(b), covering the production of high acid grape wines, except that—

(A) Natural fixed acid shall be calculated as malic acid for apple wine and as citric acid for other fruit and berry wines, instead of tartaric acid;

(B) Juice adjusted with pure dry sugar or liquid sugar as provided in this paragraph shall be treated in the same manner as original natural juice under the provisions of section 5383 (b); except that if liquid sugar is used, the volume of water contained therein must be deducted from the volume of ameliorating material authorized;

(C) Wines made under this subsection shall have a total solids content of not more than 21 percent by weight, whether or not wine spirits have been added; and

(D) Wines made exclusively from loganberries, currants, or gooseberries, shall be entitled to a volume of ameliorating material not in excess of 60 percent (in lieu of 35 percent).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1385, and amended Pub. L. 89–44, title VIII, § 806(b)(2), (c)(2), (3), June 21, 1965, 79 Stat. 163, 164; Pub. L. 90–619, § 3(b), Oct. 22, 1968, 82 Stat. 1237.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5384, act Aug. 16, 1954, ch. 736, 68A Stat. 670.

AMENDMENTS

1968—Subsec. (a). Pub. 90–619 substituted "'not more than 14 percent" for "less than 14 percent".

1965—Subsec. (a). Pub. L. 89–44, § 806(b)(2)(A), authorized the addition of liquid sugar provided the resultant volume will not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

Subsec. (b). Pub. L. 89–44, § 806(c)(3), substituted "Ameliorated" for "Reserve" in the subsec. heading.

Subsec. (b)(1). Pub. L. 89–44, § 806(b)(2)(B), removed references to reserves and reserve inventories.

Subsec. (b)(2). Pub. L. 89–44, § 806(b)(2)(C), amended the first sentence by authorizing the use of liquid sugar but limiting the use of any sugar if it reduced the natural fixed acid in the corrected juice or wine to five parts per thousand.

Pub. L. 89–44, § 806(c)(2), struck out "reserved" following "covering the production of" in the fourth sentence.

Subsec. (b)(2)(B). Pub. L. 89–44, § 806(b)(2)(D), required that, if liquid sugar is used, the volume of water contained therein be deducted from the volume of ameliorating material authorized.

Subsec. (b)(2)(C). Pub. L. 89–44, § 806(b)(2)(E), struck out "may be withdrawn from reserve inventory with" and inserted in lieu thereof "shall have".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on the first day of the first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsecs. (a) and (b), by Pub. L. 89–44 effective January 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5382 of this title.

§ 5385. Specially sweetened natural wines.

(a) Definition.

Specially sweetened natural wine is the product made by adding to natural wine of the winemaker's own production a sufficient quantity of pure dry sugar, or juice or concentrated juice from the same kind of fruit, separately or in combination, to produce a finished product having a total solids content in excess of 17 percent by weight and an alcoholic content of not more than 14 percent by volume, and shall include extra sweet kosher wine and similarly heavily sweetened wines.

(b) Cellar treatment.

Specially sweetened natural wines may be blended with each other, or with natural wine or heavy bodied blending wine in the further production of specially sweetened natural wine only, if the wines so blended are made from the same kind of fruit. Wines produced under this section may be cellar treated under the provisions of section 5382 (a) and (c). Wine spirits may not be added to specially sweetened natural wine. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1386, and amended Pub. L. 89–44, title VIII, § 806(c)(4), June 21, 1965, 79 Stat. 164; Pub. L. 90–619, §§ 3(b), 4, Oct. 22, 1968, 82 Stat. 1237.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5385, act Aug. 16, 1954, ch. 736, 68A Stat. 671.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–619, § 3(b), substituted "not more than 14 percent" for "less than 14 percent".

Subsec. (b). Pub. L. 90–619, § 4, authorized cellar treatment of specially sweetened natural wines, special natural wines, and agricultural wines.

1965—Subsec. (a). Pub. L. 89–44 struck out "sugar solids content in excess of 15" and inserted in lieu thereof "total solids content in excess of 17".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on the first day of the first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–44 effective January 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Definitions, see section 5392 of this title.

Penalties and forfeitures for violation of laws and regulations relating to wine, see section 5661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5392 of this title.

§ 5386. Special natural wines.

(a) In general.

Special natural wines are the products made, pursuant to a formula approved under this section, from a base of natural wine (including heavy-bodied blending wine) exclusively, with the addition, before, during or after fermentation, of natural herbs, spices, fruit juices, aromatics, essences, and other natural flavorings in such quantities or proportions as to enable such products to be distinguished from any natural wine not so treated, and with or without carbon dioxide naturally or artificially added, and with or without the addition, separately or in combination, of pure dry sugar or a solution of pure dry sugar and water, or caramel. No added wine spirits or alcohol or other spirits shall be used in any wine under this section except as may be contained in the natural wine (including heavy-bodied blending wine) used as a base or except as may be necessary in the production of approved essences or similar approved flavorings. The Brix degree of any solution of pure dry sugar and water used may be limited by regulations prescribed by the Secretary or his delegate in accordance with good commercial practice.

(b) Cellar treatment.

Special natural wines may be cellar treated under the provisions of section 5382 (a) and (c). (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1386, and amended Pub. L. 90–619, § 5, Oct. 22, 1968, 82 Stat. 1237.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5386, act Aug. 16, 1954, ch. 736, 68A Stat. 671.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–619 added reference to subsec. (a) of section 5382.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on the first day of the first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Definitions, see section 5392 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5392 of this title.

§ 5387. Agricultural wines.

(a) In general.

Wines made from agricultural products other than the juice of fruit shall be made in accordance with good commercial practice as may be prescribed by the Secretary or his delegate by regulations. Wines made in accordance with such regulations shall be classed as "standard agricultural wines". Wines made under this section may be cellar treated under the provisions of section 5382 (a) and (c).

(b) Limitations.

No wine spirits may be added to wines produced under this section, nor shall any coloring material or herbs or other flavoring material (except hops in the case of honey wine) be used in their production.

(c) Restriction on blending.

Wines from different agricultural commodities shall not be blended together. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1386, and amended Pub. L. 90–619, § 5, Oct. 22, 1968, 82 Stat. 1237.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5387, act Aug. 16, 1954, ch. 736, 68A Stat. 671.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-619 added reference to subsec. (a) of section 5382.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-619 effective on the first day of the first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90-619, set out as a note under section 5373 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Definitions, see section 5392 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5392 of this title.

§ 5388. Designation of wines.

(a) Standard wines.

Standard wines may be removed from premises subject to the provisions of this subchapter and be marked, transported, and sold under their proper designation as to kind and origin, or, if there is no such designation known to the trade or consumers, then under a truthful and adequate statement of composition.

(b) Other wines.

Wines other than standard wines may be removed for consumption or sale and be marked, transported, or sold only under such designation as to kind and origin as adequately describes the true composition of such products and as adequately distinguish them from standard wines, as regulations prescribed by the Secretary or his delegate shall provide. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1387.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5388, act Aug. 16, 1954, ch. 736, 68A Stat. 672.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

PART IV.—GENERAL

Sec.
5391. Exemption from rectifying and spirits taxes.
5392. Definitions.

§ 5391. Exemption from rectifying and spirits taxes.

Notwithstanding any other provision of law, the taxes imposed by sections 5001 and 5021 on distilled spirits generally and on rectified spirits and wines shall not, except as provided in this subchapter, be assessed, levied, or collected from the proprietor of any bonded wine cellar with respect to his use or treatment of wine, or use of wine spirits in wine production, in such premises, nor shall such proprietor, by reason of such treatment or use, be deemed to be a rectifier within the meaning of section 5082; except that, whenever wine or wine spirits are used in violation of this subchapter, the applicable tax imposed by sections 5001 and 5021 shall be collected unless the proprietor satisfactorily shows that such wine or wine spirits were not knowingly used in violation of law. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1387.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5391, act Aug. 16, 1954, ch. 736, 68A Stat. 672.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5392. Definitions.

(a) Standard wine.

For purposes of this subchapter the term "standard wine" means natural wine, specially sweetened natural wine, special natural wine, and standard agricultural wine, produced in accordance with the provisions of sections 5381, 5385, 5386, and 5387, respectively.

(b) Heavy bodied blending wine.

For purposes of this subchapter the term "heavy bodied blending wine" means wine made from fruit without added sugar, and with or without added wine spirits, and conforming to the definition of natural wine in all respects except as to maximum total solids content.

(c) Pure sugar.

For purposes of this subchapter the term "pure sugar" means pure refined sugar, suitable for human consumption, having a dextrose equivalent of not less than 95 percent on a dry basis, and produced from cane, beets, or fruit, or from grain or other sources of starch. Invert sugar syrup produced from such pure sugar by recognized methods of inversion may be used to prepare any sugar syrup, or solution of water and pure sugar, authorized in this subchapter.

(d) Total solids.

For purposes of this subchapter the term "total solids", in the case of wine, means the degrees Brix of the dealcoholized wine.

(e) Same kind of fruit.

For purposes of this subchapter the term "same kind of fruit" includes, in the case of grapes, all of the several species and varieties of grapes. In the case of fruits other than grapes, this term includes all of the several species and varieties of any given kind; except that this shall not preclude a more precise identification of the composition of the product for the purpose of its designation.

(f) Own production.

For purposes of this subchapter the term "own production", when used with reference to wine in a bonded wine cellar, means wine produced by fermentation in the same bonded wine cellar, whether or not produced by a predecessor in interest at such bonded wine cellar. This term may also include, under regulations, wine produced by fermentation in bonded wine cellars owned or controlled by the same or affiliated persons or firms when located within the same State; the term "affiliated" shall be deemed to include any one or more bonded wine cellar proprietors associated as members of any farm cooperative, or any one or more bonded wine cellar proprietors affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended (49 Stat. 990; 27 U.S.C. 211).

(g) Liquid sugar.

For purposes of this subchapter the term "liquid sugar" means a substantially colorless pure sugar and water solution containing not less than 60 percent pure sugar by weight (60 degrees Brix.) (Added

Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1387, and amended Pub. L. 89–44, title VIII, § 806(b)(3), June 21, 1965, 79 Stat. 163.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5392, act Aug. 16, 1954, ch. 736, 68A Stat. 672.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89–44, § 806(b)(3)(A), added fruit, grain, or other sources of starch to cane and beets as sources of "pure sugar".

Subsec. (g). Pub. L. 89–44, § 806(b)(3)(B), added subsec. (g).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective January 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

Subchapter G.—Breweries

Part
I. Establishment.
II. Operations.

PART I.—ESTABLISHMENT

Sec.
5401. Qualifying documents.
5402. Definitions.
5403. Cross references.

§ 5401. Qualifying documents.

(a) Notice.

Every brewer shall, before commencing or continuing business, file with the officer designated for that purpose by the Secretary or his delegate a notice in writing, in such form and containing such information as the Secretary or his delegate shall by regulations prescribe as necessary to protect and insure collection of the revenue.

(b) Bonds

Every brewer, on filing notice as provided by subsection (a) of his intention to commence business, shall execute a bond to the United States in such reasonable penal sum as the Secretary or his delegate shall by regulation prescribe as necessary to protect and insure collection of the revenue. The bond shall be conditioned (1) that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, including all beer removed for transfer to the brewery from other breweries owned by him as provided in section 5414; (2) that he shall pay or cause to be paid the tax on all beer removed free of tax for export as provided in section 5053 (a), which beer is not exported or returned to the brewery; and (3) that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the production and sale of any beer aforesaid. Once in every 4 years, or whenever required so to do by the Secretary or his delegate, the brewer shall execute a new bond or a continuation certificate, in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond or continuation certificate shall be in lieu of any former bond or bonds, or former continuation certificate or certificates, of such brewer in respect to all liabilities accruing after its approval. If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force between the parties for a succeeding period of not less than 4 years, the brewer may submit, in lieu of a new bond, a certificate executed, under penalties of perjury, by the brewer and the surety attesting to continuation of the bond, which certificate shall constitute a bond subject to all provisions of law applicable to bonds given pursuant to this section. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1388, and amended Pub. L. 91–673, § 3(a), Jan. 12, 1971, 84 Stat. 2056.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5401, act Aug. 16, 1954, ch. 736, 68A Stat. 674.

AMENDMENTS

1971—Subsec. (b), Pub. L. 91–673 permitted the bonding requirement to be satisfied by the continuation of an existing bond, with such continuation being subject to Governmetn approval in the same manner as a new bond and required that the continuation certificate be executed by both the brewer and the surety, under penalties of perjury.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5402. Definitions.

(a) Brewery.

The brewery shall consist of the land and buildings described in the brewer's notice. The continuity of the brewery must be unbroken except where separated by public passageways, streets, highways, waterways, or carrier rights-of-way, or partitions; and if parts of the brewery are so separated they must abut on the dividing medium and be adjacent to each other. Notwithstanding the preceding sentence, facilities under the control of the brewer for case packing, loading, or storing which are located within reasonable proximity to the brewery packaging facilities may be approved by the Secretary or his delegate as a part of the brewery if the revenue will not be jeoparized thereby.

(b) Brewer.

For definition of brewer, see section 5092.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1389, and amended Pub. L. 91–673, § 3(b), Jan. 12, 1971, 84 Stat. 2057.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5402, act Aug. 16, 1954, ch. 736, 68A Stat. 674.

AMENDMENTS

1971—Subsec. (a). Pub. L. 91–673 added proviso to the definition of "Brewery" that the continuity of the brewery must be unbroken except where separated by public passageways, streets, highways, waterways, or carrier rights-of-way, or partitions, with the exception that the Secretary approve facilities under the control of the brewer for case packing, loading, or storing, which are located within reasonable proximity to the brewery as a part of the brewery if the revenue will not be jeopordized thereby.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5403. Cross references.

(1) For authority of Secretary or his delegate to disapprove brewers' bonds, see section 5551.

(2) For authority of Secretary to require the installation and use of meters, tanks, and other apparatus, see section 5552.

(3) For deposit of United States bonds or notes in lieu of sureties, see 6 U. S. C. 15.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1389.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5403, act Aug. 16, 1954, ch. 736, 68A Stat. 674.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART II.—OPERATIONS

Sec.
5411. Use of brewery.
5412. Removal of beer in containers or by pipeline.
5413. Brewers procuring beer from other brewers.
5414. Removals from one brewery to another belonging to the same brewer.
5415. Records and returns.
5146. Definitions of package and packaging.
5417. Pilot brewing plants.

AMENDMENTS

1971—Pub. L. 91–673, § 4(b), Jan. 12, 1971, 84 Stat. 2058, substituted "Definitions of package and packaging" for "Definitions of bottle and bottling" in item 5416 and inserted item 5417.

§ 5411. Use of brewery.

The brewery shall be used under regulations prescribed by the Secretary or his delegate only for the purpose of producing, packaging, and storing beer, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts and of soft drinks; for the purpose of processing spent grain, carbon dioxide, and yeast; and for such other purposes as the Secretary or his delegate by regulation may find will not jeopardize the revenue. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1389, and amended Pub. L. 91–673, § 3(c), Jan. 12, 1971, 84 Stat. 2057.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5411, act Aug. 16, 1954, ch. 736, 68A Stat. 675.

AMENDMENTS

1971—Pub. L. 91–673 eliminated the requirement of separate facilities for the bottling of beer and cereal beverages and permitted the use of the brewery for packaging and storing beer and other cereal beverages.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Applicability of revenue laws, effective date of this section, see section 7851 (a) (5) of this title.

§ 5412. Removal of beer in containers or by pipeline.

Beer may be removed from the brewery for consumption or sale only in hogsheads, packages, and similar containers, marked, branded, or labeled in such manner as the Secretary or his delegate may by regulation require, except that beer may be removed from the brewery by pipeline to contiguous distilled spirits plants under section 5222. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1389, and amended Pub. L. 91–673, § 3(d) Jan. 12, 1971, 84 Stat. 2057.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5412, act Aug. 16, 1954, ch. 736, 68A Stat. 675.

AMENDMENTS

1971—Pub. L. 91–673 substituted "packages," for "barrels, kegs, bottles,".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Penalty for intentional removal or defacement of brewer's marks and brands, see section 5675 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5675 of this title.

§ 5413. Brewers procuring beer from other brewers.

A brewer, under such regulations as the Secretary or his delegate shall prescribe, may obtain beer in his own hogsheads, barrels, and kegs, marked with his name and address, from another brewer, with taxpayment thereof to be by the producer in the manner prescribed by section 5054. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1389.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5413, act Aug. 16, 1954, ch. 736, 68A Stat. 675.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Exemptions, see section 5113 of this title.

Imposition and rate of tax, see section 5091 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5091 of this title.

§ 5414. Removals from one brewery to another belonging to the same brewer.

Beer may be removed from one brewery to another brewery belonging to the same brewer, without payment of tax, and may be mingled with beer at the receiving brewery, subject to such conditions, including payment of the tax, and in such containers, as the Secretary or his delegate by regulations shall prescribe. The removal from one brewery to another brewery belonging to the same brewer shall be deemed to include any removal from a brewery

owned by one corporation to a brewery owned by another corporation when (1) one such corporation owns the controlling interest in the other such corporation, or (2) the controlling interest in each such corporation is owned by the same person or persons. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1389.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5414, act Aug. 16, 1954, ch. 736, 68A Stat. 675.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5401 of this title.

§ 5415. Records and returns.

(a) Records.

Every brewer shall keep records, in such form and containing such information as the Secretary or his delegate shall prescribe by regulations as necessary for protection of the revenue. These records shall be preserved by the person required to keep such records for such period as the Secretary or his delegate shall by regulations prescribe, and shall be available during business hours for examination and taking of abstracts therefrom by any internal revenue officer.

(b) Returns.

Every brewer shall make true and accurate returns of his operations and transactions in the form, at the times, and for such periods as the Secretary or his delegate shall by regulation prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1390.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5415, act Aug. 16, 1954, ch. 736, 68A Stat. 675.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Penalties and forfeitures—

Fraudulent noncompliance, see section 5671 of this title.

Noncompliance without intent to defraud, see section 5672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5671, 5672 of this title.

§ 5416. Definitions of package and packaging.

For purposes of this subchapter, the term "package" means a bottle, can, keg, barrel, or other original consumer container, and the term "packaging" means the filling of any package. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1390, and amended Pub. L. 91–673, § 3(e), Jan. 12, 1971, 84 Stat. 2057.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5416, act Aug. 16, 1954, ch. 736, 68A Stat. 676.

AMENDMENTS

1971—Pub. L. 91–673 substituted definitions of package and packaging for definitions of bottle and bottling.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5417. Pilot brewing plants.

Under such regulations as the Secretary or his delegate may prescribe, and on the filing of such bonds and applications as he may require, pilot brewing plants may, at the discretion of the Secretary or his delegate, be established and operated off the brewery premises for research, analytical, experimental, or development purposes with regard to beer or brewery operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter. (Added Pub. L. 91–673, § 4(a), Jan. 12, 1971, 84 Stat. 2057.)

EFFECTIVE DATE

Section effective on the first day of the first calendar month which begins more than 90 days after January 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

Subchapter H.—Miscellaneous Plants and Warehouses

Part
I. Vinegar plants.
II. Volatile fruit-flavor concentrate plants.
III. Manufacturing bonded warehouses.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, Part I read "Vinegar factories".

PART I.—VINEGAR PLANTS

Sec.
5501. Establishment.
5502. Qualification.
5503. Construction and equipment.
5504. Operation.
5505. Applicability of provisions of this chapter.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this part consisted of sections 5501 and 5502.

Section 5501 related to "Establishment and operation".

Section 5502 related to "Distilled vinegar".

§ 5501. Establishment.

Plants for the production of vinegar by the vaporizing process, where distilled spirits of not more than 15 percent of alcohol by volume are to be produced exclusively for use in the manufacture of vinegar on the premises, may be established under this part. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1390.)

CODIFICATION

A prior section 5501, act Aug. 16, 1954, ch. 736, 68A Stat. 677, was a cross reference to provisions pertaining to establishment and operation of vinegar factories.

Provisions similar to those comprising this section were contained in former section 5216(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5502. Qualification.

(a) Requirements.

Every person, before commencing the business of manufacturing vinegar by the vaporizing process, and at such other times as the Secretary or his delegate may by regulations prescribed, shall make application to the Secretary or his delegate for the registration of his plant and receive permission to operate. No application required under this section shall be approved until the applicant has complied with all requirements of law, and regulations prescribed by the Secretary or his delegate, in relation to such business. With respect to any change in such business after approval of an application, the Secretary or his delegate may by regulations authorize the filing of written notice of such change or require the filing of an application to make such change.

(b) Form of application.

The application required by subsection (a) shall be in such form and contain such information as the Secretary or his delegate shall by regulations prescribe to enable him to determine the identity of the applicant, the location and extent of the premises, the type of operations to be conducted on such premises, and whether the operations will be in conformity with law and regulations. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1390.)

CODIFICATION

A prior section 5502, act Aug. 16, 1954, ch. 736, 68A Stat. 677, related to "distilled vinegar".

Provisions similar to those comprising subsec. (a) of this section were contained in former section 5216(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5503. Construction and equipment.

Plants established under this part for the manufacture of vinegar by the vaporizing process shall be constructed and equipped in accordance with such regulations as the Secretary or his delegate shall prescribe. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1391.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former sections 5216(a)(1) and 5552, act Aug. 16, 1954, ch. 736, 68A Stat. 640, 680, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5504. Operation.

(a) General.

Any manufacturer of vinegar qualified under this part may, under such regulations as the Secretary or his delegate shall prescribe, separate by a vaporizing process the distilled spirits from the mash produced by him, and condense the vapor by introducing it into the water or other liquid used in making vinegar in his plant.

(b) Removals.

No person shall remove, or cause to be removed, from any plant established under this part any vinegar or other fluid or material containing a greater proportion than 2 percent of proof spirits.

(c) Records.

Every person manufacturing vinegar by the vaporizing process shall keep such records and file such reports as the Secretary or his delegate shall by regulations prescribe of the kind and quantity of materials received on his premises and fermented or mashed, the quantity of low wines produced, the quantity of such low wines used in the manufacture of vinegar, the quantity of vinegar produced, the quantity of vinegar removed from the premises, and such other information as may by regulations be required. Such records, and a copy of such reports, shall be preserved as regulations shall prescribe, and shall be kept available for inspection by any internal revenue officer during business hours. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1391.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in former section 5216(a)(1)(2), act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5505. Applicability of provisions of this chapter.

(a) Tax.

The taxes imposed by subchapter A shall be applicable to any distilled spirits produced in violation of section 5501 or removed in violation of section 5504 (b).

(b) Prohibited premises.

Plants established under this part shall not be located on any premises where distilling is prohibited under section 5601 (a) (6).

(c) Entry and examination of premises.

The provisions of section 5203 (b), (c), and (d), relating to right of entry and examination, furnishing facilities and assistance, and authority to break up grounds or walls, shall be applicable to all premises established under this part, and to all proprietors thereof, and their workmen or other persons employed by them.

(d) Registration of stills.

Stills on the premises of plants established under this part shall be registered as provided in section 5179.

(e) Installation of meters, tanks, and other apparatus.

The provisions of section 5552 relating to the installation of meters, tanks, and other apparatus shall be applicable to plants established under this part.

(f) Assignment of internal revenue officers.

The provisions of section 5553 (a) relating to the assignment of internal revenue officers shall be applicable to plants established under this part.

(g) Authority to waive records, statements, and returns.

The provisions of section 5555 (b) relating to the authority of the Secretary to waive records, statements, and returns shall be applicable to records, statements, or returns required by this part.

(h) Regulations.

The provisions of section 5556 relating to the prescribing of regulations shall be applicable to this part.

(i) Penalties.

The penalties and forfeitures provided in sections 5601 (a) (1), (6), and (12), 5601 (b) (1), 5603, 5615 (1) and (4), 5686, and 5687 shall be applicable to this part.

(j) Other provisions.

This chapter (other than this part and the provisions referred to in subsection (a), (b), (c), (d), (e), (f), (g), (h), (i) shall not be applicable with respect to plants established or operations conducted under this part. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1391.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a)—(i) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Former sections*
(a)	5216(a)(1).
(b)	5171.
(c)	5216(a)(3).
(d)	5174.
(e)	5552.
(f)	5553(a).
(g)	5555(b).
(h)	5556.
(i)	5601, 5607, 5608, 5686(b).

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 630, 640, 680, 681, 683–685, 700.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART II.—VOLATILE FRUIT-FLAVOR CONCENTRATE PLANTS

Sec.
5511. Establishment and operation.
5512. Control of products after manufacture.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51, as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, section 5512 read "Control of products after tax-free manufacture".

§ 5511. Establishment and operation.

This chapter (other than sections 5178 (a) (2) (C), 5179, 5203 (b), (c), and (d), and 5552) shall not be applicable with respect to the manufacture, by any process which includes evaporations from the mash or juice of any fruit, of any volatile fruit-flavor concentrate if—

(1) such concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of such concentrate; and

(2) such concentrate is rendered unfit for use as a beverage before removal from the place of manufacture, or (in the case of a concentrate which does not exceed 24 percent alcohol by volume) such concentrate is transferred to a bonded wine cellar for use in production of natural wine as provided in section 5382; and

(3) the manufacturer thereof makes such application, keeps such records, renders such reports, files such bonds, and complies with such other requirements with respect to the production, removal, sale, transportation, and use of such concentrate and of the mash or juice from which such concentrate is produced, as the Secretary or his delegate may by regulations prescribe as necessary for the protection of the revenue.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1392, and amended Pub. L. 88–653, § 3, Oct. 13, 1964, 78 Stat. 1085.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5511, act Aug. 16, 1954, ch. 736, 68A Stat. 677.

AMENDMENTS

1964—Pub. L. 88–653 inserted words "or (in the case of a concentrate which does not exceed 24 percent alcohol by volume) such concentrate is transferred to a bonded wine cellar for use in production of natural wine as provided in section 5382" in par. (2).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–653 effective on the first day of the second month which begins more than 10 days after Oct. 13, 1964, see section 4 of Pub. L. 88–653, set out as a note under section 5382 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Fruit flavor concentrates, imposition of tax, see section 5001 (a) (7) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 5382 of this title.

§ 5512. Control of products after manufacture.

For applicability of all provisions of this chapter pertaining to distilled spirits and wines, including those requiring payment of tax, to volatile fruit-flavor concentrates sold, transported, or used in violation of law or regulations, see section 5001 (a) (7).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1392.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5512, act Aug. 16, 1954, ch. 736, 68A Stat. 677.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART III.—MANUFACTURING BONDED WAREHOUSES

Sec.
5521. Establishment and operation.
5522. Withdrawal of distilled spirits to manufacturing bonded warehouses.
5523. Special provisions relating to distilled spirits and wines rectified in manufacturing bonded warehouses.

§ 5521. Establishment and operation.

(a) Establishment.

All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty and without having a stamp affixed thereto, shall, under such regulations as the Secretary or his delegate may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class six. The manufacturer shall first give satisfactory bonds to the Secretary or his delegate for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary or his delegate from persons allowed bonded warehouses.

(b) Supervision.

All labor performed and services rendered under this section shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

(c) Materials for manufacture.

(1) Exportable free of tax.

Any manufacturer of the articles specified in subsection (a), or of any of them, having such bonded warehouse, shall be at liberty, under such regulations as the Secretary or his delegate may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of such manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded warehouse under such regulations as the Secretary or his delegate may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge shall be received as a voucher for the manufacture of such articles.

(2) Imported materials.

Any materials imported into the United States may, under such regulations as the Secretary or his delegate may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof, whose certificate, describing the articles by their mark or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bond, or return of the amount of foreign import duties.

(d) Removals.

(1) General.

Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary or his delegate, without being charged with duty and without having a stamp affixed thereto.

(2) Transportation for export.

Any article manufactured in a bonded warehouse established under subsection (a) may be removed therefrom for transportation to a customs bonded warehouse at any port, for the purpose only of being exported therefrom, under such regulations and on the execution of such bonds or other security as the Secretary or his delegate may prescribe.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1392.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5521, act Aug. 16, 1954, ch. 736, 68A Stat. 678.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5066 of this title.

§ 5522. Withdrawal of distilled spirits to manufacturing bonded warehouses.

(a) Authorization.

Under such regulations and requirement as to stamps, bonds, and other security as shall be prescribed by the Secretary or his delegate, any manufacturer of medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors, for export, manufacturing the same in a duly constituted manufacturing bonded warehouse, shall be authorized to withdraw, from the bonded premises of any distilled spirits plant, so much distilled spirits as he may require for such purpose, without the payment of the internal revenue tax thereon.

(b) Allowance for loss or leakage.

For provisions relating to allowance for loss of distilled spirits withdrawn under subsection (a), see section 5008 (f).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1393.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5522, act Aug. 16, 1954, ch. 736, 68A Stat. 679.

Former section 5522(a) related to "authorization". See also section 5214(a) of this title.

Former section 5522(b) related to "allowance for loss or leakage". See also section 5008(f)(2) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5214 of this title.

§ 5523. Special provisions relating to distilled spirits and wines rectified in manufacturing bonded warehouses.

Distilled spirits and wines which are rectified in manufacturing bonded warehouses, class six, and distilled spirits which are reduced in proof and bottled or packaged in such warehouses, shall be deemed to have been manufactured within the meaning of section 311 of the Tariff Act of 1930 (19 U. S. C. 1311), and may be withdrawn as provided in such section, and likewise for shipment in bond to Puerto Rico, subject to the provisions of such section, and under such regulations as the Secretary or his delegate may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption. No internal revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with such section 311. No person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1394.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5523, act Aug. 16, 1954, ch. 736, 68A Stat. 679.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

Subchapter I.—Miscellaneous General Provisions

Sec.
5551. General provisions relating to bonds.
5552. Installation of meters, tanks, and other apparatus.
5553. Supervision of premises and operations.
5554. Pilot operations.
5555. Records, statements, and returns.
5556. Regulations.
5557. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations.
5558. Authority of enforcement officers.
5559. Determinations.
5560. Other provisions applicable.
5561. Exemptions to meet the requirements of the national defense.
5562. Exemptions from certain requirements in cases of disaster.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this subchapter consisted of sections 5551—5557.

Section 5554 related to "pilot plant operations".

Section 5557 related to "Other provisions applicable".

§ 5551. General provisions relating to bonds.

(a) Approval as condition to commencing business.

No individual, firm, partnership, corporation, or association, intending to commence or to continue the business of a distiller, bonded warehouseman, rectifier, brewer, or winemaker, shall commence or continue the business of a distiller, bonded warehouseman, rectifier, brewer, or winemaker until all bonds in respect of such a business, required by any provision of law, have been approved by the Secretary or the officer designated by him.

(b) Disapproval.

The Secretary or any officer designated by him may disapprove any such bond or bonds if the individual, firm, partnership, or corporation, or association giving such bond or bonds, or owning, controlling, or actively participating in the management of the business of the individual, firm, partnership, corporation, or association giving such bond or bonds, shall have been previously convicted, in a court of competent jurisdiction, of—

(1) any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of distilled spirits, wines, or beer, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise, or

(2) any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits wine, beer, or other intoxicating liquor.

(c) Appeal from disapproval.

In case the disapproval is by an officer designated by the Secretary to approve or disapprove such bonds, the individual, firm, partnership, corporation, or association giving the bond may appeal from such disapproval to the Secretary or an officer designated by him to hear such appeals, and the disapproval of the bond by the Secretary or officer designated to hear such appeals shall be final. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1394.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5551, act Aug. 16, 1954, ch. 736, 68A Stat. 680.

Provisions similar to those comprising subsec. (c) of this section were contained in former section 5177(c), act Aug. 16, 1954, ch. 736, 68A Stat. 630, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 500 of this title.

CROSS REFERENCES

Section as applicable to bond for bonded wine cellar, see section 5355 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5177, 5355 of this title.

§ 5552. Installation of meters, tanks, and other apparatus.

The Secretary or his delegate is authorized to require at distilled spirits plants, breweries, and at any other premises established pursuant to this chapter as in his judgment may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such apparatus when so required by the Secretary or his delegate shall not be

permitted to conduct business on such premises. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1395.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5552, act Aug. 16, 1954, ch. 736, 68A Stat. 680.

For application to vinegar plants of provisions of former section 5552 relating to installation of meters, tanks, and other apparatus, see also sections 5503 and 5505(e) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5505, 5511 of this title.

§ 5553. Supervision of premises and operations.

(a) Assignment of internal revenue officers.

The Secretary or his delegate is authorized to assign to any premises established under the provisions of this chapter such number of internal revenue officers as may be deemed necessary.

(b) Functions of internal revenue officer.

When used in this chapter, the term "internal revenue officer assigned to the premises" means the internal revenue officer assigned by the Secretary or his delegate to duties at premises established and operated under the provisions of this chapter. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1395.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5553, act Aug. 16, 1954, ch. 736, 68A Stat. 681.

For application to vinegar plants of provisions of former section 5553(a) relating to assignment of storekeeper-gaugers, see also section 5505(f) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5554. Pilot operations.

For the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over distilled spirits plants established under this chapter, the Secretary or his delegate is authorized to waive any regulatory provisions of this chapter for temporary pilot or experimental operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1395.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5554, act Aug. 16, 1954, ch. 736, 68A Stat. 681.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Applicability of revenue laws, effective date of this section, see section 7851 (a) (5) of this title.

§ 5555. Records, statements, and returns.

(a) General.

Every person liable to any tax imposed by this chapter, or for the collection thereof, or for the affixing of any stamp required to be affixed by this chapter, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may prescribe.

(b) Authority to waive.

Whenever in this chapter any record is required to be made or kept, or statement or return is required to be made by any person, the Secretary or his delegate may by regulation waive, in whole or in part, such requirement when he deems such requirement to no longer serve a necessary purpose. This subsection shall not be construed as authorizing the waiver of the payment of any tax.

(c) Photographic copies.

Whenever in this chapter any record is required to be made and preserved by any person, the Secretary or his delegate may by regulations authorize such person to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which accurately reproduces or forms a durable medium for so reproducing the original of such record and to retain such reproduction in lieu of the original. Every person who is authorized to retain such reproduction in lieu of the original shall, under such regulations as the Secretary or his delegate may prescribe, preserve such reproduction in conveniently accessible files and make provision for examining, viewing, and using such reproduction the same as if it were the original. Such reproduction shall be treated and considered for all purposes as though it were the original record and all provisions of law applicable to the original shall be applicable to such reproduction. Such reproduction, or enlargement or facsimile thereof, shall be admissible in evidence in the same manner and under the same conditions as provided for the admission of reproductions, enlargements, or facsimiles of records made in the regular course of business under section 1732 (b) of title 28 of the United States Code. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1395.)

CODIFICATION

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in a prior section 5555, act Aug. 16, 1954, ch. 736, 68A Stat. 681.

Former section 5555(a), relating to general provisions respecting records, statements, and returns, is also incorporated in section 5207 (b)—(d) of this title.

Former section 5555(b), relating to authority to waive records, statements, and returns, is also incorporated in section 5505(g) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5305 of this title.

§ 5556. Regulations.

The regulations prescribed by the Secretary or his delegate for enforcement of this chapter may make

such distinctions in requirements relating to construction, equipment, or methods of operation as he deems necessary or desirable due to differences in materials or variations in methods used in production, processing, or storage of distilled spirits. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1396.)

CODIFICATION

A prior section 5556, act Aug. 16, 1954, ch. 736, 68A Stat. 681, authorized the Secretary to prescribe regulations.

For application to vinegar plants of regulatory provisions of former section 5556, see also section 5505(h) of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

APPLICABILITY OF RULES AND REGULATIONS

Section 210 (e) of Pub. L. 85–859 provided that: "Until regulations are promulgated under any provision of this title [which added sections 5849, 5854, 5855 and 7608 of this title, amended this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324—7326, 7609, 7652 and 7655 of this title, and enacted notes set out under sections 5001, 5006, 5025, 5064, 5175, 5304 and 5601 of this title] which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules, or regulations which are in effect immediately prior to the effective date of such provision shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5305 of this title.

§ 5557. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations.

(a) General.

The Secretary or his delegate shall investigate violations of this subtitle and in any case in which prosecution appears warranted the Secretary or his delegate shall report the violation to the United States Attorney for the district in which such violation was committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and the Secretary or his delegate may swear out warrants before United States commissioners or other officers or courts authorized to issue warrants for the apprehension of such offenders, and may, subject to the control of such United States Attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 3041 of title 18 of the United States Code is hereby made applicable in the enforcement of this subtitle.

(b) Cross reference.

For provisions relating to the issuance of search warrants, see the Federal Rules of Criminal Procedure.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1396.)

CODIFICATION

A prior section 5557, act Aug. 16, 1954, ch. 736, 68A Stat. 681, related to applicability of other provisions. See section 5560 of this title.

Provisions similar to those comprising this section were contained in former section 5314, act Aug. 16, 1954, ch. 736, 68A Stat. 659, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5558. Authority of enforcement officers.

For provisions relating to the authority of internal revenue enforcement officers, see section 7608.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1396.)

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5559. Determinations.

Whenever the Secretary or his delegate is required or authorized, in this chapter, to make or verify any quantitative determination, such determination or verification may be made by actual court, weight, or measurement, or by the application of statistical methods, or by other means, under such regulations as the Secretary or his delegate may prescribe. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1396.)

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5560. Other provisions applicable.

All provision of subtitle F, insofar as applicable and not inconsistent with the provisions of this subtitle, are hereby extended to and made a part of this subtitle. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1396.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5557, act Aug. 16, 1954, ch. 736, 68A Stat. 681, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5561. Exemptions to meet the requirements of the national defense.

The Secretary or his delegate may temporarily exempt proprietors of distilled spirits plants from any provision of the internal revenue laws relating to distilled spirits, except those requiring payment of the tax thereon, whenever in his judgment it may seem expedient to do so to meet the requirements of the national defense. Whenever the Secretary or his delegate shall exercise the authority conferred by this section he may prescribe such regulations as may be necessary to accomplish the purpose which caused him to grant the exemption. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1397.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5217(b), act Aug. 16, 1954, ch. 736, 68A Stat. 641, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5562. Exemptions from certain requirements in cases of disaster.

Whenever the Secretary or his delegate finds that it is necessary or desirable, by reason of disaster, to waive provisions of internal revenue law with regard to distilled spirits, he may temporarily exempt proprietors of distilled spirits plants from any provision of the internal revenue laws relating to distilled spirits, except those requiring payment of the tax thereon, to the extent he may deem necessary or desirable. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1397.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5215, act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter J.—Penalties, Seizures, and Forfeitures Relating to Liquors

Part
I. Penalty, seizure, and forfeiture provisions applicable to distilling, rectifying, and distilled and rectified products.
II. Penalty and forfeiture provisions applicable to wine and wine production.
III. Penalty, seizure, and forfeiture provisions applicable to beer and brewing.
IV. Penalty, seizure, and forfeiture provisions common to liquors.
V. Penalties applicable to occupational taxes.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, Part V read: "Penalties and forfeitures applicable to occupational taxes".

PART I.—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO DISTILLING, RECTIFYING, AND DISTILLED AND RECTIFIED PRODUCTS

Sec.
5601. Criminal penalties.
5602. Penalty for tax fraud by distiller.
5603. Penalty relating to records, returns, and reports.
5604. Penalties relating to stamps, marks, brands, and containers.
5605. Penalty relating to return of materials used in the manufacture of distilled spirits, or from which distilled spirits may be recovered.
5606. Penalty relating to containers of distilled spirits.
5607. Penalty and forfeiture for unlawful use, recovery, or concealment of denatured distilled spirits, or articles.
5608. Penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding.
5609. Destruction of unregistered stills, distilling apparatus, equipment, and materials.
5610. Disposal of forfeited equipment and material for distilling.
5611. Release of distillery before judgment.
5612. Forfeiture of taxpaid distilled spirits remaining on bonded premises.
5613. Forfeiture of distilled spirits not stamped, marked, or branded as required by law.
5614. Burden of proof in cases of seizure of spirits.
5615. Property subject to forfeiture.

CODIFICATION

Prior to the general revision by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this part consisted of sections 5601—5650.

Section 5601 related to "Penalty and forfeiture for possession of unregistered still or distilling apparatus".

Section 5602 related to "Penalty and forfeiture for setting up still without permit".

Section 5603 related to "Penalty for failure or refusal of distiller or rectifier to give notice of intention to engage in such business".

Section 5604 related to "Penalty and forfeiture for failure or refusal of distiller to give bond".

Section 5605 related to "Penalty for improper approval of distiller's bond".

Section 5606 related to "Penalty and forfeiture for distilling without giving bond".

Section 5607 related to "Penalty for distilling on prohibited premises".

Section 5608 related to "Penalty for making or fermenting mash on unauthorized premises; illegal use of spirits; unlawful removal of vinegar; etc.".

Section 5609 related to "Penalty relating to return of materials used in the manufacture of distilled spirits".

Section 5610 related to "Penalty for using unregistered materials for producing spirits".

Section 5611 related to "Penalty for using false weights and measures".

Section 5612 related to "Penalty for using material or removing spirits without supervision".

Section 5613 related to "Penalty for distilling during prohibited hours".

Section 5614 related to "Penalty and forfeiture for removal of spirits during prohibited hours".

Section 5615 related to "Penalty for refusal or neglect of distillers and rectifiers to give assistance to others".

Sections 5616—5650, act Aug. 16, 1954, ch. 736, 68A Stat. 686-695, related to miscellaneous provisions, as follows:

Section 5616 related to "Penalty for obstructing or refusing to admit officer to distillery premises". See sections 5687 of this title.

Section 5617 related to "Penalty for failure to keep distillery accessible". See section 5687 of this title.

Section 5618 related to "Penalty for failure of distiller to identify fixed pipes". See section 5687 of this title.

Section 5619 related to "Penalty for refusal or neglect to draw off water and clean condensers or worm tanks". See section 5687 of this title.

Section 5620 related to "Penalty and forfeiture for false or omitted entries in distiller's books and records". See sections 5603 and 5615(5) of this title.

Section 5621 related to "Penalty relating to records and returns of distiller as wholesale dealers, rectifiers, and wholesale dealers". See section 5603 of this title.

Section 5622 related to "Disposal of forfeited equipment and material for distilling". See section 5610 of this title.

Section 5623 related to "Destruction of distilling apparatus". See section 5609 of this title.

Section 5624 related to "Release of distillery before judgment". See section 5611 of this title.

Section 5625 related to "Forfeiture of tax-paid distilled spirits remaining on distillery premises". See section 5612(a) of this title.

Section 5626 related to "Penalty and forfeiture for tax fraud by distiller". See sections 5602 and 5615(3) of this title.

Section 5627 related to "Penalty for unlawful use of rectifying premises". See section 5687 of this title.

Section 5628 related to "Penalty for rectification without payment of tax, increasing volume, etc.". See sections 5601(a)(10) and 5687 of this title.

Section 5629 related to "Penalty for unlawful rectifying". See section 5601(a) (10), (11) of this title.

Section 5630 related to "Penalty for noncompliance by rectifiers with provisions relating to rectifying, gauging, branding, and stamping". See section 5687 of this title.

Section 5631 related to "Penalty and forfeiture for failure to comply with warehousing and removal requirements". See sections 5601(a)(12), 5615(6), and 5687 of this title.

Section 5632 related to "Penalty and forfeiture for unlawful removal or concealment of spirits". See sections 5601(a)(12) and 5615(6) of this title.

Section 5633 related to "Penalty of officer in charge of warehouse for unlawful removal of spirits". See section 7214 of this title.

Section 5634 related to "Penalty and forfeiture for creation of fictitious proof". See sections 5601(a)(13) and 5615(7) of this title.

Section 5635 related to "Penalty for buying or selling used casks bearing inspection marks". See section 5604(a)(17) of this title.

Section 5636 related to "Penalty and forfeiture for failure to efface, etc., stamps and brands on emptied packages". See sections 5604(a) (2), (3), (7)—(9), (17), and 7301 of this title.

Section 5637 related to "Penalty for changing stamps or shifting spirits". See section 5604(a)(18) of this title.

Section 5638 related to "Penalty and forfeiture for affixing imitation stamps on packages of distilled spirits". See sections 5604(a)(19), 5613, 7301, and 7302 of this title.

Section 5639 related to "Forfeiture of distilled spirits in unstamped casks or packages". See section 5613(a) of this title.

Section 5640 related to "Forfeiture of spirits in unstamped containers". See section 5613(b) of this title.

Section 5641 related to "Penalty and forfeiture relating to containers of distilled spirits". See sections 5606, 5613, 7301, 7302, and 7321—7323 of this title.

Section 5642 related to "Penalties for transporting, possessing, etc., distilled spirits in unstamped containers, or counterfeiting of stamps, etc.". See section 5604(a)(1), (4)—(6), (10), (12)—(15), (b) of this title.

Section 5643 related to "Penalty and forfeiture for reuse of stamps or bottles, tampering and unlawful removal". See sections 5601(a)(12), 5604(a) (11), (12), (16), 5613, 5615(6), 5687, 7301, and 7302 of this title.

Section 5644 related to "Penalty for counterfeiting bottled in bond stamps". See section 5604(a) (4), (5), (10) of this title.

Section 5645 related to "Penalty for unlawful affixing, cancelling, or issue of stamps by officer". See section 7214 of this title.

Section 5646 related to "Penalty for evasion of distilled spirits tax". See civil penalty provisions of subtitle F of this title.

Section 5647 related to "Penalty and forfeiture for unlawful use or concealment of denatured alcohol". See sections 5273(b) (1), (2), (d), 5601(a)(12), 5607, and 5615(6) of this title.

Sections 5648 related to "Penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding". See section 5608 of this title.

Section 5649 related to "Burden of proof in cases of seizure of spirits". See section 5614 of this title.

Section 5650 related to "Penalty and forfeiture for operating distillery after giving notice of suspension". See sections 5601(a)(14) and 5615(3) of this title.

CROSS REFERENCES

Fines, penalties and forfeitures—

Generally, see chapter 163 of Title 28, Judiciary and Judicial Procedure.

Costs in action for recovery of, see section 1918 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction and venue of actions for recovery of, see sections 1355, 1395 of Title 28, Judiciary and Judicial Procedure.

Remission or mitigation of forfeitures under liquor laws, see section 3617 of Title 18, Crimes and Criminal Procedure.

§ 5601. Criminal penalties.

(a) Offenses.

Any person who—

(1) Unregistered stills.

Has in his possession or custody, or under his control, any still or distilling apparatus set up which is not registered, as required by section 5179 (a); or

(2) Failure of distiller or rectifier to file application.

Engages, in the business of a distiller or rectifier without having filed application for and received notice of registration, as required by section 5171 (a); or

(3) False or fraudulent application.

Engages, or intends to engage, in the business of distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, and files a false or fraudulent application under section 5171; or

(4) Failure or refusal of distiller or rectifier to give bond.

Carries on the business of a distiller or rectifier without having given bond as required by law; or

(5) False, forged, or fraudulent bond.

Engages, or intends to engage, in the business of distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, and gives any false, forged, or fraudulent bond, under subchapter B; or

(6) Distilling on prohibited premises.

Uses, or possesses with intent to use, any still, boiler, or other utensil for the purpose of producing distilled spirits, or aids or assists therein, or causes or procures the same to be done, in any dwelling house, or in any shed, yard, or inclosure connected with such dwelling house (except as authorized under section 5178 (a) (1) (C)), or on board any vessel or boat, or on any premises where beer or wine is made or produced, or where liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under section 5178 (b)); or

(7) Unlawful production, removal, or use of material fit for production of distilled spirits.

Except as otherwise provided in this chapter, makes or ferments mash, wort, or wash, fit for distillation or for the production of distilled spirits, in any building or on any premises other than the designated premises of a distilled spirits plant lawfully qualified to produce distilled spirits, or removes, without authorization by the Secretary or his delegate, any mash, wort, or wash, so made or fermented, from the designated premises of such lawfully qualified plant before being distilled; or

(8) Unlawful production of distilled spirits.

Not being a distiller authorized by law to produce distilled spirits, produces distilled spirits by distillation or any other process from any mash, wort, wash, or other material; or

(9) Unauthorized use of distilled spirits in manufacturing processes.

Except as otherwise provided in this chapter, uses distilled spirits in any process of manufacture unless such spirits—

(A) have been produced in the United States by a distiller authorized by law to produce distilled spirits and withdrawn in compliance with law; or

(B) have been imported (or otherwise brought into the United States) and withdrawn in compliance with law; or

(10) Unlawful rectifying or bottling.

Engages in or carries on the business of a rectifier, or a bottler of distilled spirits—

(A) with intent to defraud the United States of any tax on the distilled spirits rectified or bottled by him; or

(B) with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits; or

(11) Unlawful purchase, receipt, rectification, or bottling of distilled spirits.

Purchases, receives, rectifies, or bottles any distilled spirits, knowing or having reasonable grounds to believe that any tax due on such spirits has not been paid or determined as required by law; or

(12) Unlawful removal or concealment of distilled spirits.

Removes, other than as authorized by law, any distilled spirits on which the tax has not been paid or determined, from the place of manufacture or storage, or from any instrument of transportation, or conceals spirits so removed; or

(13) Creation of fictitious proof.

Adds, or causes to be added, any ingredient or substance (other than ingredients or substances authorized by law to be added) to any distilled spirits before the tax is paid thereon, or determined as provided by law, for the purpose of creating fictitious proof; or

(14) Distilling after notice of suspension.

After the time fixed in the notice given under section 5221 (a) to suspend operations as a distiller, carries on the business of a distiller on the premises covered by the notice of suspension, or has mash, wort, or beer on such premises, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on such premises;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

(b) Presumptions.

(1) Unregistered stills.

Whenever on trial for violation of subsection (a) (1) the defendant is shown to have been at the site or place where, and at the time when, a still or distilling apparatus was set up without having been registered, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

(2) Failure or refusal of distiller or rectifier to give bond.

Whenever on trial for violation of subsection (a) (4) the defendant is shown to have been at the site or place where, and at the time when, the business of a distiller or rectifier was so engaged in or carried on, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

(3) Unlawful production, removal, or use of material fit for production of distilled spirits

Whenever on trial for violation of subsection (a) (7) the defendant is shown to have been at the place in the building or on the premises where such mash, wort, or wash fit for distillation or the production of distilled spirits, was made or fermented, and at the time such mash, wort, or wash was there possessed, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

(4) Unlawful production of distilled spirits.

Whenever on trial for violation of subsection (a) (8) the defendant is shown to have been at the site or place where, and at the time when, such distilled spirits were produced by distillation or any other process from mash, wort, wash, or other material, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1398.)

CODIFICATION

Provisions similar to those comprising subsec. (a) (1) of this section were contained in a prior section 5601, act Aug. 16, 1954, ch. 736, 68A Stat. 683.

Former section 5601 also related to forfeiture for possession of unregistered still or distilling apparatus. See section 5615(1) of this title.

Provisions similar to those comprising subsec. (a) (2)—(8), (9)(A), (10)—(14) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subd. of subsec. (a):	*Former sections*
(2)	5172, 5603.
(3)	5603.
(4)	5172, 5604, 5606.
(5)	5604.
(6)	5171, 5607.
(7)	5216(a)(1), (4), 5608(a).
(8)	5216(a)(1), 5608(a).
(9)(A)	5216(a)(1), 5608(a).
(10)	5628, 5629.
(11)	5629.
(12)	5608(a), 5631, 5632, 5643, 5647.
(13)	5634.
(14)	5650.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 640, 641, 684, 685, 689, 690, 692, 693, 695.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PROSECUTION AND PUNISHMENT OF OFFENSES COMMITTED AND PENALTIES OR FORFEITURES INCURRED; SAVINGS PROVISION

Section 210 (c) of Pub. L. 85–859 provided that : "All offenses committed, and all penalties or forfeitures incurred, under any provision of law amended by this title [which added sections 5849, 5854, 5855 and 7608 of this title, amended this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 7272, 7301, 7224—7326, 7609, 7652 and 7655 of this title, and enacted notes set out under sections 5001, 5006, 5025, 5064, 5175, 5304 and 5601 of this title], may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5178, 5505 of this title.

§ 5602. Penalty for tax fraud by distiller.

Whenever any person engaged in or carrying on the business of a distiller defrauds, attempts to defraud, or engages in such business with intent to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. No discontinuance or nolle prosequi of any prosecution under this section shall be allowed without the permission in writing of the Attorney General. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1400.)

CODIFICATION

A prior section 5602, act Aug. 16, 1954, ch. 736, 68A Stat. 683, related to penalty and forfeiture for setting up still without permit. See sections 5615(2) and 5687 of this title.

Provisions similar to those comprising this section were contained in former sections 5606, 5626, act Aug. 16, 1954, ch. 736, 68A Stat. 684, 688, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5603. Penalty relating to records, returns and reports.

(a) Fraudulent noncompliance.

Any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who, with intent to defraud the United States, shall—

(1) fail to keep any such document or to make required entries therein; or

(2) make any false entry in such document; or

(3) cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document or any entry therein; or

(4) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(5) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto;

or who shall, with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

(b) Failure to comply.

Any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who, otherwise than with intent to defraud the United States, shall—

(1) fail to keep any such document or to make required entries therein; or

(2) make any false entry in such document; or

(3) cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document, or any entry therein, except as provided by this title or regulations issued pursuant thereto; or

(4) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(5) fail to refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto;

or who shall, otherwise than with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1400.)

CODIFICATION

A prior section 5603, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty for failure or refusal of distiller or rectifier to give notice of intention to engage in such business. See section 5601(a) (2), (3) of this title.

Provisions similar to those comprising this section were contained in former sections 5610, 5611, 5620, 5621, 5692, act Aug. 16, 1954, ch. 736, 68A Stat. 685-687, 703, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5604. Penalties relating to stamps, marks, brands, and containers.

(a) General.

Any person who shall—

(1) transport, possess, buy, sell, or transfer any distilled spirits, required to be stamped under the provisions of section 5205 (a) (2), unless the immediate container thereof has affixed thereto a stamp as required by such section; or

(2) with intent to defraud the United States, empty a container stamped under the provisions of section 5205 (a) (1) or (2) or section 5235 without destroying the stamp thereon as required by section 5205 (a) (3) or regulations prescribed pursuant thereto; or

(3) empty, or cause to be emptied, any distilled spirits from any immediate container (other than a container stamped under section 5205 (a) or section 5235) bearing any stamp, mark, or brand required by law without effacing and obliterating such stamp, mark, or brand as required by section 5205 (g); or

(4) with intent to defraud the United States, falsely make, forge, alter, or counterfeit any stamp required under section 5205 or section 5235; or

(5) use, sell, or have in his possession any forged or fraudulently altered stamp, or counterfeit of any stamp, required under section 5205 or section 5235, or any plate or die used or which may be used in the manufacture thereof; or

(6) with intent to defraud the United States, use, reuse, sell, or have in his possession any stamp required to be destroyed by section 5205 (a) (3) or regulations prescribed pursuant thereto; or

(7) remove any stamp required by law or regulations from any cask or package containing, or which had contained, distilled spirits, without defacing or destroying such stamp at the time of such removal; or

(8) have in his possession any undestroyed or undefaced stamp removed from any cask or package containing, or which had contained, distilled spirits; or

(9) have in his possession any cancelled stamp or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits; or

(10) make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required under section 5205 or section 5235; or

(11) reuse any stamp required under section 5205 (a) or section 5235, after the same shall have once been affixed to a container as provided in such sections or regulations issued pursuant thereto; or

(12) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once been filled and stamped under the provisions of this chapter, without removing and destroying the stamp so previously affixed to such bottle; or

(13) affix any stamp issued pursuant to section 5205 (a) (2) and (3) to any container containing distilled spirits on which any tax due is unpaid or undetermined; or

(14) make any false statement in any application for stamps under section 5205; or

(15) possess any stamp prescribed under section 5205 or section 5235 obtained by him otherwise than as provided by such sections or regulations issued pursuant thereto; or

(16) willfully and unlawfully remove, change, or deface any stamp, mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein; or

(17) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any stamp, mark, or brand required by law to be affixed to any cask or package containing distilled spirits; or

(18) change or alter any stamp, mark, or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently use any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein; or

(19) affix, or cause to be affixed, to or on any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

(b) Officers authorized to enforce this section.

Any officer authorized to enforce any provision of law relating to internal revenue stamps is authorized to enforce this section. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1401.)

CODIFICATION

A prior section 5604, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty and forfeiture for failure or refusal of distiller to give bond. See sections 5601(a) (4), (5) and 5615(3) of this title.

Provisions similar to those comprising this section were contained in former sections of I.R.C. 1954, prior to the general revisions of this chapter by Pub. L. 85-859, as follows:

Present subsecs.:	*Former sections*
(a) (1)	5008(b) (1), 5642.
(a) (2), (3)	5636.
(a) (4), (5)	5642, 5644.
(a) (6)	5642.
(a) (7)—(9)	5636.
(a) (10)	5642, 5644.
(a) (11)	5643.
(a) (12)	5642, 5643.
(a) (13)—(15)	5642.
(a) (16)	5643.
(a) (17)	5635, 5636.
(a) (18)	5637.
(a) (19)	5638.
(b)	5642.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 602, 690—693.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5605. Penalty relating to return of materials used in the manufacture of distilled spirits, or from which distilled spirits may be recovered.

Any person who willfully violates any provision of section 5291 (a), or of any regulation issued pursuant thereto, and any officer, director, or agent of any such person who knowingly participates in such violation, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both. (Added Pub. L. 85-859, title II, § 201, Sept 2, 1958, 72 Stat. 1402.)

CODIFICATION

A prior section 5605, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty for improper approval of distiller's bond. See section 7214 of this title.

Provisions similar to those comprising this section were contained in former section 5609, act Aug. 16, 1954, ch. 736, 68A Stat. 685, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5606. Penalty relating to containers of distilled spirits.

Whoever violates any provision of section 5301, or of any regulation issued pursuant thereto, or the terms or conditions of any permit issued pursuant to the authorization contained in such section, and any officer, director, or agent of any corporation who knowingly participates in such violation, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1402.)

CODIFICATION

A prior section 5606, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty and forfeiture for distilling without giving bond. See sections 5601(a)(4), 5602, and 5615(3) of this title.

Provisions similar to those comprising this section were contained in former section 5641, act Aug. 16, 1954, ch. 736, 68A Stat. 692, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5607. Penalty and forfeiture for unlawful use, recovery, or concealment of denatured distilled spirits, or articles.

Any person who—

(1) uses denatured distilled spirits withdrawn free of tax under section 5214 (a) (1) in the manufacture of any medicinal preparation or flavoring extract in violation of the provisions of section 5273 (b) (1) or knowingly sells, or offers for sale, any such medicinal preparation or flavoring extract in violation of section 5273 (b) (2); or

(2) knowingly withdraws any denatured distilled spirits free of tax under section 5214 (a) (1) for beverage purposes; or

(3) knowingly sells any denatured distilled spirits withdrawn free of tax under section 5214 (a) (1), or any articles containing such denatured distilled spirits, for beverage purposes; or

(4) recovers or attempts to recover by redistillation or by any other process or means (except as authorized in section 5223 or in section 5273 (c)) any distilled spirits from any denatured distilled spirits withdrawn free of tax under section 5214 (a) (1), or from any articles manufactured therefrom, or knowingly uses, sells, conceals, or otherwise disposes of distilled spirits so recovered or redistilled;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense; and all personal property used in connection with his business, together with the buildings and ground constituting the premises on which such unlawful acts are performed or permitted to be performed shall be forfeited to the United States. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1402.)

CODIFICATION

A prior section 5607, act Aug. 16, 1954, ch, 736, 68A Stat. 684, related to penalty for distilling on prohibited premises. See sections 5505(i) and 5601(a)(6) of this title.

Provisions similar to those comprising this section were contained in former section 5647, act Aug. 16, 1954, ch. 736, 68A Stat. 693, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5608. Penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding.

(a) Fraudulent claim for drawback.

Every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback than the tax actually paid or determined thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than 5 years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States, whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

(b) Unlawful relanding.

Every person who, with intent to defraud the United States, relands within the jurisdiction of the United States any distilled spirits which have been shipped for exportation under the provisions of this chapter, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all vessels, vehicles, or aircraft used in relanding and removing such distilled spirits, shall be forfeited to the United States. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1403, and amended Pub. L. 89-44, title VIII, § 805(e), June 21, 1965, 79 Stat. 161.)

CODIFICATION

A prior section 5608, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for making or fermenting mash on unauthorized premises; illegal use of spirits; unlawful removal of vinegar; etc. See sections 5505(i), 5601(a) (7), (8), (9)(A), (12), 5615(4), and 5687 of this title.

Provisions similar to those comprising this section were contained in former section 5648, act Aug. 16, 1954, ch. 736, 68A Stat. 694, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1965—Subsec. (b). Pub. L. 89-44 substituted ", with intent to defraud the United States," for "intentionally" following "Every person who".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b) by Pub. L. 89-44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89-44, set out as a note under section 5008 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 5609. Destruction of unregistered stills, distilling apparatus, equipment, and materials.

(a) General.

In the case of seizure elsewhere than on premises qualified under this chapter of any unregistered still, distilling or fermenting equipment or apparatus, or distilling or fermenting material, for any offense involving forfeiture of the same, where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same. In the case of seizure, other than on premises qualified

under this chapter or in transit thereto or therefrom, of any distilled spirits on which the tax has not been paid or determined, for any offense involving forfeiture of the same, the seizing officer is authorized to destroy the distilled spirits forthwith. Any destruction under this subsection shall be in the presence of at least one credible witness. The seizing officer shall make such report of said seizure and destruction and take such samples as the Secretary or his delegate may require.

(b) Claims.

Within 1 year after destruction made pursuant to subsection (a) the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary or his delegate for reimbursement of the value of such property. If the claimant establishes to the satisfaction of the Secretary or his delegate that—

(1) such property had not be used in violation of law; or

(2) any unlawful use of such property had been without his consent or knowledge,

the Secretary or his delegate shall make an allowance to such claimant not exceeding the value of the property destroyed. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1403.)

CODIFICATION

A prior section 5609, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty relating to return of materials used in the manufacture of distilled spirits. See section 5605 of this title.

Provisions similar to those comprising this section were contained in former section 5623, act Aug. 16, 1954, ch. 736, 68A Stat. 687, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5610. Disposal of forfeited equipment and material for distilling.

All boilers, stills, or other vessels, tools and implements, used in distilling or rectifying, and forfeited under any of the provisions of this chapter, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for fermentation or distillation, shall be sold at public auction or otherwise disposed of as the court in which forfeiture was recovered shall in its discretion direct. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1404.)

CODIFICATION

A prior section 5610, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for using unregistered materials for producing spirits. See section 5603 of this title.

Provisions similar to those comprising this section were contained in former section 5622, act Aug. 16, 1954, ch. 736, 68A Stat. 687, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5611. Release of distillery before judgment.

Any distillery or distilling apparatus seized on any premises qualified under this chapter, for any violation of law, may, in the discretion of the court, be released before final judgment to a receiver appointed by the court to operate such distillery or apparatus. Such receiver shall give bond, which shall be approved in open court, with corporate surety, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court. Funds obtained from such operation shall be impounded as the court shall direct pending such final judgment. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1404.)

CODIFICATION

A prior section 5611, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for using false weights and measures. See section 5603 of this title.

Provisions similar to those comprising this section were contained in former section 5624, act Aug. 16, 1954, ch. 736, 68A Stat. 688, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5612. Forfeiture of taxpaid distilled spirits remaining on bonded premises.

(a) General.

No distilled spirits on which tax has been paid or determined shall be stored or allowed to remain on the bonded premises of any distilled spirits plant, under the penalty of forfeiture of all spirits so found.

(b) Exceptions.

Subsection (a) shall not apply in the case of—

(1) distilled spirits which have been bottled in bond under section 5233, and which are returned to bonded premises for rebottling, relabeling, or restamping in accordance with the provisions of section 5233 (d); or

(2) distilled spirits in the process of prompt removal from bonded premises on payment or determination of the tax; or

(3) distilled spirits returned to bonded premises in accordance with the provisions of section 5215; or

(4) distilled spirits, held on bonded premises, on which the tax has become payable by operation of law, but on which the tax has not been paid.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1404.)

CODIFICATION

A prior section 5612, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for using material or removing spirits without supervision. See section 5687 of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in former section 5625, act Aug. 16, 1954, ch. 736, 68A Stat. 688, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5613. Forfeiture of distilled spirits not stamped, marked, or branded as required by law.

(a) Unmarked or unbranded casks or packages.

All distilled spirits found in any cask or package required by this chapter or any regulation issued pursuant thereto to bear a mark, brand, or identification, which cask or package is not marked,

branded, or identified in compliance with this chapter and regulations issued pursuant thereto, shall be forfeited to the United States.

(b) Unstamped containers.

All distilled spirits found in any container required by this chapter or any regulations issued pursuant thereto to bear a stamp, which container is not stamped in compliance with this chapter and regulations issued pursuant thereto, shall be forfeited to the United States. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1404.)

CODIFICATION

A prior section 5613, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for distilling during prohibited hours. See section 5687 of this title.

Provisions similar to those comprising this section were contained in former sections 5639 and 5640, act Aug. 16, 1954, ch. 736, 68A Stat. 691, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5614. Burden of proof in cases of seizure of spirits.

Whenever seizure is made of any distilled spirits found elsewhere than on the premises of a distilled spirits plant, or than in any warehouse authorized by law, or than in the store or place of business of a wholesale liquor dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law, or regulations issued pursuant thereto, to be made in respect of such spirits, have not been made at the time or in the manner required, or in respect to which any owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1405.)

CODIFICATION

A prior section 5614, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty and forfeiture for removal of spirits during prohibited hours. See sections 5687 and 7301 of this title.

Provisions similar to those comprising this section were contained in former section 5649, act Aug. 16, 1954, ch. 736, 68A Stat. 694, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5615. Property subject to forfeiture.

The following property shall be forfeited to the United States:

(1) Unregistered still or distilling apparatus.

Every still or distilling apparatus not registered as required by section 5179, together with all personal property in the possession or custody or under the control of the person required by section 5179 to register the still or distilling apparatus, and found in the building or in any yard or inclosure connected with the building in which such still or distilling apparatus is set up; and

(2) Distilling apparatus removed without notice or set up without permit.

Any still, boiler, or other vessel to be used for the purpose of distilling which is removed without notice having been given as required by section 5105 (a) or which is set up without permit first having been obtained as required by such section; and

(3) Distilling without giving bond or with intent to defraud.

Whenever any person carries on the business of a distiller without having given bond as required by law or gives any false, forged, or fraudulent bond; or engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the distilled spirits distilled by him, or any part thereof; or after the time fixed in the notice declaring his intention to suspend work, filed under section 5221 (a), carries on the business of a distiller on the premises covered by such notice, or has mash, wort, or beer on such premises, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on such premises—

(A) all distilled spirits or wines, and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found; and

(B) all distilled spirits, wines, raw materials for the production of distilled spirits, and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith and used with or constituting a part of the premises; and

(C) all the right, title, and interest of such person in the lot or tract of land on which the distillery is situated; and

(D) all the right, title, and interest in the lot or tract of land on which the distillery is located of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and

(E) all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from the distillery, which shall be found in any such building, yard, or inclosure; and

(F) all the right, title, and interest of every person in any premises used for ingress or egress to or from the distillery who knowingly has suffered or permitted such premises to be used for such ingress or egress; and

(4) Unlawful production and removals from vinegar plants.

(A) all distilled spirits in excess of 15 percent of alcohol by volume produced on the premises of a vinegar plant; and

(B) all vinegar or other fluid or other material containing a greater proportion than 2 percent of proof spirits removed from any vinegar plant; and

(5) False or omitted entries in records, returns, and reports.

Whenever any person required by section 5207 to keep or file any record, return, report, summary, transcript, or other document, shall, with intent to defraud the United States—

(A) fail to keep any such document or to make required entries therein; or

(B) make any false entry in such document; or

(C) cancel, alter, or obliterate any part of such document, or any entry therein, or destroy any part of such document, or entry therein; or

(D) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(E) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto; or

(F) permit any of the acts described in the preceding subparagraphs to be performed;

all interest of such person in the distillery, bonded warehouse, or rectifying or bottling establishment where such acts or omissions occur, and in the equipment thereon, and in the lot or tract of land on which such distillery, bonded warehouse, or rectifying or bottling establishment stands, and in all personal property on the premises of the distillery, bonded warehouse, or rectifying or bottling establishment where such acts or omissions occur, used in the business there carried on; and

(6) Unlawful removal of distilled spirits.

All distilled spirits on which the tax has not been paid or determined which have been removed, other than as authorized by law, from the place of manufacture, storage, or instrument of transportation; and

(7) Creation of fictitious proof.

All distilled spirits on which the tax has not been paid or determined as provided by law to which any ingredient or substance has been added for the purpose of creating fictitious proof.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1405.)

CODIFICATION

A prior section 5615, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty for refusal or neglect of distillers and rectifiers to give assistance to officers. See sections 5203(e) and 5687 of this title.

Provisions similar to those comprising this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subds.	*Former Sections*
(1)	5601.
(2)	5602.
(3)	5604, 5606, 5626, 5650.
(4)	5608(b).
(5)	5620
(6)	5631, 5632, 5643, 5647.
(7)	5634.

The former sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 683–690, 692, 693, 695.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5305 of this title.

PART II.—PENALTY AND FORFEITURE PROVISIONS APPLICABLE TO WINE AND WINE PRODUCTION

Sec.
5661. Penalty and forfeiture for violation of laws and regulations relating to wine.
5662. Penalty for alteration of wine labels.
5663. Cross reference.

§ 5661. Penalty and forfeiture for violation of laws and regulations relating to wine.

(a) Fraudulent offenses.

Whoever, with intent to defraud the United States, fails to pay any tax imposed upon wine or violates, or fails to comply with, any provision of subchapter F or subpart C of part I of subchapter A, or regulations issued pursuant thereto, or recovers or attempts to recover any spirits from wine, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, for each such offense, and all products and materials used in any such violation shall be forfeited to the United States.

(b) Other offenses.

Any proprietor of premises subject to the provisions of subchapter F, or any employee or agent of such proprietor, or any other person, who otherwise than with intent to defraud the United States violates or fails to comply with any provision of subchapter F or subpart C of part I of subchapter A, or regulations issued pursuant thereto, or who aids or abets in any such violation, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1407.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5661, act Aug. 16, 1954, ch. 736, 68A Stat. 695.

Former section 5661(a) also provided for an additional penalty "of double the tax due, to be assessed, levied and collected in the same manner as taxes are collected". See chapter 68 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalties relating to payment and collection of liquor taxes, see section 5684 of this title.

§ 5662. Penalty for alteration of wine labels.

Any person who, without the permission of the Secretary or his delegate, so alters as to materially change the meaning of any stamp, mark, brand, or label required to appear upon any wine upon its removal from premises subject to the provisions of subchapter F, or from customs custody, or who, after such removal, represents any wine, whether in its original containers or otherwise, to be of an identity or origin other than its proper identity or origin as shown by such stamp, mark, brand, or label, or who, directly or indirectly, and whether by

manner of packaging or advertising or any other form of representation, represents any still wine to be an effervescent wine or a substitute for an effervescent wine, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1407.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5662, act Aug. 16, 1954, ch. 736, 68A Stat. 695.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5663. Cross reference.

For penalties of common application pertaining to liquors, including wines, see part IV, and for penalties for rectified products, see part I.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1407.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5663, act Aug. 16, 1954, ch. 736, 68A Stat. 695.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART III.—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO BEER AND BREWING

Sec.
5671. Penalty and forfeiture for evasion of beer tax and fraudulent noncompliance with requirements.
5672. Penalty for failure of brewer to comply with requirements and to keep records and file returns.
5673. Forfeiture for flagrant and willful removal of beer without taxpayment.
5674. Penalty for unlawful removal of beer.
5675. Penalty for intentional removal or defacement of brewer's marks and brands.
5676. Penalties relating to beer stamps.

§ 5671. Penalty and forfeiture for evasion of beer tax and fraudulent noncompliance with requirements.

Whoever evades or attempts to evade any tax imposed by section 5051 or 5091, or with intent to defraud the United States fails or refuses to keep and file true and accurate records and returns as required by section 5415 and regulations issued pursuant thereto, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, for each such offense, and shall forfeit all beer made by him or for him, and all the vessels, utensils, and apparatus used in making the same. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1408.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5671, act Aug. 16, 1954, ch. 736, 68A Stat. 696.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5672. Penalty for failure of brewer to comply with requirements and to keep records and file returns.

Every brewer who, otherwise than with intent to defraud the United States, fails or refuses to keep the records and file the returns required by section 5415 and regulations issued pursuant thereto, or refuses to permit any internal revenue officer to inspect his records in the manner provided, or violates any of the provisions of subchapter G or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1408.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5672, act Aug. 16, 1954, ch. 736, 68A Stat. 696.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5673. Forfeiture for flagrant and willful removal of beer without taxpayment.

For flagrant and willful removal of taxable beer for consumption or sale, with intent to defraud the United States of the tax thereon, all the right, title, and interest of each person who knowingly has suffered or permitted such removal, or has connived at the same, in the lands and buildings constituting the brewery shall be forfeited by a proceeding in rem in the District Court of the United States having jurisdiction thereof. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1408.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5673, act Aug. 16, 1954, ch. 736, 68A Stat. 696.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Judicial action to enforce forfeiture, see section 7323 of this title.

§ 5674. Penalty for unlawful removal of beer.

Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1408.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5674, act Aug. 16, 1954, ch. 736, 68A Stat. 696.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5675. Penalty for intentional removal or defacement of brewer's marks and brands.

Every person other than the owner, or his agent authorized so to do, who intentionally removes or defaces any mark, brand, or label required by section 5412 and regulations issued pursuant thereto shall be liable to a penalty of $50 for each barrel or other container from which such mark, brand, or label is so removed or defaced. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1408.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5675, act Aug. 16, 1954, ch. 736, 68A Stat. 696.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5676. Penalties relating to beer stamps.

If stamps or other devices, evidencing the tax on beer or indicating compliance with the provisions of this chapter, are required by the Secretary or his delegate under section 5054, the following paragraphs shall apply—

(1) Penalty for sale, removal, or receipt without proper stamp or device.

Any brewer, or other person who sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase of, any beer contained in any hogshead, barrel, keg, or other container from any brewery upon which the stamp, or device, in case of removal, has not been affixed, or on which a false or fraudulent stamp, or device, in case of removal is affixed with knowledge that it is such, or on which a stamp, or device, in case of removal, once cancelled, is used a second time, shall be fined not more than $1,000, or imprisoned for not more than 1 year, or both.

(2) Penalty for withdrawal from improperly stamped containers or without destroying stamps or devices.

Any person who withdraws or aids in the withdrawal of any beer from any hogshead, barrel, keg, or other container, without destroying or defacing the stamp or device affixed thereon, or withdraws or aids in the withdrawal of any beer from any hogshead, barrel, keg, or other container, upon which the proper stamp or device has not been affixed, or on which a false or fraudulent stamp or device is affixed, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(3) Penalty for counterfeiting stamps and devices and trafficking in used stamps or devices.

Every person who makes, sells, or uses any false or counterfeit stamp or device of the kind mentioned in section 5054 or regulations issued pursuant thereto, or who makes, sells, or uses any die for printing or making any such false or counterfeit stamp or device, or who procures the same to be done, and every person who shall remove, or cause to be removed, from any hogshead, barrel, keg or other container of beer, any stamp or device required by regulations issued pursuant to section 5054, with intent to reuse such stamp or device, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp or device removed from another hogshead, barrel, keg, or other container, or receives, buys, sells, gives away, or has in his possession any such stamp or device so removed, or makes any fraudulent use of any such stamp or device for beer, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both.

(4) Forfeiture of unstamped containers.

The ownership or possession by any person of any beer in hogsheads, barrels, kegs, or other similar containers which do not bear the stamps or devices required by regulations issued pursuant to section 5054 shall render such hogsheads, barrels, kegs, and other similar containers, and the beer contained therein, liable to seizure wherever found and to forfeiture.

(5) Penalty for removal or defacement of stamps, devices, or labels.

Every person who intentionally removes, alters, or defaces any stamp, device, or label required by section 5054 or regulations issued thereunder to be placed on containers of beer, other than in the manner and at the time required by law or regulations issued by the Secretary or his delegate, shall be liable to a fine of not more than $500 for each such container from which the stamp, device, or label is removed, altered, or defaced.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1408.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5676, act Aug. 16, 1954, ch. 736, 68A Stat. 697.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

PART IV.—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS COMMON TO LIQUORS

Sec.
5681. Penalty relating to signs.
5682. Penalty for breaking locks or gaining access.
5683. Penalty and forfeiture for removal of liquors under improper brands.
5684. Penalties relating to the payment and collection of liquor taxes.
5685. Penalty and forfeiture relating to possession of devices for emitting gas, smoke, etc., explosives and firearms, when violating liquor laws.
5686. Penalty for having, possessing, or using liquor or property intended to be used in violating provisions of this chapter.
5687. Penalty for offenses not specifically covered.
5688. Disposition and release of seized property.
5689. Penalty and forfeiture for tampering with a stamp machine.
5690. Definition of the term "person".

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, the following sections read as follows:

Section 5681 related to "Penalty and forfeiture for failure to post or unlawfully posting signs of distillers, rectifiers or wholesale liquor dealers".

Section 5683 related to "Penalty and forfeiture for removal of liquors or wines under improper brands".

Section 5686 related to "Miscellaneous penalties".

Section 5687 related to "Penalties and forfeiture applicable to distillers, rectifiers and wholesale liquor dealers for offenses not specifically covered".

§ 5681. Penalty relating to signs.

(a) Failure to post required sign.

Every person engaged in distilling, warehousing of distilled spirits, rectifying, or bottling of distilled spirits, and every wholesale dealer in liquors, who fails to post the sign required by section 5115 (a) or section 5180 (a) shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) Posting or displaying false sign.

Every person, other than a distiller, warehouseman of distilled spirits, rectifier, or bottler of distilled spirits who has received notice of registration of his plant under the provisions of section 5171 (a), or other than a wholesale dealer in liquors who has paid the special tax (or who is exempt from payment of such special tax by reason of the provisions of section 5113 (a)), who puts up or keeps up any sign indicating that he may lawfully carry on the business of a distiller, bonded warehouseman, rectifier, bottler of distilled spirits, or wholesale dealer in liquors, as the case may be, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(c) Premises where no sign is placed or kept.

Every person who works in any distillery, or in any rectifying, distilled spirits bottling, or wholesale liquor establishment, on which no sign required by section 5115 (a) or section 5180 (a) is placed or kept, and every person who knowingly receives at, or carries or conveys any distilled spirits to or from any such distillery, or to or from any such rectifying, distilled spirits bottling, or wholesale liquor establishment, or who knowingly carries or delivers any grain, molasses, or other raw material to any distillery on which said sign is not placed and kept, shall forfeit all vehicles, aircraft, or vessels used in carrying or conveying such property and shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(d) Presumption.

Whenever on trial for violation of subsection (c) by working in a distillery or rectifying establishment on which no sign required by section 5180 (a) is placed or kept, the defendant is shown to have been present at such premises, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury). (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1410.)

CODIFICATION

Provisions similar to those comprising subsecs. (a)—(c) of this section were contained in a prior section 5681, act Aug. 16, 1954, ch. 736, 68A Stat. 698.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5682. Penalty for breaking locks or gaining access.

Every person, who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any room, building, tank, vessel, or apparatus, by any duly authorized internal revenue officer, or opens said lock, seal, room, building, tank, vessel, or apparatus, or in any manner gains access to the contents therein, in the absence of the proper officer, or otherwise than as authorized by law, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1410.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5682, act Aug. 16, 1954, ch. 736, 68A Stat. 698.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5683. Penalty and forfeiture for removal of liquors under improper brands.

Whenever any person ships, transports, or removes any distilled spirits, wines, or beer, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, and shall forfeit such distilled spirits, wines, or beer, and casks or packages. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1410.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5683, act Aug. 16, 1954, ch. 736, 68A Stat. 699.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Jurisdiction of district court of the United States of proceeding for recovery of fine, penalty or forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 5684. Penalties relating to the payment and collection of liquor taxes.

(a) Failure to pay tax.

Whoever fails to pay any tax imposed by part I of subchapter A at the time prescribed shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(b) Failure to make deposit of taxes.

Section 6656 relating to failure to make deposit of taxes shall apply to the failure to make any deposit of taxes imposed under part I of subchapter A on the date prescribed therefor, except that the penalty for such failure shall be 5 percent of the amount of the underpayment in lieu of the penalty provided by such section.

(c) Applicability of section 6659.

The penalties imposed by subsections (a) and (b) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6659(a).

(d) Cross references.

(1) For provisions relating to interest in the case of taxes not paid when due, see section 6601.

(2) For penalty for failure to file tax return or pay tax, see section 6651.

(3) For additional penalties for failure to pay tax, see section 6653.

(4) For penalty for attempt to evade or defeat any tax imposed by this title, see section 7201.

(5) For penalty for willful failure to file return, supply information, or pay tax, see section 7203.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1410, and amended Pub. L. 91–172, title IX, § 943(c)(4), Dec. 30, 1969, 83 Stat. 728.)

CODIFICATION

A prior section 5684, act Aug. 16, 1954, ch. 736, 68A Stat. 699, also related to "penalties relating to the payment and collection of liquor taxes". See section 5687 of this title and criminal and civil penalties of subtitle F of this title.

AMENDMENTS

1969—Subsec. (d)(2). Pub. L. 91–172 added "or pay tax" after "tax return."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (d) by section 943(c)(4) of Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

EFFECTIVE DATE

Section as effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Costs of prosecution in criminal cases, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Information and returns, see chapter 61 of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5685. Penalty and forfeiture relating to possession of devices for emitting gas, smoke, etc., explosives and firearms, when violating liquor laws.

(a) Penalty for possession of devices for emitting gas, smoke, etc.

Whoever, when violating any law of the United States, or of any Territory or possession of the United States, or of the District of Columbia, in regard to the manufacture, taxation, or transportation of or traffic in distilled spirits, wines, or beer, or when aiding in any such violation, has in his possession or in his control any device capable of causing emission of gas, smoke, or fumes, and which may be used for the purpose of hindering, delaying, or preventing pursuit or capture, any explosive, or any firearm (as defined in section 5848), except a machine gun, or a shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length, shall be fined not more than $5,000, or imprisoned not more than 10 years, or both, and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession or control of such device, firearm, or explosive.

(b) Penalty for possession of machine gun, etc.

Whoever, when violating any such law, has in his possession or in his control a machine gun, or any shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length, shall be imprisoned not more than 20 years; and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession and control of such machine gun, shotgun, or rifle.

(c) Forfeiture of firearms, devices, etc.

Every such firearm or device for emitting gas, smoke, or fumes, and every such explosive, machine gun, shotgun, or rifle, in the possession or control of any person when violating any such law, shall be seized and shall be forfeited and disposed of in the manner provided by section 5862.

(d) Definition of machine gun.

As used in this section the term "machine gun" means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1411, and amended Pub. L. 86–478, § 4, June 1, 1960, 74 Stat. 150.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5685, act Aug. 16, 1954, ch. 736, 68A Stat. 699.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–478 substituted "shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length" for "shotgun or rifle having a barrel or barrels less than 18 inches in length."

Subsec. (b). Pub. L. 86–478 substituted "shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length" for "shotgun or rifle having a barrel or barrels less than 18 inches in length."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–478 effective on the first day of the first month which begins more than 10 days after June 1, 1960, and, for purposes of the rate of the special tax imposed by section 5801 of this title, shall apply with respect to periods beginning after June 30, 1960, see section 5 of Pub. L. 86–478, set out as a note under section 5801 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5686. Penalty for having, possessing, or using liquor or property intended to be used in violating provisions of this chapter.

(a) General.

It shall be unlawful to have or possess any liquor or property intended for use in violating any provision of this chapter or regulations issued pursuant thereto, or which has been so used, and every person so having or possessing or using such liquor or property, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(b) Cross reference.

For seizure and forfeiture of liquor and property had, possessed, or used in violation of subsection (a), see section 7302.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1411.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5686 (b), (c), act Aug. 16, 1954, ch. 736, 68A Stat. 700.

Former section 5686(a) related to offenses as to operation of industrial alcohol or denaturing plants or unlawful withdrawal of taxable alcohol. See section 5687 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Applicability of this section to Puerto Rico and Virgin Islands, see section 5314 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5687. Penalty for offenses not specifically covered.

Whoever violates any provision of this chapter or regulations issued pursuant thereto, for which a specific criminal penalty is not prescribed by this chapter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1412.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5687, act Aug. 16, 1954, ch. 736, 68A Stat. 700.

Section 5687 also related to forfeitures applicable to distillers, rectifiers and wholesale liquor dealers for offenses not specifically covered. See sections 7301 and 7302 of this title.

Provisions similar to those comprising this section were contained in former sections 5602, 5608(c), 5612—5619, 5627, 5628, 5630, 5631, 5643, 5684(a) and 5686(a), act Aug. 16, 1954, ch. 736, 68A Stat. 683, 685, 686, 689, 692, 693, 699, 700, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5505 of this title.

§ 5688. Disposition and release of seized property.

(a) Forfeiture.

(1) Delivery.

All distilled spirits, wines, and beer forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Administrator of General Services to be disposed of as hereinafter provided.

(2) Disposal.

The Administrator of General Services shall dispose of all distilled spirits, wines, and beer which have been delivered to him pursuant to paragraph (1)—

(A) by delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wines, or beer for medicinal, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency; or

(B) by gifts to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wines, or beer for medicinal purposes; or

(C) by destruction.

(3) Limitation on disposal.

Except as otherwise provided by law, no distilled spirits, wines, or beer which have been seized under any law of the United States may be disposed of in any manner whatsoever except after forfeiture and as provided in this subsection.

(4) Regulations.

The Administrator of General Services is authorized to make all rules and regulations necessary to carry out the provisions of this subsection.

(5) Remission or mitigation of forfeitures.

Nothing in this section shall affect the authority of the Secretary or his delegate, under the customs or internal revenue laws, to remit or mitigate the forfeiture, or alleged forfeiture, of such distilled spirits, wines, or beer, or the authority of the Secretary or his delegate, to compromise any civil or criminal case in respect of such distilled spirits, wines, or beer prior to commencement of suit thereon, or the authority of the Secretary or his delegate to compromise any claim under the customs laws in respect to such distilled spirits, wines, or beer.

(b) Distraint or judicial process.

Except as provided in section 5243, all distilled spirits sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon, pursuant to the applicable provisions of this chapter and in accordance with regulations to be prescribed by the Secretary or his delegate.

(c) Release of seized vessels or vehicles by courts.

Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof. As used in this subsection, the word "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air. (Added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1412.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5688 (a)—(c), act Aug. 16, 1954, ch. 736, 68A Stat. 701.

Former section 5688(d) related to release of seized property by Secretary or his delegate and is now covered by this section.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Stamping, marking, and branding seized goods, see section 6807 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6807 of this title.

§ 5689. Penalty and forfeiture for tampering with a stamp machine.

Whoever manufactures, procures, possesses, uses, or tampers with a tax-stamp machine which may be required under section 5061 (b) with intent to evade the internal revenue tax imposed on distilled spirits, rectified spirits, wines, or beer, and whoever, with intent to defraud, makes, alters, simulates, or counterfeits any stamp of the character imprinted by such stamp machines, or who procures, possesses, uses, or sells any forged, altered, counterfeited, or simulated tax stamp, or any plate, die, or device intended for use in forging, altering, counterfeiting, or simulating any such stamps, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, and any machine, device, equipment, or materials used in violation of this section shall be forfeited to the United States and after condemnation shall be destroyed. But this provision shall not exclude any other penalty or forfeiture provided by law. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1413.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5689, act Aug. 16, 1954, ch. 736, 68A Stat. 702.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5690. Definition of the term "person."

The term "person", as used in this subchapter, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1413.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5690, act Aug. 16, 1954, ch. 736, 68A Stat. 702.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART V.—PENALTIES APPLICABLE TO OCCUPATIONAL TAXES

Sec.
5691. Penalties for nonpayment of special taxes relating to liquors.

CODIFICATION

Prior to the general revision by Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313, of the provisions of former chapter 51 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 595, and amended thereafter, this part consisted of sections 5691—5693.

Section 5691 related to "Penalties and forfeitures for nonpayment of special taxes relating to liquors".

Section 5692 related to "Penalty relating to records of retail liquor dealers".

Section 5693, act Aug. 16, 1954, ch. 736, 68A Stat. 703, related to "Penalties relating to posting of special tax stamps". See section 5692 of this title.

AMENDMENTS

1968—Pub. L. 90–618, title II, § 206(b), Oct. 22, 1968, 82 Stat. 1235, struck out item 5692 "Penalties relating to posting of special tax stamps".

§ 5691. Penalties for nonpayment of special taxes relating to liquors.

(a) General.

Any person who shall carry on the business of a brewer, rectifier, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, limited retail dealer, or manufacturer of stills, and willfully fail to pay the special tax as required by law, shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense.

(b) Presumption in case of the sale of 20 wine gallons or more.

For the purposes of this chapter, the sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer, as defined in section 5112 (a). (Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1413.)

CODIFICATION

Provisions similar to those comprising subsec. (a) of this section were contained in a prior section 5691, act Aug. 16, 1954, ch. 736, 68A Stat. 702.

Former section 5691 also related to forfeitures for nonpayment of special taxes relating to liquors. See sections 5607, 5613, 5615, 5661(a), 5671, 5673, 5676(4), 5683, 7301, and 7302 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5692. Repealed. Pub. L. 90–618, title II, § 206(a), Oct. 22, 1968, 82 Stat. 1235.

Section, Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1413, set forth a cross reference to section 7273 (a), relating to penalties for failure to post special tax stamps.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Oct. 22, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

Chapter 52.—CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Subchapter
A. Definitions; rate and payment of tax; exemption from tax; and refund and drawback of tax.
B. Qualification requirements for manufacturers of tobacco products and cigarette papers and tubes, and export warehouse proprietors.
C. Operations by manufacturers and importers of tobacco products and cigarette papers and tubes and export warehouse proprietors.

Subchapter
D. Records of manufacturers of tobacco products and cigarette papers and tubes, and export warehouse proprietors.
E. General provisions.
F. Penalties and forfeitures.

AMENDMENTS

1965—Pub. L. 89–44, title V, § 502(b) (1), (2), June 21, 1965, 79 Stat. 150, struck out "Tobacco," from the chapter heading, reference to dealers in tobacco materials from the heading of subchapter B, the heading of subchapter D and redesignated subchapters E, F and G as D, E and F respectively, and struck out in the heading of subchapter D (as redesignated) a reference to dealers in tobacco materials.

1958—Pub. L. 85–859, title II, 202, Sept. 2, 1958, 72 Stat. 1414, substituted "manufacturers of tobacco products and cigarette papers and tubes, export warehouse proprietors, and" for "manufacturers of articles and" in the hearing of subchapters B and E, "manufacurers and importers of tobacco products and cigarette papers and tubes and export warehouse proprietors" for "manufacturers of articles" in the heading of subchapter C, and "Penalties and forfeitures" for "Fines, penalties and forfeitures" in the heading of subchapter G.

Subchapter A.—Definitions; Rate and Payment of Tax; Exemption From Tax; and Refund and Drawback of Tax

Sec.
5701. Rate of tax.
5702. Definitions.
5703. Liability for tax and method of payment.
5704. Exemption from tax.
5705. Credit, refund, or allowance of tax.
5706. Drawback of tax.
5708. Losses caused by disaster.

AMENDMENTS

1965—Pub. L. 89–44, title V, § 501(g), title VIII, § 808 (c)(2), June 21, 1965, 79 Stat. 150, 165, struck out item 5707 and, in item 5705, inserted "Credit" before "refund".

1958—Pub. L. 85–859, title II, § 202, Sept. 2, 1958, 72 Stat. 1414, added item 5708.

§ 5701. Rate of tax.

(a) Cigars.

On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) Small cigars.

On cigars, weighing not more than 3 pounds per thousand, 75 cents per thousand;

(2) Large cigars.

On cigars, weighing more than 3 pounds per thousand;

(A) If removed to retail at not more than 2½ cents each, $2.50 per thousand;

(B) If removed to retail at more than 2½ cents each and not more than 4 cents each, $3 per thousand;

(C) If removed to retail at more than 4 cents each and not more than 6 cents each, $4 per thousand;

(D) If removed to retail at more than 6 cents each and not more than 8 cents each, $7 per thousand;

(E) If removed to retail at more than 8 cents each and not more than 15 cents each, $10 per thousand;

(F) If removed to retail at more than 15 cents each and not more than 20 cents each, $15 per thousand;

(G) If removed to retail at more than 20 cents each, $20 per thousand.

In determining the retail price, for tax purposes, regard shall be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on cigars as a commodity. For purposes of the preceding sentence, the amount of State or local tax excluded from the retail price shall be the actual tax imposed; except that, if the combined taxes result in a numerical figure ending in a fraction of a cent, the amount so excluded shall be rounded to the next highest full cent unless such rounding would result in a tax lower than the tax which would be imposed in the absence of State or local tax. Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(b) Cigarettes.

On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) Small cigarettes.

On cigarettes, weighing not more than 3 pounds per thousand, $4 per thousand;

(2) Large cigarettes.

On cigarettes, weighing more than 3 pounds per thousand, $8.40 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(c) Cigarette papers.

On each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed a tax of ½ cent for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.

(d) Cigarette tubes.

On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 1 cent for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.

(e) Imported tobacco products and cigarette papers and tubes.

The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles. (Aug. 16, 1954, ch. 736, 68A Stat. 705; Mar. 30, 1955, ch. 18, § 3(a)(9), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(a)(9), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, § 3(a)(7), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, § 3(a)(7), 72 Stat. 259; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1414; June 30, 1959, Pub. L. 86–75,

§ 3(a)(7), 73 Stat. 157; June 30, 1960, Pub. L. 86-564, title II, § 202(a)(9), 74 Stat. 290; Sept. 14, 1960, Pub. L. 86-779, § 1, 74 Stat. 998; June 30, 1961, Pub. L. 87-72, § 3(a)(9), 75 Stat. 193; June 28, 1962, Pub. L. 87-508, § 3(a)(8), 76 Stat. 114; June 29, 1963, Pub. L. 88-52, § 3(a)(9), 77 Stat. 72; June 30, 1964, Pub. L. 88-348, § 2(a)(9), 78 Stat. 237; June 21, 1965, Pub. L. 89-44, title V, §§ 501(f), 502(a), 79 Stat. 150; Jan. 2, 1968, Pub. L. 90-240, § 4(a), 81 Stat. 776.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-240 provided that the amount of State and local tax excluded from the retail price be the actual tax imposed, except that, if the combined taxes result in a numerical figure ending in a fraction of a cent, the amount so excluded be rounded to the next highest full cent unless such rounding would result in a tax lower than the tax which would be imposed in the absence of State and local taxes.

1965—Pub. L. 89-44, § 502(a), struck out subsec. (a) relating to tobacco and redesignated subsecs. (b)—(f) as subsecs. (a)—(e) respectively.

Subsec. (b)(1). Pub. L. 89-44, § 501(f), removed the July 1, 1965 time limit for the $4 per thousand rate as well as the provision for imposition of a $3.50 rate on and after July 1, 1965.

1964—Subsec. (c)(1). Pub. L. 88-348 substituted "July 1, 1965" for "July 1, 1964" in two instances.

1963—Subsec. (c)(1). Pub. L. 88-52 substituted "July 1, 1964" for "July 1, 1963" in two instances.

1962—Subsec. (c)(1). Pub. L. 87-508 substituted "July 1, 1963" for "July 1, 1962" in two instances.

1961—Subsec. (c)(1). Pub. L. 87-72 substituted "July 1, 1962" for "July 1, 1961" in two instances.

1960—Subsec. (b). Pub. L. 86-779 substituted "imposed on cigars as a commodity" for "imposed on the retail sales of cigars."

Subsec. (c)(1). Pub. L. 86-564 substituted "July 1, 1961" for "July 1, 1960" in two instances.

1959—Subsec. (c)(1). Pub. L. 86-75 substituted "July 1, 1960" for "July 1, 1959" in two places.

1958—Subsec. (b). Pub. L. 85-859 provided that in determining the retail price, for tax purposes, regard shall be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on the retail sale of cigars, and required cigars not exempt from tax under this chapter which are removed but not intended for sale to be taxed at the same rate as similar cigars removed for sale.

Subsec. (c)(1). Pub. L. 85-475 substituted "July 1, 1959" for "July 1, 1958" in two places.

Subsec. (d). Pub. L. 85-859 substituted "On each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed" for "On cigarette papers, manufactured in or imported into the United States, there shall be imposed, on each package, book, or set containing more than 25 papers".

Subsec. (f). Pub. L. 85-859 substituted "imposed by this section on tobacco products and cigarette papers and tubes imported into the United States" for "imposed on articles by this section".

1957—Subsec. (c)(1). Pub. L. 85-12 substituted "July 1, 1958" for "April 1, 1957" in two places.

1956—Subsec. (c)(1) Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" in two places.

1955—Subsec. (c)(1). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" in two places.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(b) of Pub. L. 90-240 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply to the removal of cigars on or after the first day of the first calendar quarter which begins more than 30 days after the date of the enactment of this Act [Jan. 2, 1968]."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(d) of Pub. L. 89-44 provided that: "The amendments made by section 501 [repealing sections 5063 and 5707 and 5701 note and amending this section and sections 5001(a)(1), (3), 5022, 5041(b) (1)—(5), and 5051(a) of this title] shall apply on and after July 1, 1965. The amendments made by section 502 [striking out subchapter D of chapter 52 of this title and redesignating subchapters E, F, and G as subchapters D, E, and F respectively, and amending this section and sections 5702 (a)—(*l*), 5704, 5711(a), 5741, 5753, 5762(a)(1), (2), and 5763(b), (c) of this title] shall apply on and after January 1, 1966."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86-779 provided that: "The amendment made by the first section of this Act [to subsec. (b) of this section] shall apply with respect to cigars removed on or after the ninth day of the first month which begins after the date of the enactment of this Act [Sept. 14, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5703 of this title.

§ 5702. Definitions.

When used in this chapter—

(a) Cigar.

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).

(b) Cigarette.

"Cigarette" means—

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(c) Tobacco products.

"Tobacco products" means cigars and cigarettes.

(d) Manufacturer of tobacco products.

"Manufacturer of tobacco products" means any person who manufactures cigars or cigarettes, except that such term shall not include—

(1) a person who produces cigars or cigarettes solely for his own personal consumption or use; or

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

(e) Cigarette paper.

"Cigarette paper" means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(f) Cigarette papers.

"Cigarette papers" means taxable books or sets of cigarette papers.

(g) Cigarette tube.

"Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(h) Manufacturer of cigarette papers and tubes.

"Manufacturer of cigarette papers and tubes" means any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

(i) Export warehouse.

"Export warehouse" means a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

(j) Export warehouse proprietor.

"Export warehouse proprietor" means any person who operates an export warehouse.

(k) Removal or remove.

"Removal" or "remove" means the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond, as the Secretary or his delegate shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States.

(*l*) Importer.

"Importer" means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 706; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1415; June 21, 1965, Pub. L. 89–44, title V, § 502(b)(3), title VIII, § 808(a), 79 Stat. 151, 164.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44, §§ 502(b)(3)(A), 808(a), redesignated subsec. (b) as (a), repealed former subsec. (a) which related to manufactured tobacco and, in subsec. (a) as so redesignated, allowed the use of any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsec. (b)(2) as a wrapper in addition to the leaf tobacco previously allowed.

Subsec. (b). Pub. L. 89–44, §§ 502(b)(3)(A), 808(a), redesignated subsec. (c) as (b) and permitted the use, as a wrapper for cigarettes in addition to paper and substances other than tobacco as previously allowed, any substance containing tobacco, which, because of the finished product's appearance, tobacco type, labeling, and packaging, is likely to be offered to or purchased by consumers as cigarettes. Former subsec. (b) redesignated as (a).

Subsec. (c). Pub. L. 89–44, § 502(b)(3) (A), (B), redesignated former subsec. (d) as (c) and eliminated reference to manufactured tobacco. Former subsec. (c) redesignated as (b).

Subsec. (d). Pub. L. 89–44, § 502(b)(3) (A), (C), redesignated subsec. (e) as (d), and simplified the definition of manufacturer of tobacco products to include only persons who manufacture cigars or cigarettes and reduced the area of excluded activities so as to exclude only persons producing cigars and cigarettes solely for their own personal use and proprietors of customs bonded manufacturing warehouses with respect to the operation of such warehouses. Former subsec. (d) redesignated (c).

Subsecs. (e)—(k). Pub. L. 89–44, § 502(b)(3)(A) redesignated subsecs. (f)—(k) and (n) as (e)—(j) and (k) respectively. Former subsec. (e) redesignated (d).

Subsec. (*l*). Pub. L. 89–44, § 502(b)(3)(A), redesignated subsec. (*o*) as (*l*) and repealed former subsec. (*l*) which related to tobacco materials.

Subsec. (m). Pub. L. 89–44, § 502(b)(3)(A), repealed subsec. (m) which related to tobacco dealers.

Subsecs. (n), (*o*). Pub. L. 89–44, § 502(b)(3)(A), redesignated subsec. (n) and (*o*) as (k) and (*l*) respectively.

1958—Subsec. (a). Pub. L. 85–859 inserted the term "for removal, or merely removed".

Subsec. (b). Pub. L. 85–859 redesignated former subsec. (c) as (b) and former subsec. (b) as (e).

Subsec. (c). Pub. L. 85–859 redesignated former subsec. (d) as (c) and former subsec. (c) as (b).

Subsec. (d). Pub. L. 85–859 redesignated former subsec. (f) as (d) and former subsec. (d) as (c).

Subsec. (e). Pub. L. 85–859 consolidated the definitions "manufacturer of tobacco" and "manufacturer of cigars and cigarettes", inserted the phrase "for removal, or merely removes", excluded from the definition a proprietor of a customs bonded manufacturing warehouse with respect to the operation of the warehouse, and required bona fide associations of farmers or growers to maintain records of leaf tobacco.

Subsec. (f). Pub. L. 85–859 redesignated former subsec. (g) as (f) and former subsec. (f) as (d).

Subsec. (g). Pub. L. 85–859 added subsec. (g) and redesignated former subsec. (g) as (f).

Subsec. (i). Pub. L. 85–859 substituted "into books or sets containing more than 25 papers each, or into tubes" for "into packages, books, sets, or tubes".

Subsec. (j). Pub. L. 85–859 substituted provisions defining "export warehouse" for provisions which defined "article" as manufactured tobacco, cigars, cigarettes, and cigarette papers and tubes.

Subsec. (k). Pub. L. 85–859 added subsec. (k) and redesignated former subsec. (k) as (*l*).

Subsec. (*l*). Pub. L. 85–859 redesignated former subsec. (k) as (*l*) and substituted "other than manufactured tobacco, cigars, and cigarettes" for "in process, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, dust, stems, and waste". Former subsec. (*l*), redesignated (m).

Subsec. (m). Pub. L. 85–859 redesignated former subsec. (*l*) as (m) and included within the definition persons who receive tobacco materials, other than stems and waste, for use in the production of fertilizer, insecticide, or nicotine, required associations of farmers or growers of tobacco to maintain records of all leaf tobacco acquired or received and sold or otherwise disposed of, and excluded from the definition persons who buy leaf tobacco without taking physical possession of the tobacco and qualified manufacturers of tobacco products. Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 85–859 redesignated former subsec. (m) as (n) and substituted "tobacco products or cigarette papers or tubes" for "articles". Former subsec. (n) redesignated (*o*).

Subsec. (*o*). Pub. L. 85–859 redesignated former subsec. (n) as (*o*) and substituted "tobacco products or cigarette papers or tubes" for "articles" in two instances, and inserted provisions to include within the definition persons who remove cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 808(d)(1) of Pub. L. 89–44 provided that: "The amendments made by subsections (a) and (b)(3) [to this section and section 7652(a)(3) of this title] shall take effect on July 1, 1965."

Amendment of subsec. (a)—(*l*) by section 502 of Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5703. Liability for tax and method of payment.

(a) Liability for tax.

(1) Original liability.

The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701.

(2) Transfer of liability.

When tobacco products and cigarette papers and tubes are transferred, without payment of tax, pursuant to section 5704, the liability for tax shall be transferred in accordance with the provisions of this paragraph. When tobacco products and cigarette papers and tubes are transferred between the bonded premises of manufacturers and export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles, and the transferor shall thereupon be relieved of his liability for such tax. When tobacco products and cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or cigarette papers and tubes, the transferee shall become liable for the tax on such articles upon release from customs custody, and the importer shall thereupon be relieved of his liability for such tax.

(b) Method of payment of tax.

The taxes imposed by section 5701 shall be determined at the time of removal of the tobacco products and cigarette papers and tubes. Such taxes shall be paid on the basis of a return, except that the taxes shall continue to be paid by stamp until the Secretary or his delegate provides, by regulations, for the payment of the taxes on the basis of a return. The Secretary or his delegate shall, by regulations, prescribe the period or event for which such return shall be made, the information to be furnished on such return, the time for making such return, and the time for payment of such taxes. Any postponement under this subsection of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the Secretary or his delegate may, by regulations, prescribe for the protection of the revenue. The Secretary or his delegate may, by regulations, require payment of tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of tax on the basis of a return under this subsection or regulations prescribed thereunder. All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5701.

(c) Stamps to evidence the tax.

If the Secretary or his delegate shall by regulation provide for the payment of tax by return and require the use of stamps to evidence the tax imposed by this chapter or to indicate compliance therewith, the Secretary or his delegate shall cause to be prepared suitable stamps to be issued to manufacturers and importers of tobacco products, to be used and accounted for, in accordance with such regulations as the Secretary or his delegate shall prescribe.

(d) Use of government depositaries.

The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this chapter, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time, and condition under which the receipt of such tax by such banks and trust companies is to be treated as payment for tax purposes.

(e) Assessment.

Whenever any tax required to be paid by this chapter is not paid in full at the time required for such payment, it shall be the duty of the Secretary or his delegate, subject to the limitations prescribed in section 6501, on proof satisfactory to him, to determine the amount of tax which has been omitted to be paid, and to make an assessment therefor against the person liable for the tax. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after the person liable for the tax has been afforded reasonable notice and opportunity to show cause, in writing, against such assessment. (Aug. 16, 1954, ch. 736, 68A Stat. 707; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1417.)

AMENDMENTS

1958—Subsec. (a)(1). Pub. L. 85–859 designated part of first sentence of subsec. (a) as par. (1) thereof and redesignated the remainder of subsec. (a) as (b).

Subsec. (a)(2). Pub. L. 85–859 added subsec (a)(2).

Subsec. (b). Pub. L. 85–859 designated former subsec. (a), with exception of part of the first sentence, as subsec. (b) and substituted "tobacco products and cigarette papers and tubes" for "articles", and inserted provisions relating to postponements, and to payment of the tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of the tax.

Subsec. (c). Pub. L. 85–859 designated former subsec. (b) as (c) and substituted "If the Secretary or his delegate shall by regulation provide for the payment of tax by return and require the use of" for "If the Secretary or his delegate shall, by regulation, require the use", and "tobacco products" for "articles". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 85–859 redesignated former subsec. (c) as (b) and former subsec (d) as (e).

Subsec. (e). Pub. L. 85–859 designated former subsec. (d) as (e) and permitted assessments in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5704. Exemption from tax.

(a) Tobacco products furnished for employee use or experimental purposes.

Tobacco products may be furnished by a manufacturer of such products, without payment of tax, for use or consumption by employees or for experimental purposes, in such quantities, and in such

manner as the Secretary or his delegate shall by regulation prescribe.

(b) Tobacco products and cigarette papers and tubes transferred or removed in bond from domestic factories and export warehouses.

A manufacturer or export warehouse proprietor may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or export warehouse proprietor, or remove such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States; and manufacturers may similarly remove such articles for use of the United States; in accordance with such regulations and under such bonds as the Secretary or his delegate shall prescribe.

(c) Tobacco products and cigarette papers and tubes released in bond from customs custody.

Tobacco products and cigarette papers and tubes, imported or brought into the United States, may be released from customs custody, without payment of tax, for delivery to a manufacturer of tobacco products or cigarette papers and tubes, in accordance with such regulations and under such bond as the Secretary or his delegate shall prescribe.

(d) Tobacco products and cigarette papers and tubes exported and returned.

Tobacco products and cigarette papers and tubes classifiable under item 804.00 of title I of the Tariff Act of 1930 (relating to duty on certain articles previously exported and returned) may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax for delivery to a manufacturer of tobacco products or cigarette papers and tubes, in accordance with such regulations and under such bond as the Secretary or his delegate shall prescribe. Upon such release such products, papers, and tubes shall be subject to this chapter as if they had not been exported or otherwise removed from internal-revenue bond. (Aug. 16, 1954, ch. 736, 68A Stat. 708; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1418; June 30, 1964, Pub. L. 88–342, § 1(b), 78 Stat. 234; June 21, 1965, Pub. L. 89–44, title V, § 502(b)(4), 79 Stat. 151.)

REFERENCES IN TEXT

Item 804.00 of title I of the Tariff Act of 1930, referred to in subsec. (e), is classified to section 1202 of Title 19, Customs Duties.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89–44, § 502(b)(4), redesignated subsec. (d) as (c), eliminated therein all references to tobacco materials, and repealed former subsec. (c) which related to tobacco materials shipped or delivered in bond.

Subsec. (d). Pub. L. 89–44, § 502(b)(4)(A), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 89–44, § 502(b)(4)(A), redesignated subsec (e) as (d).

1964—Subsec. (e). Pub. L. 88–342 added subsec. (e).

1958—Subsec. (b). Pub. L. 85–859 included transfers by export warehouse proprietors, and substituted "tobacco products and cigarette papers and tubes" for "articles", preceding "without payment of tax".

Subsec. (c). Pub. L. 85–859 authorized shipments without payment of tax of tobacco stems and waste only, to any person for use by him as fertilizer or insecticide or in the production of fertilizer, insecticide, or nicotine.

Subsec. (d). Pub. L. 85–859 substituted "tobacco products, cigarette papers and tubes" for "articles" wherever appearing, and eliminated provisions which related to delivery to bonded premises of manufacturers and dealers.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 502 of Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–342 provided that subsec. (e) of this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after June 30, 1964.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5703, 5751 of this title.

§ 5705. Credit, refund, or allowance of tax.

(a) Credit or refund.

Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made (without interest) to the manufacturer, importer, or export warehouse proprietor, on proof satisfactory to the Secretary or his delegate that the claimant manufacturer, importer, or export warehouse proprietor has paid the tax on tobacco products and cigarette papers and tubes withdrawn by him from the market; or on such articles lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the claimant.

(b) Allowance.

If the tax has not yet been paid on tobacco products and cigarette papers and tubes proved to have been withdrawn from the market or lost or destroyed as aforesaid, relief from the tax on such articles may be extended upon the filing of a claim for allowance therefor in accordance with such regulations as the Secretary or his delegate shall prescribe.

(c) Limitation.

Any claim for credit or refund of tax under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates, and shall be in such form and contain such information as the Secretary or his delegate shall by regulations prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 709; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1419; June 21, 1965, Pub. L. 89–44, title VIII, § 808(b)(1), (2), (c)(1), 79 Stat. 164, 165.)

AMENDMENTS

1965—Pub. L. 89–44, § 808(c)(1), struck out "Refund or" in the section heading and inserted in lieu thereof "Credit, refund, or".

Subsec. (a). Pub. L. 89–44, § 808(b)(1), replaced "Refund" with "Credit or refund" in the subsec. heading and struck out "Refund of any tax imposed by this chapter shall be made", replacing it with "Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made".

Subsec. (c). Pub. L. 89–44, § 808(b)(2), inserted "credit or" before "refund".

1958—Subsec. (a). Pub. L. 85–859 authorized refunds to export warehouse proprietors, provided for refunds to be made without interest, and eliminated provisions which authorized refunds where the tax has been paid in error.

Subsec. (b). Pub. L. 85–859 permitted relief where a tax has not yet been paid on tobacco products and cigarette papers and tubes proved to have been withdrawn from the market.

Subsec. (c). Pub. L. 85–859 substituted "under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates" for "imposed by this chapter shall be filed within 3 years of the date of payment of tax".

EFFECTIVE DATE OF 1965 AMENDMENT

Section 808(d)(2) of Pub. L. 89–44 provided that: "The amendments made by subsections (b)(1), (2), and (c) [to this section] shall take effect on October 1, 1965."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5706. Drawback of tax.

There shall be an allowance of drawback of tax paid on tobacco products and cigarette papers and tubes, when shipped from the United States, in accordance with such regulations and upon the filing of such bond as the Secretary or his delegate shall prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 709; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1419.)

AMENDMENTS

1958—Pub. L. 85–859 substituted "tobacco products and cigarette papers and tubes" for "articles".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5707. Repealed. Pub. L. 89–44, title V, § 501(g), June 21, 1965, 79 Stat. 150.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 709; Mar. 30, 1955, ch. 18, § 3(b)(3), 69 Stat. 14; Mar. 29, 1956, ch. 115, § 3(b)(3), 70 Stat. 67; Mar. 29, 1957, Pub. L. 85–12, § 3(b)(3), 71 Stat. 10; June 30, 1958, Pub. L. 85–475, § 3(b)(3), 72 Stat. 259; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1419; June 30, 1959, Pub. L. 86–75, § 3(b)(2), 73 Stat. 158; June 30, 1960, Pub. L. 86–564, title II, § 202(b)(2), 74 Stat. 291; June 30, 1961, Pub. L. 87–72, § 3(b)(2), 75 Stat. 193; June 28, 1962, Pub. L. 87–508, § 3(b)(2), 76 Stat. 114; June 29, 1963, Pub. L. 88–52, § 3(b)(1)(B), 77 Stat. 72; June 30, 1964, Pub. L. 88–348, § 2(b)(1)(B), 78 Stat. 237, made provision for floor stocks refunds on cigarettes, set limitations on eligibility for credit or refunds, and made applicable existing penalty and administrative procedures.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

§ 5708. Losses caused by disaster.

(a) Authorization.

Where the President has determined under the Disaster Relief Act of 1970, that a "major disaster" as defined in such Act has occurred in any part of the United States, the Secretary or his delegate shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on tobacco products and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States on and after the effective date of this section, if such tobacco products or cigarette papers or tubes were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such tobacco products or cigarette papers or tubes for sale at the time of such disaster.

(b) Claims.

No claim shall be allowed under this section unless—

(1) filed within 6 months after the date on which the President makes the determination that the disaster referred to in subsection (a) has occurred; and

(2) the claimant furnishes proof to the satisfaction of the Secretary or his delegate that—

(A) he was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes covered by the claim, and

(B) he is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary or his delegate shall prescribe.

(c) Destruction of tobacco products or cigarette papers or tubes.

Before the Secretary or his delegate makes payment under this section in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes condemned by a duly authorized official or rendered unmarketable, such tobacco products or cigarette papers or tubes shall be destroyed under such supervision as the Secretary or his delegate may prescribe, unless such tobacco products or cigarette papers or tubes were previously destroyed under supervision satisfactory to the Secretary or his delegate.

(d) Other laws applicable.

All provisions of law, including penalties, applicable in respect of internal revenue taxes on tobacco products and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes. (Added Pub. L. 85–859, title II, § 202, Sept. 2, 1958, 72 Stat. 1420, and amended Pub. L. 91–606, title III, § 301 (j), Dec. 31, 1970, 84 Stat. 1759.)

REFERENCES IN TEXT

The Disaster Relief Act of 1970, referred to in subsec. (a), is classified to chapter 58 (section 4401 et seq.) of Title 42, The Public Health and Welfare.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–606 substituted "Disaster Relief Act of 1970" for "Act of September 30, 1950 (42 U.S.C. 1855)".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 4401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective on Sept. 3, 1958, see section 210(a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

LOSSES OF TOBACCO PRODUCTS CAUSED BY DISASTER

Section 209 of Pub. L. 85-859 provided that:

"(a) AUTHORIZATION.—Where the President has determined under the Act of September 30, 1950 (42 U. S. C., sec. 1855), that a 'major disaster' as defined in such Act has occurred in any part of the United States, the Secretary of the Treasury or his delegate shall pay (without interest) to the person specified in subsection (b) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on tobacco products and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States after December 31, 1954, and not later than the date of enactment of this Act [September 2, 1958], if such tobacco products or cigarette papers or tubes were at the time of such disaster in the possession of—

"(1) the person paying such tax, or such tax and duty, or obligated to pay a determined tax, on such tobacco products or cigarette papers or tubes,

"(2) the manufacturer or importer, or

"(3) a wholesale or retail dealer,

all referred to in this section as the possessor or possessors.

"(b) TO WHOM MADE.—Any payment authorized by this section may be made—

"(1) to the possessor, or

"(2) to any manufacturer, importer, or wholesaler who replaced (or to any manufacturer or importer who has given credit or made replacement to a wholesaler who replaced) for the possessor the full equivalent of the tobacco products or cigarette papers or tubes so lost or rendered unmarketable or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such tobacco products or cigarette papers or tubes.

"(c) CLAIMS.—No claim shall be allowed under this section unless—

"(1) filed within 6 months after the date of enactment of this Act [September 2, 1958], and

"(2) the claimant furnishes proof to the satisfaction of the Secretary of the Treasury or his delegate that—

"(A) neither the claimant nor any possessor was indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes covered by the claim, and

"(B) the claimant is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary of the Treasury or his delegate shall prescribe.

"(d) DESTRUCTION OF TOBACCO PRODUCTS OR CIGARETTE PAPERS OR TUBES.—Before the Secretary of the Treasury or his delegate makes payment under this section in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes rendered unmarketable or condemned by a duly authorized official, such tobacco products or cigarette papers or tubes shall be destroyed under such supervision as the Secretary of the Treasury or his delegate may prescribe, unless such tobacco products or cigarette papers or tubes were previously destroyed under supervision satisfactory to the Secretary of the Treasury or his delegate.

"(e) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of internal revenue taxes on tobacco products and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes."

Subchapter B.—Qualification Requirements for Manufacturers of Tobacco Products and Cigarette Papers and Tubes, and Export Warehouse Proprietors

Sec.
5711. Bond.
5712. Application for permit.
5713. Permit.

AMENDMENTS

1965—Pub. L. 89-44, title V, § 502(b)(5), June 21, 1965, 79 Stat. 151, struck out reference to dealers in tobacco materials from the subchapter heading.

§ 5711. Bond.

(a) When required.

Every person, before commencing business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, shall file such bond, conditioned upon compliance with this chapter and regulations issued thereunder, in such form, amount, and manner as the Secretary or his delegate shall by regulation prescribe. A new or additional bond may be required whenever the Secretary or his delegate considers such action necessary for the protection of the revenue.

(b) Approval or disapproval.

No person shall engage in such business until he receives notice of approval of such bond. A bond may be disapproved, upon notice to the principal on the bond, if the Secretary or his delegate determines that the bond is not adequate to protect the revenue.

(c) Cancellation.

Any bond filed hereunder may be canceled, upon notice to the principal on the bond, whenever the Secretary or his delegate determines that the bond no longer adequately protects the revenue. (Aug. 16, 1954, ch. 736, 68A Stat. 711; Sept. 2, 1958, Pub. L. 85-859, title II, § 202, 72 Stat. 1421; June 21, 1965, Pub. L. 89-44, title V, § 502(b)(6), 79 Stat. 151.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-44 struck out reference to dealers in tobacco materials.

1958—Subsec. (a). Pub. L. 85-859 included export warehouse proprietors, and substituted "manufacturer of tobacco products or cigarette papers and tubes" for "manufacturer of articles".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by section 502 of Pub. L. 89-44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89-44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5713 of this title.

§ 5712. Application for permit.

Every person, before commencing business as a manufacturer of tobacco products or as an export warehouse proprietor, and at such other time as the Secretary or his delegate shall by regulation prescribe, shall make application for the permit provided for in section 5713. The application shall be in such form as the Secretary or his delegate shall prescribe and shall set forth, truthfully and accurately, the information called for on the form. Such application may be rejected and the permit denied if the Secretary or his delegate, after notice and opportunity for hearing, find that—

(1) the premises on which it is proposed to conduct the business are not adequate to protect the revenue; or

(2) such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with this chapter, or has failed to disclose any material information required or made any material false statement in the application therefor.

No person subject to this section, who is lawfully engaged in business on the date of the enactment of the Excise Tax Technical Changes Act of 1958, shall be denied the right to carry on such business pending reasonable opportunity to make application for permit and final action thereon. (Aug. 16, 1954, ch. 736, 68A Stat. 711; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1421.)

REFERENCES IN TEXT

The date of enactment of the Excise Tax Technical Changes Act of 1958, referred to in the text, means the date of enactment of Pub. L. 85–859, which was enacted on Sept. 2, 1958.

AMENDMENTS

1958—Pub. L. 85–859 included export warehouse proprietors, and excluded dealers in tobacco materials.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5713 of this title.

§ 5713. Permit.

(a) Issuance.

A person shall not engage in business as a manufacturer of tobacco products or as an export warehouse proprietor without a permit to engage in such business. Such permit, conditioned upon compliance with this chapter and regulations issued thereunder, shall be issued in such form and in such manner as the Secretary or his delegate shall by regulation prescribe, to every person properly qualified under sections 5711 and 5712. A new permit may be required at such other time as the Secretary or his delegate shall by regulation prescribe.

(b) Revocation.

If the Secretary or his delegate has reason to believe that any person holding a permit has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud, or has violated the conditions of such permit, or has failed to disclose any material information required or made any material false statement in the application for such permit, or has failed to maintain his premises in such manner as to protect the revenue, the Secretary or his delegate shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. If, after hearing, the Secretary or his delegate finds that such person has not in good faith complied with this chapter or with any other provision of this title involving intent to defraud, has violated the conditions of such permit, has failed to disclose any material information required or made any material false statement in the application therefor, or has failed to maintain his premises in such manner as to protect the revenue, such permit shall be suspended for such period as the Secretary or his delegate deems proper or shall be revoked. (Aug. 16, 1954, ch. 736, 68A Stat. 712; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1421.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–859 substituted "manufacturer of tobacco products" for "manufacturer of articles", included export warehouse proprietors, and eliminated provisions which related to dealers in tobacco materials.

Subsec. (b). Pub. L. 85–859 redesignated former subsec. (c) as (b) and omitted former subsec. (b) that required permits to be posted.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5712 of this title.

Subchapter C.—Operations by Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes and Export Warehouse Proprietors

Sec.
5721. Inventories.
5722. Reports.
5723. Packages, marks, labels, notices, and stamps.

AMENDMENTS

1958—Pub. L. 85–859, title II, § 202, Sept. 2, 1958, 72 Stat. 1422, substituted "Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes and Export Warehouse Proprietors" for "Manufacturers of Articles" in heading of subchapter and included marks in item 5723.

§ 5721. Inventories.

Every manufacturer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor, shall make a true and accurate inventory at the time of commencing business, at the time of concluding business, and at such other times, in such manner and form, and to include such items, as the Secretary or his delegate shall by regulation prescribe. Such inventories shall be subject to verification by any internal revenue officer. (Aug. 16, 1954, ch. 736, 68A Stat. 713; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1422.)

AMENDMENTS

1958—Pub. L. 85–859 substituted "manufacturer of tobacco products or cigarette papers and tubes" for "manufacturer of articles" and "internal revenue officer" for "revenue officer", and inserted provisions to include export warehouse proprietors.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5722. Reports.

Every manufacturer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor, shall make reports containing such information, in such form, at such times, and for such periods as the Secretary or his delegate shall by regulation prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 713; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1422.)

AMENDMENTS

1958—Pub. L. 85–859 substituted "manufacturer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor" for "manufacturer of articles".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 5723. Packages, marks, labels, notices, and stamps.

(a) Packages.

All tobacco products and cigarette papers and tubes shall, before removal, be put up in such packages as the Secretary or his delegate shall by regulation prescribe.

(b) Marks, labels, notices, and stamps.

Every package of tobacco products or cigarette papers or tubes shall, before removal, bear the marks, labels, notices, and stamps, if any, that the Secretary or his delegate by regulation prescribes.

(c) Lottery features.

No certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes.

(d) Indecent or immoral material prohibited.

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes.

(e) Exceptions.

Tobacco products furnished by manufacturers of such products for use or consumption by their employees, or for experimental purposes, and tobacco products and cigarette papers and tubes transferred to the bonded premises of another manufacturer or export warehouse proprietor or released in bond from customs custody for deliver to a manufacturer of tobacco products or cigarette papers and tubes, may be exempted from subsection (a) and (b) in accordance with such regulations as the Secretary or his delegate shall prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 713; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1422.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–859 substituted "Packages" for "Packages, labels, notices, and stamps" in the catchline, and "All tobacco products and cigarette papers and tubes shall, before removal, be put up in such packages as" for "All articles shall, before removal, be put up in packages having such labels, notices, and stamps as", in the text of subsec. (a).

Subsec. (b). Pub. L. 85–859 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–859 redesignated former subsec. (b) as (c) and substituted "tobacco products or cigarette papers or tubes" for "articles". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 85–859 redesignated former subsec. (e) as (d) and substituted "tobacco products or cigarette papers or tubes" for "articles". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85–859 permitted exemption of tobacco products and cigarette papers and tubes transferred to the bonded premises of another maufacturer or export warehouse proprietor or released in bond from customs custody for delivery to a manufacturer of tobacco products or cigarette papers and tubes, and eliminated provisions which authorized exemption of articles removed for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, and so shipped.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Criminal penalties for violation of this chapter, see section 5762 of this title.

Forfeiture for violation of this section, see section 5763 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5751, 5763 of this title.

§§ 5731, 5732. Repealed. Pub. L. 89–44, title V, § 502(b) (7), June 21, 1965, 79 Stat. 151.

Section 5731, acts Aug. 16, 1954, ch. 736, 68A Stat. 714; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1423, restricted the shipment and delivery of tobacco materials to shipment and delivery pursuant to the regulations prescribed by the Secretary or his delegate.

Section 5732, acts Aug. 16, 1954, ch. 736, 68A Stat. 714; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1423, required that a dealer in tobacco materials make statement of shipments and deliveries or give an inventory upon demand of any internal revenue officer.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

Subchapter D.—Records of Manufacturers of Tobacco Products and Cigarette Papers and Tubes, and Export Warehouse Proprietors

Sec.
5741. Records to be maintained.

AMENDMENTS

1965—Pub. L. 89–44, title V, § 502(b) (7), (8), June 21, 1965, 79 Stat. 151, struck out former subchapter D, relating to operations by dealers in tobacco materials, redesignated as subchapter D former subchapter E, and, in the heading for subchapter D, as redesignated, struck out reference to dealers in tobacco materials.

1958—Pub. L. 85–859, title II, § 202, Sept. 2, 1958, 72 Stat. 1423, substituted "Manufacturers of Tobacco Products and Cigarette Papers and Tubes, Export Warehouse proprietors, and" for "Manufacturers of Articles and" in heading of subchapter.

§ 5741. Records to be maintained.

Every manufacturer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor, shall keep such records in such manner as the Secretary or his delegate shall by regulation prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 715; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1423; June 21, 1965, Pub. L. 89–44, title V, § 502(b) (9), 79 Stat. 151.)

AMENDMENTS

1965—Pub. L. 89–44 struck out reference to every dealer in tobacco materials.

1958—Pub. L. 85–859 substituted "tobacco products or cigarette papers and tubes, every warehouse proprietor, and every dealer" for "articles and dealer", and "such manner" for "such form".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 502 of Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub L. 85–859, set out as a note under section 5001 of this title.

Subchapter E.—General Provisions

Sec.
5751. Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal.
5752. Restrictions relating to marks, labels, notices, stamps, and packages.
5753. Disposal of forfeited, condemned, and abandoned tobacco products, and cigarette papers and tubes.

AMENDMENTS

1965—Pub. L. 89–44, title V, § 502(b)(7), (10), June 21, 1965, 79 Stat. 151, 152, redesignated as subchapter E former subchapter F and, in the table of sections for subchapter E as so redesignated, struck out reference to tobacco materials in item 5753. Former subchapter E redesignated D.

1958—Pub. L. 85–859, title II, § 202, Sept. 2, 1958, 72 Stat. 1423 substituted "sale of tobacco products and cagarette papers and tubes, after removal" for "sale of articles, after removal not exempt from tax" in item 5751, included marks and notices in item 5752, and substituted "tobacco products, cigarette papers and tubes, and" for "articles and" in item 5753.

§ 5751. Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal.

(a) Restriction.

No person shall—

(1) with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes—

(A) upon which the tax has not been paid or determined in the manner and at the time prescribed by this chapter or regulations thereunder; or

(B) which, after removal without payment of tax pursuant to section 5704, have been diverted from the applicable purpose or use specified in that section; or

(2) with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes, which are not put up in packages as required under section 5723 or which are put up in packages not bearing the marks, labels, notices, and stamps, as required under such section; or

(3) otherwise than with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes, which are not put up in packages as required under section 5723 or which are put up in packages not bearing the marks, labels, notices, and stamps, as required under such section. This paragraph shall not prevent the sale or delivery of tobacco products or cigarette papers or tubes directly to consumers from proper packages, nor apply to such articles when so sold or delivered.

(b) Liability to tax.

Any person who possesses tobacco products or cigarette papers or tubes in violation of subsection (a) (1) or (a) (2) shall be liable for a tax equal to the tax on such articles. (Aug. 16, 1954, ch. 736, 68A Stat. 716; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1424.)

AMENDMENTS

1958—Pub. L. 85–859 substituted "tobacco products and cigarette papers and tubes, after removal" for "articles, after removal, not exempt from tax" in the catchline.

Subsec. (a) amended generally by Pub. L. 85–859, which included within the restrictions, purchase, receipt, possession, offer for sale, or sale of other disposition of tobacco products or cigarette papers or tubes, after removal, upon which the tax has not been paid or determined, or which after removal without payment of tax have been diverted from the applicable purpose or use specified in section 5704, and to provide that par. (3) shall not prevent the delivery of tobacco products or cigarette papers or tubes directly to consumers from proper packages, nor apply to such articles when so delivered.

Subsec. (b). Pub. L. 85–859 substituted "tobacco products or cigarette papers or tubes in violation of subsection (a) (1) or (a) (2) shall be liable for a tax equal to the tax on such articles" or "articles in violation of subsection (a) of this section, shall incur liability to the tax thereon in addition to the penalties prescribed elsewhere in this title".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5762 of this title.

§ 5752. Restrictions relating to marks, labels, notices, stamps, and packages.

No person shall, with intent to defraud the United States—

(a) destroy, obliterate, or detach any mark, label, notice, or stamp prescribed or authorized, by this chapter or regulations thereunder, to appear on, or be affixed to, any package of tobacco products or cigarette papers or tubes, before such package is emptied; or

(b) empty any package of tobacco products or cigarette papers or tubes without destroying any stamp thereon to evidence the tax or indicate compliance with this chapter, prescribed by this chapter or regulations thereunder to be affixed to such package; or

(c) detach, or cause to be detached, from any package of tobacco products or cigarette papers or tubes any stamp, prescribed by this chapter or regulations thereunder, to evidence the tax or indicate compliance with this chapter, or purchase, receive, possess, sell, or dispose of, by gift or otherwise, any such stamp which has been so detached; or

(d) purchase, receive, possess, sell, or dispose of, by gift or otherwise, any package which previously contained tobacco products or cigarette papers or tubes which has been emptied, and upon which any stamp prescribed by this chapter or regulations thereunder, to evidence the tax or indicate compliance with this chapter, has not been destroyed. (Aug. 16, 1954, ch. 736, 68A Stat. 716; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1424.)

AMENDMENTS

1958—Pub. L. 85–859 included marks and notices in the catchline, limited the penalties to cases where there is intent to defraud the United States, and prohibited the destruction, obliteration, or detachment of any mark, label, notice or stamp before a package of tobacco products or cigarette papers or tubes is emptied.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5762 of this title.

§ 5753. Disposal of forfeited, condemned, and abandoned tobacco products, and cigarette papers and tubes.

If it appears that any forfeited, condemned, or abandoned tobacco products, or cigarette papers and tubes, when offered for sale, will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, such articles shall not be sold for consumption in the United States but shall be disposed of in accordance with such regulations as the Secretary or his delegate shall prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 716; Sept. 2, 1958, Pub. L. 85-859, title II, § 202, 72 Stat. 1425; June 21, 1965, Pub. L. 89-44, title V, § 502(b)(11), 79 Stat. 152.)

AMENDMENTS

1965—Pub. L. 89-44 struck out references to tobacco materials wherever appearing both in the heading and the text.

1958—Pub. L. 85-859 substituted "tobacco products, cigarette papers and tubes" for "articles" wherever appearing.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 502 of Pub. L. 89-44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89-44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter F.—Penalties and Forfeitures

Sec.
5761. Civil penalties.
5762. Criminal penalties.
5763. Forfeitures.

AMENDMENTS

1965—Pub. L. 89-44, title V, § 502(b)(7), June 21, 1965, 79 Stat. 151, redesignated as subchapter F former subchapter G. Former subchapter F redesignated E.

1958—Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1425, substituted "Penalties and Forfeitures" for "Fines, Penalties, and Forfeitures" in subchapter heading.

§ 5761. Civil penalties.

(a) Omitting things required or doing things forbidden.

Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to a penalty of $1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or under section 6651 or 6653 may be collected from such person by assessment.

(b) Failure to pay tax.

Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(c) Failure to make deposit of taxes.

Section 6656 relating to failure to make deposit of taxes shall apply to the failure to make any deposit of taxes imposed under subchapter A on the date prescribed therefor, except that the penalty for such failure shall be 5 percent of the amount of the underpayment in lieu of the penalty provided by such section.

(d) Applicability of section 6659.

The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6659 (a). (Aug. 16, 1954, ch. 736, 68A Stat. 717; Sept. 2, 1958, Pub. L. 85-859, title II, § 202, 72 Stat. 1425.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-859 eliminated a reference to section 6652 of this title.

Subsec. (c). Pub. L. 85-859 substituted provisions relating to failure to make deposit of taxes for provisions which authorized a penalty of 5 percent of the tax due but unpaid where a person failed to pay tax at the time prescribed, and required the penalties to be added to the tax and assessed and collected at the same time, in the same manner, and as a part of the tax.

Subsec. (d). Pub. L. 85-859 added subsec. (d). Similar provisions were formerly contained in subsec. (c) of this section.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out a a note under section 5001 of this title.

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for recovery of penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Venue of action for penalty, see section 1395 of Title 28, Judiciary and Judicial Procedure.

§ 5762. Criminal penalties.

(a) Fraudulent offenses.

Whoever, with intent to defraud the United States—

(1) Engaging in business unlawfully.

Engages in business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, without filing the bond and obtaining the permit where required by this chapter or regulations thereunder; or

(2) Failing to furnish information or furnishing false information.

Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter or regulations thereunder; or

(3) Refusing to pay or evading tax.

Refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or

(4) Removing tobacco products or cigarette papers or tubes unlawfully.

Removes, contrary to this chapter or regulations thereunder, any tobacco products or cigarette papers or tubes subject to tax under this chapter; or

(5) Purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully.

Violates any provision of section 5751 (a) (1) or (a) (2); or

(6) Affixing improper stamps.

Affixes to any package containing tobacco products or cigarette papers or tubes any improper or counterfeit stamp, or a stamp prescribed by this chapter or regulations thereunder which has been previously used on a package of such articles; or

(7) Destroying, obliterating, or detaching marks, labels, notices, or stamps before packages are emptied.

Violates any provision of section 5752 (a); or

(8) Emptying packages without destroying stamps.

Violates any provision of section 5752 (b); or

(9) Possessing emptied packages bearing stamps.

Violates any provision of section 5752 (d); or

(10) Refilling packages bearing stamps.

Puts tobacco products or cigarette papers or tubes into any package which previously contained such articles and which bears a stamp prescribed by this chapter or regulations thereunder without destroying such stamp; or

(11) Detaching stamps or possessing used stamps.

Violates any provision of section 5752 (c);

shall, for each such offense, be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(b) Other offenses.

Whoever, otherwise than as provided in subsection (a), violates any provision of this chapter, or of regulations prescribed thereunder, shall, for each such offense, be fined not more than $1,000, or imprisoned not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 717; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1425; June 21, 1965, Pub. L. 89–44, title V, § 502(b) (12), 79 Stat. 152.)

AMENDMENTS

1965—Subsec. (a) (1). Pub. L. 89–44, § 502(b) (12) (A), struck out reference to a dealer in tobacco materials.

Subsec. (a) (2). Pub. L. 89–44, § 502(b) (12) (B), struck out reference to statements.

1958—Subsec. (a). Pub. L. 85–859 included export warehouse proprietors in par. (1), eliminated provisions in pars. (6) and (9)—(11) which related to labels and notices, and added pars. (7) and (8).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by section 502 of Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5763. Forfeitures.

(a) Tobacco products and cigarette papers and tubes unlawfully possessed.

(1) Tobacco products and cigarette papers and tubes possessed with intent to defraud.

All tobacco products and cigarette papers and tubes which, after removal, are possessed with intent to defraud the United States shall be forfeited to the United States.

(2) Tobacco products and cigarette papers and tubes not properly packaged.

All tobacco products and cigarette papers and tubes not in packages as required under section 5723 or which are in packages not bearing the marks, labels, notices, and stamps, as required under such section, which, after removal, are possessed otherwise than with intent to defraud the United States, shall be forfeited to the United States. This paragraph shall not apply to tobacco products or cigarette papers or tubes sold or delivered directly to consumers from proper packages.

(b) Personal property of qualified manufacturers, and export warehouse proprietors, acting with intent to defraud.

All tobacco products and cigarette papers and tubes, packages, internal revenue stamps, machinery, fixtures, equipment, and all other materials and personal property on the premises of any qualified manufacturer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, who, with intent to defraud the United States, fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter; or refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or removes, contrary to any provision of this chapter, any article subject to tax under this chapter, shall be forfeited to the United States.

(c) Real and personal property of illicit operators.

All tobacco products, cigarette papers and tubes, machinery, fixtures, equipment, and other materials and personal property on the premises of any person engaged in business as a manufacturer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, without filing the bond or obtaining the permit, as required by this chapter, together with all his right, title, and interest in the building in which such business is conducted, and the lot or tract of ground on which the building is located, shall be forfeited to the United States.

(d) General.

All property intended for use in violating the provisions of this chapter, or regulations thereunder, or which has been so used, shall be forfeited to the United States as provided in section 7302. (Aug. 16, 1954, ch. 736, 68A Stat. 718; Sept. 2, 1958, Pub. L. 85–859, title II, § 202, 72 Stat. 1426; June 21, 1965, Pub. L. 89–44, title V, § 502(b) (13), 79 Stat. 152.)

AMENDMENTS

1965—Subsec. (b). Pub. L. 89–44, § 502(b) (13) (A), struck out references to tobacco materials, dealers in tobacco materials, and statements.

Subsec. (c). Pub. L. 89–44, § 502(b) (13) (B), struck out references to tobacco materials and dealers in tobacco materials.

1958—Subsec. (a). Pub. L. 85–859 substituted "tobacco products and cigarette papers and tubes" for "articles" wherever appearing and inserted provisions

making par. (2) inapplicable to tobacco products or cigarette papers for tubes delivered directly to consumers from proper packages.

Subsec. (b). Pub. L. 85–859 included property of export warehouse proprietors.

Subsec. (c). Pub. L. 85–859 included property of export warehouse proprietors.

Subsec. (d). Pub. L. 85–859 included property intended for use, or used, in violating regulations under this chapter.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 502 of Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

Chapter 53.—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Subchapter
A. Taxes.
B. General provisions and exemptions.
C. Prohibited acts.
D. Penalties and forfeitures.

CODIFICATION

This chapter as added by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1227, constitutes a general revision of the provisions of a former chapter 53, as enacted Aug. 16, 1964, ch. 736, 68A Stat. 721, and amended thereafter. The analysis reflects the following changes that were made by way of substitution:

"Machine Guns, Destructive Devices, and Certain Other Firearms" for "Machine Guns and Certain Other Firearms" in the chapter heading;

"General provisions and exemptions" for "General provisions" in subch. B;

"Prohibited acts" for "Unlawful acts" in subch. C.

Subchapter A.—Taxes

Part
I. Special (occupational) taxes.
II. Tax on transferring firearms.
III. Tax on making firearms.

PART I.—SPECIAL (OCCUPATIONAL) TAXES

Sec.
5801. Tax.
5802. Registration of importers, manufacturers, and dealers.

CODIFICATION

Prior to the general revision, by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228, of the provisions of former chapter 53, as enacted Aug. 16, 1964, ch. 736, 68A Stat. 721, and amended thereafter, this part consisted of sections 5801–5803.

Section 5802 related to "Registration".

Section 5803 related to "Exemptions".

§ 5801. Tax.

On first engaging in business and thereafter on or before the first day of July of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

(1) Importers.—$500 a year or fraction thereof;

(2) Manufacturers.—$500 a year or fraction thereof;

(3) Dealers.—$200 a year or fraction thereof.

Except an importer, manufacturer, or dealer who imports, manufactures, or deals in only weapons classified as "any other weapon" under section 5845 (e), shall pay a special (occupational) tax for each place of business at the following rates: Importers, $25 a year or fraction thereof; manufacturers, $25 a year or fraction thereof; dealers, $10 a year or fraction thereof. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1227.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5801, act Aug. 16, 1964, ch. 736, 68A Stat. 721, as amended by acts Sept. 2, 1958, Pub. L. 85–859, title II, § 203(a), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, § 1, 74 Stat. 149.

EFFECTIVE DATE

Section 207 of Pub. L. 90–618 provided that:

"(a) Section 201 of this title [adding this chapter] shall take effect on the first day of the first month following the month in which it is enacted [October, 1968].

"(b) Notwithstanding the provisions of subsection (a) or any other provision of law, any person possessing a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 (as amended by this title) [section 5845(a) of this title] which is not registered to him in the National Firearms Registration and Transfer Record shall register each firearm so possessed with the Secretary of the Treasury or his delegate in such form and manner as the Secretary or his delegate may require within the thirty days immediately following the effective date of section 201 of this Act [see subsec. (a) of this section]. Such registrations shall become a part of the National Firearms Registration and Transfer Record required to be maintained by section 5841 of the Internal Revenue Code of 1954 (as amended by this title) [section 5841 of this title]. No information or evidence requried to be submitted or retained by a natural person to register a firearm under this section shall be used, directly or indirectly, as evidence against such person in any criminal proceeding with respect to a prior or concurrent violation of law.

"(c) The amendments made by sections 202 through 206 of this title [amending sections 6806 and 7273 of this title, repealing sections 5692 and 6107 of this title, and enacting provisions set out as a note under this section] shall take effect on the date of enactment [Oct. 22, 1968].

"(d) The Secretary of the Treasury, after publication in the Federal Register of his intention to do so, is authorized to establish such periods of amnesty, not to exceed ninety days in the case of any single period, and immunity from liability during any such period, as the Secretary determines will contribute to the purposes of this title [adding this chapter, and sections 6806 and 7273 of this title, repealing sections 5692 and 6107 of this title, and enacting provisions set out as notes under this section]."

SHORT TITLE

Section 202 of Pub. L. 90–618 provided that: "The amendments made by section 201 of this title [adding this chapter] shall be cited as the 'National Firearms Act Amendments of 1968'."

CROSS REFERENCES

Other laws applicable, see section 5846 of this title.

Prohibited acts, see section 58611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5851, 5861 of this title.

§ 5802. Registration of importers, manufacturers, and dealers.

On first engaging in business and thereafter on or before the first day of July of each year, each importer, manufacturer, and dealer in firearms shall register with the Secretary or his delegate in each internal revenue district in which such business is to be carried on, his name, including any trade name,

and the address of each location in the district where he will conduct such business. Where there is a change during the taxable year in the location of, or the trade name used in, such business, the importer, manufacturer, or dealer shall file an application with the Secretary or his delegate to amend his registration. Firearms operations of an importer, manufacturer, or dealer may not be commenced at the new location or under a new trade name prior to approval by the Secretary or his delegate of the application. (Added Pub. L. 90–618, title II, § 201, Oct 22, 1968, 82 Stat. 1227.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5802, act Aug. 16, 1954, ch. 736, 68A Stat. 721.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5861 of this title.

CODIFICATION

Section 5803, act Aug. 16, 1954, ch. 736, 68A Stat. 722, setting forth a cross reference to section 5812 exempting certain transfers, was omitted in the general revision of this chapter by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1227.

PART II.—TAX ON TRANSFERRING FIREARMS

Sec.
5811. Transfer tax.
5812. Transfers.

CODIFICATION

Prior to the general revision, by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228, of the provisions of former chapter 53, as enacted Aug. 16, 1954, ch. 736, 68A Stat. 721, and amended thereafter, "Part II. Transfer tax" of "Subchapter A. Taxes" consisted of sections 5811–5814.

Section 5811 related to "Tax".
Section 5812 related to "Exemptions".
Section 5813 related to "Stamps".
Section 5814 related to "Order forms".

§ 5811. Transfer tax.

(a) Rate.

There shall be levied, collected, and paid on firearms transferred a tax at the rate of $200 for each firearm transferred, except, the transfer tax on any firearm classified as any other weapon under section 5845(e) shall be at the rate of $5 for each such firearm transferred.

(b) By whom paid.

The tax imposed by subsection (a) of this section shall be paid by the transferor.

(c) Payment.

The tax imposed by subsection (a) of this section shall be payable by the appropriate stamps prescribed for payment by the Secretary or his delegate. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5811, act Aug. 16, 1954, ch. 736, 68A Stat. 722, as amended by acts Sept. 2, 1958, Pub. L. 85–859, title II, § 203 (b), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, § 2, 74 Stat. 149.

EFFECTIVE DATE

Section effective on the first day of the first month following October 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5852–5854 of this title.

§ 5812. Transfers.

(a) Application.

A firearm shall not be transferred unless (1) the transferor of the firearm has filed with the Secretary or his delegate a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary or his delegate; (2) any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form; (3) the transferee is identified in the application form in such manner as the Secretary or his delegate may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; (4) the transferor of the firearm is identified in the application form in such manner as the Secretary or his delegate may by regulations prescribe; (5) the firearm is identified in the application form in such manner as the Secretary or his delegate may by regulations prescribe; and (6) the application form shows that the Secretary or his delegate has approved the transfer and the registration of the firearm to the transferee. Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

(b) Transfer of possession.

The transferee of a firearm shall not take possession of the firearm unless the Secretary or his delegate has approved the transfer and registration of the firearm to the transferee as required by subsection (a) of this section. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat 1228.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5812, act Aug. 16, 1954, ch. 736, 68A Stat. 722.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

CODIFICATION

Section 5813, act Aug. 16, 1954, 736, 68A Stat. 723, relating to the affixing of the required stamps to the order form for the firearm, was omitted in the general revision of this chapter by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228.

Section 5814, act Aug. 16, 1954, ch. 736, 68A Stat. 723, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203(c), 72 Stat. 1427, relating to the order forms required for the transfer of a firearm, was omitted in the general revision of this chapter by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228.

PART III.—TAX ON MAKING FIREARMS

Sec.
5821. Making tax.
5822. Making.

CODIFICATION

Prior to the general revision, by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228, of the provisions of former chapter 53, as enacted Aug. 16, 1954, ch. 736, 68A Stat. 721, and amended thereafter, this part consisted of section 5821 relating to "Rate, exceptions, etc.".

§ 5821. Making tax.

(a) Rate.

There shall be levied, collected, and paid upon the making of a firearm a tax at the rate of $200 for each firearm made.

(b) By whom paid.

The tax imposed by subsection (a) of this section shall be paid by the person making the firearm.

(c) Payment.

The tax imposed by subsection (a) of this section shall be payable by the stamp prescribed for payment by the Secretary or his delegate. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5821, act Aug. 16, 1954, ch. 736, 68A Stat. 724, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203 (d), 72 Stat. 1427.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5852, 5853 of this title.

§ 5822. Making.

No person shall make a firearm unless he has (a) filed with the Secretary or his delegate a written application, in duplicate, to make and register the firearm on the form prescribed by the Secretary or his delegate; (b) paid any tax payable on the making and such payment is evidenced by the proper stamp affixed to the original application form; (c) identified the firearm to be made in the application form in such manner as the Secretary or his delegate may by regulations prescribe; (d) identified himself in the application form in such manner as the Secretary or his delegate may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; and (e) obtained the approval of the Secretary or his delegate to make and register the firearm and the application form shows such approval. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228.)

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207(a) of Pub. L. 90–618, set out as a note under section 5801 of this title.

CODIFICATION

Section 5831, act Aug. 16, 1954, ch. 736, 68A Stat. 724, setting forth a cross reference to section 4181 of this title relating to an excise tax on pistols, revolvers, and firearms, and the analysis "Part IV—Other Taxes", consisting of section 5831 of this title, was omitted in the general revision of this chapter by Pub. L. 90–618, title II, § 201, Oct. 22, 82 Stat. 1229.

Subchapter B.—General Provisions and Exemptions.

Part
I. General provisions.
II. Exemptions.

PART I.—GENERAL PROVISIONS

Sec.
5841. Registration of firearms.
5842. Identification of firearms.
5843. Records and returns.
5844. Importation.
5845. Definitions.
5846. Other laws applicable.
5847. Effect on other law.
5848. Restrictive use of information.
5849. Citation of chapter.

CODIFICATION

Prior to the general revisions, by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1228, of the provisions of former chapter 53, as enacted Aug. 16, 1954, ch. 736, 68A Stat. 721, and amended thereafter, "Subchapter B. General provisions" consisted of sections 5841–5849, without analysis of parts comprising subchapter.

Section 5841 related to "Registration of persons in general".

Section 5832 related to "Books, records and returns".

Section 5843 related to "Identification of firearms".

Section 5844 related to "Exportation".

Section 5845 related to "Importation".

Section 5847 related to "Regulations".

Section 5848 related to "Definitions".

§ 5841. Registration of firearms.

(a) Central registry.

The Secretary or his delegate shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States. This registry shall be known as the National Firearms Registration and Transfer Record. The registry shall include—

(1) identification of the firearm;

(2) date of registration; and

(3) identification and address of person entitled to possession of the firearm.

(b) By whom registered.

Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor.

(c) How registered.

Each manufacturer shall notify the Secretary or his delegate of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect the registration of the firearm required by this section. Each importer, maker, and transferor of a firearm shall, prior to importing, making, or transferring a firearm, obtain authorization in such manner as required by this chapter or regulations issued thereunder to import, make, or transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.

(d) Firearms registered on effective date of this Act.

A person shown as possessing a firearm by the records maintained by the Secretary or his delegate pursuant to the National Firearms Act in force on the day immediately prior to the effective date of the National Firearms Act of 1968 shall be considered to have registered under this section the firearms in his possession which are disclosed by that record as being in his possession.

(e) Proof of registration.

A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary or his delegate upon request. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1229.)

REFERENCES IN TEXT

The effective date of this Act, referred to in catchline to subsec. (d) is Nov. 1, 1968. See Effective Date note set out below.

The National Firearms Act, referred to in subsec. (d), is this chapter.

The effective date of the National Firearms Act of 1968, referred to in subsec. (d), is Nov. 1, 1968. See Effective Date note set out below.

The National Firearms Act of 1968 probably means the National Firearms Act Amendments of 1968. See Short Title note set out under section 5801 of this title.

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5841, act Aug. 16, 1954, ch. 736, 68A Stat. 725.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§ 5842. Identification of firearms.

(a) Identification of firearms other than destructive devices.

Each manufacturer and importer and anyone making a firearm shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the Secretary or his delegate may by regulations prescribe.

(b) Firearms without serial number.

Any person who possesses a firearm, other than a destructive device, which does not bear the serial number and other information required by subsection (a) of this section shall identify the firearm with a serial number assigned by the Secretary or his delegate and any other information the Secretary or his delegate may by regulations prescribe.

(c) Identification of destructive device.

Any firearm classified as a destructive device shall be identified in such manner as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1230.)

CODIFICATION

A prior section 5842, act Aug. 16, 1954, ch. 736, 68A Stat. 725, related to "books, records and returns." See section 5843 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5843, act Aug. 16, 1954, ch. 736, 68A Stat. 725, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203 (e), 72 Stat. 1427, prior to the general revision of this chapter by Pub. L. 90–618.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§ 5843. Records and returns.

Importers, manufacturers, and dealers shall keep such records of, and render such returns in relation to, the importation, manufacture, making, receipt, and sale, or other disposition, of firearms as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1230.)

CODIFICATION

A prior section 5843, act Aug. 16, 1954, ch. 736, 68A Stat. 725, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203 (e), 72 Stat. 1427, related to "identification of firearms." See section 5842 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5842, act Aug. 16, 1954, 68A Stat. 725, prior to the general revision of this chapter by Pub. L. 90–618.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§ 5844. Importation.

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary or his delegate, that the firearm to be imported or brought in is—

(1) being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or

(2) being imported or brought in for scientific or research purposes; or

(3) being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer;

except that, the Secretary or his delegate may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm. (Added Pub. L. 90–619, title II, § 201, Oct. 22, 1968, 82 Stat. 1230.)

CODIFICATION

A prior section 5844, act Aug. 16, 1954, ch. 736, 68A Stat. 725, related to "exportation."

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5845, act Aug. 16, 1954, ch. 736, 68A Stat. 725, prior to the general revision of this chapter by Pub. L. 90–618.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5861 of this title.

§ 5845. Definitions.

For the purpose of this chapter—

(a) Firearm.

The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels

of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary or his delegate finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machinegun.

The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle.

The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun.

The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon.

The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which my be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device.

The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary of the Treasury or his delegate finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) Antique firearm.

The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) Unserviceable firearm.

The term "unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) Make.

The term "make", and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) Transfer.

The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) Dealer.

The term "dealer" means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) Importer.

The term "importer" means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) Manufacturer.

The term "manufacturer" means any person who is engaged in the business of manufacturing firearms. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1230.)

CODIFICATION

A prior section 5845, act Aug. 16, 1954, ch. 736, 68A Stat. 725, related to importation of firearms into the United States or its territory. See section 5844 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5848, act Aug. 16, 1954, ch. 736, 68A Stat. 727, as amended by acts Sept. 2, 1958, Pub. L. 85–859, title II, § 203(f), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, § 3, 74 Stat. 149, prior to the general revision of this chapter by Pub. L. 90–618.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, except as to persons possessing firearms as defined in subsec. (a) of this section which are not registered to such persons in the National Firearms Registration and Transfer Record, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5811 of this title; 18 sections 844, 922, 925.

§ 5846. Other laws applicable.

All provisions of law relating to special taxes imposed by chapter 51 and to engraving, issuance, sale, accountability, cancellation, and distribution of stamps for tax payment shall, insofar as not inconsistent with the provisions of this chapter, be applicable with respect to the taxes imposed by sections 5801, 5811, and 5821. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1232.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5846, act Aug. 16, 1954, ch. 736, 68A Stat. 726.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§ 5847. Effect on other laws.

Nothing in this chapter shall be construed as modifying or affecting the requirements of section 414 of the Mutual Security Act of 1954, as amended, with respect to the manufacture, exportation, and importation of arms, ammunition, and implements of war. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1232.)

REFERENCES IN TEXT

Section 414 of the Mutual Security Act of 1954, as amended, referred to in the text, is classified to section 1934 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

A prior section 5847, act Aug. 16, 1954, ch. 736, 68A Stat. 726, related to regulations that the Secretary or his delegate may prescribe. See section 926 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§ 5848. Restrictive use of information.

(a) General rule.

No information or evidence obtained from an application, registration, or records required to be submitted or retained by a natural person in order to comply with any provision of this chapter or regulations issued thereunder, shall, except as provided in subsection (b) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration, or the compiling of the records containing the information or evidence.

(b) Furnishing false information.

Subsection (a) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1232.)

CODIFICATION

A prior section 5848, act Aug. 16, 1954, ch. 736, 68A Stat. 727, as amended by acts Sept. 2, 1958, Pub. L. 85–859, title II, § 203 (f), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, § 3, 74 Stat, 149, related to definition of a firearm, machine gun, rifle, shotgun, other weapon, importer, manufacturer, dealer, interstate commerce, transfer and person. See section 5845 of this title.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5685 of this title.

§ 5849. Citation of chapter.

This chapter may be cited as the "National Firearms Act" and any reference in any other provision of law to the "National Firearms Act" shall be held to refer to the provisions of this chapter. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1232.)

CODIFICATION

Provisions similar to those comprising this section were contained in a prior section 5849, Pub. L. 85–859, title II, § 203(g)(1), Sept. 2, 1958, 72 Stat. 1427.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

PART II.—EXEMPTIONS

Sec.
5851. Special (occupational) tax exemption.
5852. General transfer and making exemption.
5853. Exemption from transfer and making tax available to certain governmental entities and officials.[1]
5854. Exportation of firearms exempt from transfer tax.

CODIFICATION

Prior to the general revision by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1233 of the provisions of former chapter 53 as enacted Aug. 16, 1954, ch. 736. 68A Stat. 721, and amended thereafter, "Subchapter C.—Unlawful Acts" consisited of sections 5851–5855.

Section 5851 related to "Possessing firearms illegally". See section 5861(b) of this title.

[1] Item catchline does not conform to section catchline.

Section 5852 related to "Removing or changing identification marks". See section 5861(g) of this title and section 922(k) of Title 18, Crimes and Criminal Procedure.

Section 5853 related to "Importing firearms illegally". See section 5861(k) of this title and section 922(a) of Title 18, Crimes and Criminal Procedure.

Section 5854 related to "Failure to register and pay special tax". See section 5861 (a), (d) of this title and section 923 of Title 18, Crimes and Criminal Procedure.

Section 5855, Pub. L. 85–859, title II, § 203(i) (1), Sept. 2, 1958, 72 Stat. 1428, related to "Unlawful transportation in interstate commerce". See section 5861(j) of this title and section 922 (e), (f), (i)–(j) of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Firearms restrictions, denial of relief from disabilities for violations of this chapter, see section 925(c) of Title 18, Crimes and Criminal Procedure.

§ 5851. Special (occupational) tax exemption.

(a) Business with United States.

Any person required to pay special (occupational) tax under section 5801 shall be relieved from payment of that tax if he establishes to the satisfaction of the Secretary or his delegate that his business is conducted exclusively with, or on behalf of, the United States or any department, independent establishment, or agency thereof. The Secretary or his delegate may relieve any person manufacturing firearms for, or on behalf of, the United States from compliance with any provision of this chapter in the conduct of such business.

(b) Application.

The exemption provided for in subsection (a) of this section may be obtained by filing with the Secretary or his delegate an application on such form and containing such information as may by regulations be prescribed. The exemptions must thereafter be renewed on or before July 1 of each year. Approval of the application by the Secretary or his delegate shall entitle the applicant to the exemptions stated on the approved application. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1233.)

CODIFICATION

A prior section 5851, act Aug. 16, 1954, ch. 736, 68A Stat. 728, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203(h) (1), (2), 72 Stat. 1428, related to possessing firearms illegally. See section 5861(b) of this title.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5812, act Aug. 16, 1954, ch. 736, 68A Stat. 722, prior to the general revision of this chapter by Pub. L. 90–618.

§ 5852. General transfer and making tax exemption.

(a) Transfer.

Any firearm may be transferred to the United States or any department, independent establishment, or agency thereof, without payment of the transfer tax imposed by section 5811.

(b) Making by a person other than a qualified manufacturer.

Any firearm may be made by, or on behalf of, the United States, or any department, independent establishment, or agency thereof, without payment of the making tax imposed by section 5821.

(c) Making by a qualified manufacturer.

A manufacturer qualified under this chapter to engage in such business may make the type of firearm which he is qualified to manufacture without payment of the making tax imposed by section 5821.

(d) Transfers between special (occupational) taxpayers.

A firearm registered to a person qualified under this chapter to engage in business as an importer, manufacturer, or dealer may be transferred by that person without payment of the transfer tax imposed by section 5811 to any other person qualified under this chapter to manufacture, import, or deal in that type of firearm.

(e) Unserviceable firearm.

An unserviceable firearm may be transferred as a curio or ornament without payment of the transfer tax imposed by section 5811, under such requirements as the Secretary or his delegate may by regulations prescribe.

(f) Right to exemption.

No firearm may be transferred or made exempt from tax under the provisions of this section unless the transfer or making is performed pursuant to an application in such form and manner as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1233.)

CODIFICATION

A prior section 5852, act Aug. 16, 1954, ch. 736, 68A Stat. 728, related to removing or changing identification marks. See section 5861(g) of this title and section 922(k) of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5814, act Aug. 16, 1954, ch. 736, 68A Stat. 723, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203(c), 72 Stat. 1427, prior to the general revision of this chapter by Pub. L. 90–618.

§ 5853. Transfer and making tax exemption available to certain governmental entities.

(a) Transfer.

A firearm may be transferred without the payment of the transfer tax imposed by section 5811 to any State, possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations.

(b) Making.

A firearm may be made without payment of the making tax imposed by section 5821 by, or on behalf of, any State, or possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations.

(c) Right to exemption.

No firearm may be transferred or made exempt from tax under this section unless the transfer or making is performed pursuant to an application in

such form and manner as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1233.)

CODIFICATION

A prior section 5853, act Aug. 16, 1954, ch. 736, 68A Stat. 728, related to importing firearms illegally. See section 5861(k) of this title and section 922(a) of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618 set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5821, act Aug. 16, 1954, ch. 736, 68A Stat. 724, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, § 203(d), 72 Stat. 1427, prior to the general revision of this chapter by Pub. L. 90–618.

§ 5854. Exportation of firearms exempt from transfer tax.

A firearm may be exported without payment of the transfer tax imposed under section 5811 provided that proof of the exportation is furnished in such form and manner as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1234.)

CODIFICATION

A prior section 5854, Pub. L. 85–859, title II, § 203(i)(1), Sept. 2, 1958, 72 Stat. 1428, related to failure to register and pay special tax. See section 5861 (a), (d) of this title and section 923 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5844, act Aug. 16, 1954, ch. 736, 68A Stat. 725, prior to the general revision of this chapter by Pub. L. 90–618.

CODIFICATION

Section 5855, Pub. L. 85–859, title II, § 203(i)(1), Sept. 2, 1958, 72 Stat. 1428, making it unlawful for any person required to comply with the provisions of sections 5814, 5821, and 5841 of this title, to ship, carry or deliver any firearm in interstate commerce if such sections have not been complied with, was omitted in the general revision of this chapter by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1234.

Subchapter C.—Prohibited Acts

Sec.
5861. Prohibited acts.[1]

CODIFICATION

Prior to the general revision by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1234 of the provisions of former chapter 53 as enacted Aug. 16, 1954, ch. 736, 68A Stat. 721 and amended thereafter, "Subchapter D.—Penalties and Forfeitures" consisted of sections 5861 and 5862.

Section 5861 related to "Penalties".

Section 5862, act Aug. 16, 1954, ch. 736, 68A Stat. 729, related to "Forfeitures". See section 5872 of this title.

§ 5861. Prohibited acts.

It shall be unlawful for any person—

(a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or

(b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or

(c) to receive or possess a firearm made in violation of the provisions of this chapter; or

(d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or

(e) to transfer a firearm in violation of the provisions of this chapter; or

(f) to make a firearm in violation of the provisions of this chapter; or

(g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or

(h) to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered; or

(i) to receive or possess a firearm which is not identified by a serial number as required by this chapter; or

(j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or

(k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844; or

(*l*) to make, or cause the making of, a false entry on any application, return, or record required by this chapter, knowing such entry to be false.

(Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1234.)

CODIFICATION

A prior section 5861, act Aug. 16, 1954, 736, 68A Stat. 729, related to penalties. See section 5871 of this title.

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a), (b), (d), (g), (k), and (j) of this section were contained in former sections of I.R.C. 1954, prior to the general revision of this chapter by Pub. L. 90–618, as follows:

Present subsecs:	*Former sections*
(a)	5854.
(b)	5851.
(d)	5854.
(g)	5852.
(k)	5853.
(j)	5855.

The former sections 5851–5853, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 728.

The former sections 5854 and 5855, Pub. L. 85–859, title II, § 203(i)(1), Sept. 2, 1958, are set out in 72 Stat. 1428.

CODIFICATION

Section 5862, act Aug. 16, 1954, ch. 736, 68A Stat. 729, relating to the forfeiture and disposal of any firearm involved in any violation of the provisions of this chapter or any regulation promulgated thereunder, was omitted in the general revision of this chapter by Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1234. The provisions of section 5862 of this title are covered by section 5872 of this title.

[1] Analysis was not enacted by Congress and is editorially inserted.

Subchapter D.—Penalties and Forfeitures

Sec.
5871. Penalties.
5872. Forfeitures.

§ 5871. Penalties.

Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both, and shall become eligible for parole as the Board of Parole shall determine. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1234.)

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207(a) of Pub. L. 90–618, set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5861, act Aug. 16, 1954, ch. 736, 68A Stat. 729, prior to the general revision of this chapter by Pub. L. 90–618.

CROSS REFERENCES

Felony as an offense punishable for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 5872. Forfeitures.

(a) Laws applicable.

Any firearm involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal revenue laws relating to searches, seizures, and forfeitures of unstamped articles are extended to and made to apply to the articles taxed under this chapter, and the persons to whom this chapter applies.

(b) Disposal.

In the case of the forfeiture of any firearm by reason of a violation of this chapter, no notice of public sale shall be required; no such firearm shall be sold at public sale; if such firearm is forfeited for a violation of this chapter and there is no remission or mitigation of forfeiture thereof, it shall be delivered by the Secretary or his delegate to the Administrator of General Services, General Services Administration, who may order such firearm destroyed or may sell it to any State, or possession, or political subdivision thereof, or at the request of the Secretary or his delegate, may authorize its retention for official use of the Treasury Department, or may transfer it without charge to any executive department or independent establishment of the Government for use by it. (Added Pub. L. 90–618, title II, § 201, Oct. 22, 1968, 82 Stat. 1235.)

EFFECTIVE DATE

Section effective on the first day of the first month following October, 1968, see section 207(a) of Pub. L. 90–618, set out as a note under section 5801 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5862, act Aug. 16, 1954, ch. 736, 68A Stat. 729, prior to the general revision of this chapter by Pub. L. 90–618.

CROSS REFERENCES

Seizure and forfeiture of carriers transporting contraband articles, see section 781 et seq. of Title 49, Transportation.

Subtitle F.—Procedure and Administration

Chapter
61. Information and returns.
62. Time and place for paying tax.
63. Assessment.
64. Collection.
65. Abatements, credits, and refunds.
66. Limitations.
67. Interest.
68. Additions to the tax, additional amounts, and assessable penalties.
69. General provisions relating to stamps.
70. Jeopardy, bankruptcy and receiverships.
71. Transferees and fiduciaries.
72. Licensing and registration.
73. Bonds.
74. Closing agreements and compromises.
75. Crimes, other offenses, and forfeitures.
76. Judicial proceedings.
77. Miscellaneous provisions.
78. Discovery of liability and enforcement of title.
79. Definitions.
80. General Rules.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 874 of this title; title 42 sections 401, 1395i.

Chapter 61.—INFORMATION AND RETURNS

Subchapter
A. Returns and records.
B. Miscellaneous provisions.

Subchapter A.—Returns and Records

Part
I. Records, statements, and special returns.
II. Tax returns or statements.
III. Information returns.
IV. Signing and verifying of returns and other documents.
V. Time for filing returns and other documents.
VI. Extension of time for filing returns.
VII. Place for filing returns or other documents.
VIII. Designation of income tax payments to Presidential Election Campaign Fund.

AMENDMENTS

1966—Pub. L. 89–809, title III, § 302(b), Nov. 13, 1966, 80 Stat. 1588, added item VIII.

PART I.—RECORDS, STATEMENTS, AND SPECIAL RETURNS

Sec.
6001. Notice or regulations requiring records, statements, and special returns.

§ 6001. Notice or regulations requiring records, statements, and special returns.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title. (Aug. 16, 1954, ch. 736, 68A Stat. 731.)

CROSS REFERENCES

Methods of accounting for taxable income, see section 446 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 874, 4403, 4815 of this title.

PART II.—TAX RETURNS OR STATEMENTS

Subpart
A. General requirement.
B. Income tax returns.
C. Estate and gift tax returns.
D. Miscellaneous provisions.

SUBPART A.—GENERAL REQUIREMENT

Sec.
6011. General requirement of return, statement, or list.

§ 6011. General requirement of return, statement, or list.

(a) General rule.

When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer.

The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Repealed. Pub. L. 89-44, title I, § 101(b)(6), June 21, 1965, 79 Stat. 136.

(d) Interest equalization tax returns, etc.

(1) In general.

(A) Every person shall make a return for each calendar quarter during which he incurs liability for the tax imposed by section 4911, or would so incur liability but for the provisions of section 4918. The return shall, in addition to such other information as the Secretary or his delegate may by regulations require, include a list of all acquisitions made by such person during the calendar quarter for which exemption is claimed under section 4918 accompanied by a copy of any return made during such quarter under subparagraph (B). No return or accompanying evidence shall be required under this paragraph, in connection with any acquisition with respect to which—

(i) an IET clean confirmation is obtained in accordance with the provisions of section 4918(b),

(ii) a validation certificate described in section 4918(b) issued to the person from whom such acquisition was made is obtained, and such certificate was filed in accordance with the requirements prescribed by the Secretary or his delegate, or

(iii) a validation certificate was obtained by the acquiring person after such acquisition and before the date prescribed by section 6076(a) for the filing of the return,

nor shall any such acquisition be required to be listed in any return made under this paragraph.

(B) Every person who incurs liability for the tax imposed by section 4911 shall, if he disposes of the stock or debt obligation with respect to which such liability was incurred prior to the filing of the return required by subparagraph (A) (unless such disposition is made under circumstances which entitle such person to a credit under the provisions of section 4919), made a return of such tax.

(2) Information returns of commercial banks.

Every United States person (as defined in section 4920(a)(4)) which is a commercial bank shall file a return with respect to loans and commitments to foreign obligors at such times, in such manner, and setting forth such information as the Secretary or his delegate shall by forms and regulations prescribe.

(3) Reporting requirements for certain members of exchanges and associations.

Every member or member organization of a national securities exchange or of a national securities association registered with the Securities and Exchange Commission, which is not subject to the provisions of section 4918(c), shall keep such records and file such information as the Secretary or his delegate may by forms or regulations prescribe in connection with acquisitions and sales effected by such member or member organization, as a broker or for his own account, of stock of a foreign issuer or debt obligations of a foreign obligor—

(A) with respect to which a validation certificate described in section 4918(b)(1)(A) has been received by such member or member organization; or

(B) with respect to which an acquiring United States person is subject to the tax imposed by section 4911.

(e) Income, estate, and gift taxes.

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

(Aug. 16, 1954, ch. 736, 68A Stat. 732; Sept. 2, 1958, Pub. L. 85-859, title I, § 161, 72 Stat. 1305; Sept. 2, 1964, Pub. L. 88-563, § 3(a), 78 Stat. 843; June 21, 1965, Pub. L. 89-44, title I, § 101(b)(6), 79 Stat. 136; July 31, 1967, Pub. L. 90-59, § 4(b), 81 Stat. 154; Nov. 26, 1969, Pub. L. 91-128, § 4 (f), (g), 83 Stat. 267.)

AMENDMENTS

1969—Subsec. (d)(1)(B). Pub. L. 91-128, § 4(f), added provisions excepting dispositions made under circumstances entitling the person to a credit under the provisions of section 4919 from the requirement that persons incurring liability for the tax imposed by section 4911 of this title, if he disposes of the stock or debt obligation with respect to which such liability was incurred prior to the filing of the return required by subparagraph (A), file a return of such tax.

Subsec. (d)(3). Pub. L. 91-128, § 4(g), eased the recordkeeping requirements by providing that nonparticipating be subject to the recordkeeping and reporting requirements prescribed by the Secretary or his delegate only insofar as they engage in sales or acquisitions in which the nonparticipating firm has received a validation certificate indicating the stock or debt obligation qualifies for the exemption or where the U.S. person acquiring the stock or debt obligation is subject to the interest equalization tax, including acquisitions where a broker's confirmation to the customer indicates, or should indicate that the particular acquisition is or may be subject to the tax.

1967—Subsec. (d)(1). Pub. L. 90-59 denominated existing provisions as subpar. (A), added subpar. (B), and, in subpar. (A) as so denominated, substituted a copy of any return made during a quarter under subpar. (B) for a certificate of American ownership complying with section 4918(e) or a summary statement establishing exemption together with reasons for person's inability to

establish prior American ownership as the document to accompany the list of acquisitions made during the calendar quarter for which an exemption is claimed under section 4918, struck out "a written confirmation, furnished in accordance with the requirements described in section 4918 (c) or (d), is treated as conclusive proof of prior American ownership;" following "No return or accompanying evidence shall be required under this paragraph, in connection with any acquisition with respect to which", and added clauses (i), (ii), and (iii).

1965—Subsec. (c). Pub. L. 89–44 repealed subsec. (c) which related to the return of retailers excise taxes by suppliers.

1964—Subsec. (d). Pub. L. 88–563 added subsec. (d), and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 88–563 redesignated former subsec. (d) as (e).

1958—Subsec. (c). Pub. L. 85–859 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 85–859 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–128 applicable with respect to acquisitions of debt obligations made after Nov. 26, 1969, see section 4(i)(4) of Pub. L. 91–128, set out as a note under section 4920 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (d)(1) of this section by Pub. L. 90–59 applicable with respect to acquisitions of stock and debt obligations made after July 14, 1967, see section 4(h) of Pub. L. 90–59, set out as a note under section 4918 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Repeal of subsec. (c) applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

FIRST RETURN PERIOD FOR INTEREST EQUALIZATION TAX RETURNS

Section 3(d)(1) of Pub. L. 89–243, Oct. 9, 1965, 79 Stat. 955, provided that: "Notwithstanding any provision of section 6011(d)(1) of the Internal Revenue Code of 1954 [subsec. (d)(1) of this section], the first period for which returns shall be made under such section 6011(d)(1) with respect to acquisitions made subject to tax by this section shall be the period commencing February 11, 1965, and ending at the close of the calendar quarter in which the enactment of this Act [Oct. 9, 1965] occurs."

Section 3(e) of Pub. L. 88–563 provided that: "Notwithstanding any provision of section 6011(d)(1) of the Internal Revenue Code of 1954 [subsec. (d)(1) of this section], the first period for which returns shall be made under such section 6011(d)(1) shall be the period commencing July 19, 1963, and ending at the close of the calendar quarter in which the enactment of this Act [Sept. 2, 1964] occurs."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4919, 6076, 6680 of this title.

SUBPART B.—INCOME TAX RETURNS

Sec.
6012. Persons required to make returns of income.
6013. Joint returns of income tax by husband and wife.
6014. Income tax return—tax not computed by taxpayer.
6015. Declaration of estimated income tax by individuals.
6017. Self-employment tax returns.

AMENDMENTS

1968—Pub. L. 90–364, title I, § 103(e)(7), June 28, 1968, 82 Stat. 264, struck out item 6016 "Declarations of estimated income tax by corporations."

§ 6012. Persons required to make returns of income.

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $600 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

(i) who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than $1,700, or

(ii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $2,300 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The $1,700 amount specified in subparagraph (A)(i) shall be increased to $2,300 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the $2,300 amount specified in subparagraph (A)(ii) shall be increased by $600 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income; and

(5) Every estate or trust of which any beneficiary is a nonresident alien;

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers.

(1) Returns of decedents.

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability.

If an individual is unable to make a return required under subsection (a) or section 6015 (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations.

In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts.

Returns of an estate or a trust shall be made by the fiduciary thereof.

(5) Joint fiduciaries.

Under such regulations as the Secretary or his delegate may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(c) Certain income earned abroad or from sale of residence.

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65) and without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States).

(d) Consolidated returns.

For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

(Aug. 16, 1954, ch. 736, 68A Stat. 732; Sept. 2, 1958, Pub. L. 85–866, title I, § 72(a), 72 Stat. 1660; Feb. 26, 1964, Pub. L. 88–272, title II, § 206(b)(1), 78 Stat. 40; Dec. 30, 1969, Pub. L. 91–172, title IX, § 941(a), 83 Stat. 726.)

TAXABLE YEARS AFTER 1972

Pub. L. 91–172, title IX, § 941(d), Dec. 30, 1969, 83 Stat. 726 provided that: "Effective with respect to taxable years beginning after December 31, 1972, section 6012(a)(1) is amended—

"(1) by striking out '$600' each place it appears therein and inserting in lieu thereof '$750';

"(2) by striking out '$1,700' each place it appears and inserting in lieu thereof '$1,750'; and

"(3) by striking out '$2,300' each place it appears and inserting in lieu thereof '$2,500'."

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91–172 raised the income level at which a tax return must be filed.

1964—Subsec. (c). Pub. L. 88–272 inserted provisions relating to sale of residence.

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 85–866 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a) by section 941(a) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 30, 1969, see section 941(d) of Pub. L. 91–172, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88–272, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 72 (c) of Pub. L. 85–866 provided that: "The amendments [adding subsec. (c) of this section and section 911 (c) of this title] made by this section shall apply to taxable years beginning after December 31, 1957."

CROSS REFERENCES

Place for filing returns generally, see section 6091 of this title.

Returns of banks with respect to common trust funds, see section 6032 of this title.

Returns of tax on resident foreign corporations by agent, see section 882 of this title.

Tax adjustment measured by prior benefits, see section 1333 of this title.

Time and place for paying tax shown on returns, see section 6151 of this title.

Time for filing income tax returns, see section 6072 of this title.

Time return deemed filed and tax considered paid, see section 6513 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 1333, 6032, 6062, 6072, 6513 of this title.

§ 6013. Joint returns of income tax by husband and wife.

(a) Joint returns.

A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) no joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) no joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443 (a)(1);

(3) in the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the

last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) Joint return after filing separate return.

(1) In general.

Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(2) Limitations for making of election.

The election provided for in paragraph (1) may not be made—

(A) unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(B) after the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(C) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(D) after either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(E) after either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(3) When return deemed filed.

(A) Assessment and collection.

For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than $650 of gross income ($1,300 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of $650 or more ($1,300 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such joint return.

(B) Credit or refund.

For purposes of section 6511, a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

(4) Additional time for assessment.

If a joint return is made under this subsection, the periods of limitations provided in sections 6501 and 6502 on the making of assessments and the beginning of levy or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (3)).

(5) Additions to the tax and penalties.

(A) Additions to the tax.

Where the amount shown as the tax by the husband and wife on a joint return made under this subsection exceeds the aggregate of the amounts shown as the tax upon the separate return of each spouse—

(i) Negligence.

If any part of such excess is attributable to negligence or intentional disregard of rules and regulations (but without intent to defraud) at the time of the making of such separate return, then 5 percent of the total amount of such excess shall be added to the tax;

(ii) Fraud.

If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, then 50 percent of the total amount of such excess shall be added to the tax.

(B) Criminal penalty.

For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns) the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return.

(c) Treatment of joint return after death of either spouse.

For purposes of sections 21, 443, and 7851 (a) (1) (A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

(d) Definitions.

For purposes of this section—

(1) the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(A) if both have the same taxable year—as of the close of such year; and

(B) if one dies before the close of the taxable year of the other—as of the time of such death; and

(2) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married; and

(3) if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

(e) Spouse relieved of liability in certain cases.

(1) In general.

Under regulations prescribed by the Secretary or his delegate, if—

(A) a joint return has been made under this section for taxable year and on such return there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission, and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to such omission from gross income.

(2) Special rules.

For purposes of paragraph (1)—

(A) the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws, and

(B) the amount omitted from gross income shall be determined in the manner provided by section 6501(e)(1)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 733; Sept. 2, 1958, Pub. L. 85-866, title I, § 73, 72 Stat. 1660; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 801(a)(2), (b)(2), 83 Stat. 675; Jan. 12, 1971, Pub. L. 91-679, § 1, 84 Stat. 2063.)

INCREASES IN PERSONAL EXEMPTION

Section 801(c)(2) of Pub. L. 91-172 provided for an increase in the personal exemptions set out in subsec. (b)(3)(A), to $700 and $1,400 respectively, with respect to taxable years beginning after Dec. 31, 1971 and before Jan. 1, 1973.

Section 801(d)(2) of Pub. L. 91-172 provided for an increase in the personal exemptions set out in subsec. (b)(3)(A), to $750 and $1,500, respectively, with respect to taxable years beginning after Dec. 31, 1972.

AMENDMENTS

1971—Subsec. (e). Pub. L. 91-679 added subsec. (e).

1969—Subsec. (b)(3)(A). Pub. L. 91-172 increased the exemptions wherever appearing from $600 and $1,200 to $625 and $1,250 respectively, for taxable years ending Dec. 31, 1970, and from $625 to $650 and $1,250 to $1,300, for taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972.

1958—Subsec. (b)(2)(C). Pub. L. 85-866 substituted "section 6213" for "such section".

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 91-679 provided that: "The amendments made by the first two sections of this Act [enacting subsec. (e) of this section and amending section 6653(b) of this title] shall apply to all taxable years to which the Internal Revenue Code of 1954 applies. Corresponding provisions shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to all taxable years to which such Code applies."

EFFECTIVE DATE OF 1969 AMENDMENT

Section 801(a)(2) of Pub. L. 91-172 provided in part that the increases in exemptions from $600 to $625 and from $1,200 to $1,250, respectively, were effective with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) (2) (C) of this section by Pub. L. 85-866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Allowance of deductions for personal exemptions, see section 151 of this title.

Limitations—

Assessment and collection, see section 6501 of this title.

Credit or refund, see section 6511 of this title.

Medical, dental, etc., expenses, see section 213 of this title.

Rate of tax, see section 2 of this title.

Self-employment income of spouse, computation of in joint returns, see section 6017 of this title.

Time and place for paying tax shown on return, see section 6151 of this title.

Time for filing return, see section 6072 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1. 51, 121, 151, 165, 179, 213, 1244, 6012, 6017, 6032, 6072, 6653 of this title.

§ 6014. Income tax return—Tax not computed by taxpayer.

(a) Election by taxpayer.

An individual entitled to elect to pay the tax imposed by section 3 whose gross income is less than $10,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section and shall constitute an election to pay the tax imposed by section 3. In such case the tax shall be computed by the Secretary or his delegate who shall mail to the taxpayer a notice stating the amount determined as payable. In determining the amount payable, the credit against such tax provided for by section 37 shall not be allowed.

(b) Regulations.

The Secretary or his delegate shall prescribe regulations for carrying out this section, and such regulations may provide for the application of the rules of this section—

(1) to cases where the gross income includes items other than those enumerated by subsection (a),

(2) to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100,

(3) to cases where the gross income is $10,000 or more,

(4) to cases where the taxpayer is entitled to the credit provided by section 37 (relating to retirement income credit), or

(5) to cases where the taxpayer does not elect the standard deduction.

Such regulations shall provide for the application of this section in the case of husband and wife, including provisions determining when a joint return under this section may be permitted or required, whether the liability shall be joint and several, and whether one spouse may make return under this section and the other without regard to this section. (Aug. 16, 1954, ch. 736, 68A Stat. 736; Feb. 26, 1964, Pub. L. 88–272, title II, § 201(d)(14), title III, § 301(b)(2), 78 Stat. 32, 140; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(d)(1), title § 942(a), 83 Stat. 684, 726.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 803(d)(1), raised the individual gross income limit of $5,000 to $10,000 for exercising the option to pay the tax under section 3 of this title, and struck out provisions relating to heads of household, surviving spouses and married individuals filing separate returns.

Subsec. (b). Pub. L. 91–172, § 942(a), substituted provisions authorizing the Secretary to promulgate regulations to compute the tax in cases where the gross income is $10,000 or more, where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100, where the taxpayer is entitled to a credit under section 37 of this title, or where the taxpayer does not elect the standard deduction, for provisions auhorizing the computation of the tax in cases where the cross income is $5,000 but not more than $5,200, or where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100, but not more than $200.

1964—Subsec. (a). Pub. L. 88–272 deleted "34 or" preceding "37 shall not be allowed", and inserted "In the case of a married individual filing a separate return and electing the benefits of this subsection, neither Table V in section 3(a) nor Table V in section 3(b) shall apply."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a) by section 803(d)(1) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

Section 942(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [which amended subsec. (b) of this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of subsec. (a) by section 201(d)(14) of Pub. L. 88–272, which deleted "34 or" preceding "37 shall not be allowed," applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 35 of this title.

Amendment of subsec. (a) of section 301(b)(2) of Pub. L. 88–272 applicable, except for purpose of section 21, to taxable years beginning after Dec. 31, 1963, see section 301(c) of Pub. L. 88–272, set out as a note under section 3 of this title.

CROSS REFERENCES

Definition of deficiency, see section 6211 of this title.

Time for paying tax not computed by taxpayer, see section 6151 (b) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 37, 6151, 6211 of this title.

§ 6015. Declaration of estimated income tax by individuals.

(a) Requirement of declaration.

Except as otherwise provided in subsection (i), every individual shall make a declaration of his estimated tax for the taxable year if—

(1) the gross income for the taxable year can reasonably be expected to exceed—

(A) $5,000, in the case of—

(i) a single individual other than a head of a household (as defined in section 2(b)) or a surviving spouse (as defined in section 2 (a));

(ii) a married individual not entitled under subsection (b) to file a joint declaration with his spouse; or

(iii) a married individual entitled under subsection (b) to file a joint declaration with his spouse, but only if the aggregate gross income of such individual and his spouse for the taxable year can reasonably be expected to exceed $10,000; or

(B) $10,000, in the case of—

(i) a head of a household (as defined in section 2(b)); or

(ii) a surviving spouse (as defined in section 2(a)); or

(2) the gross income can reasonably be expected to include more than $200 from sources other than wages (as defined in section 3401(a)).

Notwithstanding the provisions of this subsection, no declaration is required if the estimated tax (as defined in subsection (c)) can reasonably be expected to be less than $40.

(b) Joint declaration by husband and wife.

In the case of a husband and wife, a single declaration under this section may be made by them

jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident alien, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(c) Estimated tax.

For purposes of this title, in the case of an individual, the term "estimated tax" means—

(1) the amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year (other than the tax imposed by section 56), plus

(2) the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

(3) the amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

(d) Contents of declaration.

The declaration shall contain such pertinent information as the Secretary or his delegate may by forms or regulations prescribe.

(e) Amendment of declaration.

An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary or his delegate.

(f) Return as declaration or amendment.

If on or before January 31 (or March 1, in the case of an individual referred to in section 6073 (b), relating to income from farming or fishing) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Secretary or his delegate—

(1) if the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(2) if the tax shown on the return (reduced by the sum of the credits against tax provided by part IV of subchapter A of chapter 1) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by subsection (e) to be filed on or before January 15.

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the 15th or last day of the months specified in this subsection, the 15th or last day of the months which correspond thereto.

(g) Short taxable years.

An individual with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Secretary or his delegate.

(h) Estates and trusts.

The provisions of this section shall not apply to an estate or trust.

(i) Nonresident alien individuals.

No declaration shall be required to be made under this section by a nonresident alien individual unless—

(1) withholding under chapter 24 is made applicable to the wages, as defined in section 3401(a), of such individual,

(2) such individual has income (other than compensation for personal services subject to deduction and withholding under section 1441) which is effectively connected with the conduct of a trade or business within the United States, or

(3) such individual is a resident of Puerto Rico during the entire taxable year.

(j) Applicability.

This section shall be applicable only with respect to taxable years beginning after December 31, 1954; and sections 58, 59, and 60 of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955. (Aug. 16, 1954, ch. 736, 68A Stat. 737; Sept. 2, 1958, Pub. L. 85–866, title I, § 74, 72 Stat. 1660; Sept. 14, 1960, Pub. L. 86–779, § 5(a), 74 Stat. 1000; Sept. 25, 1962, Pub. L. 87–682, § 1(a)(1), 76 Stat. 575; Mar. 15, 1966, Pub. L. 89–368, title I, § 102(a), 80 Stat. 62; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(j), 80 Stat. 1554; Dec. 30, 1969, Pub. L. 91–172, title III, § 301(b)(12), title VIII, § 803(d)(7), title IX, § 944(a), 83 Stat. 586, 684, 729.)

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91–172, § 803(d)(7), substituted "section 2(b)" for "section 1(b)(2)" in cl. (i) of subpar. (A) and cl. (i) of subpar. (B) and "section 2(a)" for "section 2(b)" in cl. (i) of subpar. (A) and cl. (ii) of subpar. (B).

Subsec. (c)(1). Pub. L. 91–172, § 301(b)(12), inserted "(other than the tax imposed by section 56)" after "taxable year".

Subsec. (f). Pub. L. 91–172, § 944(a), substituted "March 1" for "February 15".

1966—Subsec. (a). Pub. L. 89–809, § 103(j)(1), substituted "Except as otherwise provided in subsection (i), every individual shall make a declaration of his estimated tax for the taxable year if" for "Every individual (other than a nonresident alien with respect to whose wages, as defined in section 3401(a), withholding under chapter 24 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall make a declaration of his estimated tax for the taxable year if" in the material preceding par. (1).

Subsec. (c). Pub. L. 89–368 expanded the definition of "estimated tax" to include the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year.

Subsec. (i). Pub. L. 89–809, § 103(j)(2), (3), added subsec. (i), and redesignated former subsec. (i) as (j).

Subsec. (j). Pub. L. 89–809, § 103(j)(2), redesignated former subsec. (i) as (j).

1962—Subsec. (f). Pub. L. 87–682 inserted "or fishing" following "from farming."

1960—Subsec. (a). Pub. L. 86–779 provided that no declaration is to be required if the estimated tax can reasonably be expected to be less than $40, eliminated the gross income test of $400 plus $600 times the number of exemptions, and increased from $100 to $200 the minimum gross income which can reasonably be expected to be received from sources other than wages without becoming liable to file a declaration.

1958—Subsec. (f). Pub. L. 85–866 provided that, in the case of a taxpayer on a fiscal-year basis, the months which correspond to those specified in the subsection should be substituted therefor.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a)(1) by section 803(d)(7) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out, as a note under section 1 of this title.

Amendment of subsec. (c)(1) by section 301(b)(12) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

Section 944(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall apply with respect to taxable years beginning after December 31, 1968."

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Amendment of subsec. (c) by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–682 provided that: "The amendments made by the first section of this Act [to this section, and sections 6073, 6153 and 6654 of this title] shall apply only with respect to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 5(b) of Pub. L. 86–779 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply with respect to taxable years beginning after December 31, 1960."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (f) of this section effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

DECLARATION OF ESTIMATED TAX

With respect to taxable years beginning before Dec. 30, 1969, if a taxpayer is required to make a declaration, or to pay any amount of estimated tax by reason of amendments made by Pub. L. 91–172, such amount shall be paid ratably on each of the remaining installment dates for the taxable year beginning with the first installment date on or after Dec. 30, 1969; as to any declaration or payment of estimated tax before the first installment date, applicability of this section, and sections 6154, 6654, and 6655 of this title without regard to amendments made by Pub. L. 91–172, see section 946(b) of Pub. L. 91–172, set out as a note under section 6153 of this title.

TAX SURCHARGE EXTENSION; DECLARATIONS OF ESTIMATED TAX

Requirement of making a declaration or amended declaration or amended declaration of estimated tax or of payment of any amount or additional amount of estimated tax by reason of amendment of sections 51(a)(1)(A), (B), (2)(A) and 963(b) of this title as calling for payment of such amount or additional amount ratably on or before each of remaining installment dates for taxable year beginning with first installment date on or after the 30th day after Aug. 7, 1969; application of this section without regard to such amendment with respect to any declaration or payment of estimated tax before such first installment date; and definition of "installment date", see section 5(c) of Pub. L. 91–53, set out as an Effective Date of 1969 Amendment note under section 51 of this title.

CROSS REFERENCES

Installment payments of estimated income tax by individuals, see section 6153 of this title.

Time for filing declarations of estimated income tax by individuals, see section 6073 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6012, 6020, 6073, 6153, 6151, 6651, 7203, 7701 of this title.

§ 6016. Repealed. Pub. L. 90–364, title I, § 103(a), June 28, 1968, 82 Stat. 260.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 738; Feb. 26, 1964, Pub. L. 88–272, title I, § 122(d), 78 Stat. 29, Nov. 13, 1966, Pub. L. 89–809, title I, § 104(1), 80 Stat. 1563, provided for the declaration of estimated income tax by corporations.

EFFECTIVE DATE OF REPEAL

Repeal of section effective with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90–364, set out as a note under section 6154 of this title.

§ 6017. Self-employment tax returns.

Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse. (Aug. 16, 1954, ch. 736, 68A Stat. 739.)

CROSS REFERENCES

Time for filing income tax returns, see section 6072 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6072 of this title.

SUBPART C.—ESTATE AND GIFT TAX RETURNS

Sec.
6018. Estate tax returns.
6019. Gift tax returns.

§ 6018. Estate tax returns.

(a) Returns by executor.

(1) Citizens or residents.

In all cases where the gross estate at the death of a citizen or resident exceeds $60,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(2) Nonresidents not citizens of the United States.

In the case of the estate of every nonresident not a citizen of the United States if that part of the gross estate which is situated in the United States exceeds $30,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(b) Returns by beneficiaries.

If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Secretary or his delegate such person shall in like manner make a return as to such part of the gross estate. (Aug. 16, 1954, ch. 736, 68A Stat. 739; Nov. 13, 1966, Pub. L. 89–809, title I, § 108(g), 80 Stat. 1574.)

AMENDMENTS

1966—Subsec. (a)(2). Pub. L. 89–809 substituted "$30,000" for "$2,000".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

CROSS REFERENCES

Extension of time for filing returns, see section 6081 (a) of this title.

Failure to produce records, penalty for, see section 7269 of this title.

Place for filing estate tax returns, see section 6091 (b) (3) of this title.

Time and place for paying tax shown on returns, see section 6151 of this title.

Time for filing estate tax return, see section 6075 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2011, 2014, 2106, 2108, 6075, 6091, 7269 of this title.

§ 6019. Gift tax returns.

(a) In general.

Any individual who in any calendar quarter makes any transfers by gift (other than transfers which under section 2503(b) are not to be included in the total amount of gifts for such quarter and other than qualified charitable transfers) shall make a return for such quarter with respect to the gift tax imposed by subtitle B.

(b) Qualified charitable transfers.

(1) Return requirement.

A return shall be made of any qualified charitable transfer—

(A) for the first calendar quarter, in the calendar year in which the transfer is made, for which a return is required to be filed under subsection (a), or

(B) if no return is required to be filed under subparagraph (A), for the fourth calendar quarter in the calendar year in which such transfer is made.

A return made pursuant to the provisions of this paragraph shall be deemed to be a return with respect to any transfer reported as a qualified charitable transfer for the calendar quarter in which such transfer was made.

(2) Definition of qualified charitable transfer.

For purposes of this section, the term "qualified charitable transfer" means a transfer by gift with respect to which a deduction is allowable under section 2522 in an amount equal to the amount transferred.

(c) Tenancy by the entirety.

For provisions relating to requirement of return in the case of election as to the treatment of gift by creation of tenancy by the entirety, see section 2515 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 739; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(d)(3), 84 Stat. 1841.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-614 substituted "Any individual who in any calendar quarter makes any transfers by gift (other than transfers which under section 2503(b) are not to be included in the total amount of gifts for such quarter and other than qualified charitable transfers) shall make a return for such quarter with respect to the gift tax imposed by subtitle B" for "Any individual who in any calendar year makes any transfers by gift (except those which under section 2503(b) are not to be included in the total amount of gifts for such year) shall make a return with respect to the gift tax imposed by subtitle B".

Subsec. (b). Pub. L. 91-614 added subsec. (b). Former subsec. (b) was redesignated subsec. (c).

Subsec (c). Pub. L. 91-614 redesignated former subsec. (b) as subsec. (c).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Extension of time for filing returns, see section 6081 (a) of this title.

Place for filing returns generally, see section 6091 of this title.

Time and place for paying tax shown on return, see section 6151 of this title.

Time for filing gift tax return, see section 6075 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6075 of this title.

SUBPART D.—MISCELLANEOUS PROVISIONS

Sec.
6020. Returns prepared for or executed by Secretary.
6021. Listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.

§ 6020. Returns prepared for or executed by Secretary.

(a) Preparation of return by Secretary.

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary or his delegate may prepare such return, which, being signed by such person, may be received by the Secretary or his delegate as the return of such person.

(b) Execution of return by Secretary.

(1) Authority of Secretary to execute return.

If any person fails to make any return (other than a declaration of estimated tax required under section 6015) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or his delegate shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns.

Any return so made and subscribed by the Secretary or his delegate shall be prima facie good and sufficient for all legal purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 740; June 28, 1968, Pub. L. 90-364, title I, § 103(e)(3), 82 Stat. 264.)

AMENDMENTS

1968—Subsec. (b)(1). Pub. L. 90-364 struck out reference to section 6016.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90-364, set out as a note under section 6154 of this title.

CROSS REFERENCES

Assessment authority, see section 6201 of this title.

Limitations on assessment and collection, see section 6501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6501 of this title.

§ 6021. Listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.

Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the Secretary or his delegate, as required by law or by regulations prescribed pursuant to law, the Secretary or his delegate shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary and make lists of the same, according to the forms prescribed. Such lists, being subscribed by the Secretary or his delegate, shall be sufficient lists of such articles for all purposes. (Aug. 16, 1954, ch. 736, 68A Stat. 740.)

PART III.—INFORMATION RETURNS

Subpart

A. Information concerning persons subject to special provisions.
B. Information concerning transactions with other persons.
C. Information regarding wages paid employees.
D. Information concerning private foundations.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(j)(64), Dec. 30, 1969, 82 Stat. 533, added item D.

SUBPART A.—INFORMATION CONCERNING PERSONS SUBJECT TO SPECIAL PROVISIONS

Sec.
6031. Return of partnership income.
6032. Returns of banks with respect to common trust funds.
6033. Returns by exempt organizations.
6034. Returns by trusts claiming charitable deductions under section 642(c).[1]
6035. Returns of officers, directors, and shareholders of foreign personal holding companies.
6036. Notice of qualification as executor or receiver.
6037. Return of electing small business corporation.
6038. Information with respect to certain foreign corporations.
6039. Information required in connection with certain options.
6040. Cross references.

AMENDMENTS

1964—Pub. L. 88-272, title II, § 221(d)(2), Feb. 26, 1964, 78 Stat. 75, redesignated item 6039 as 6040, and added item 6039.

1960—Pub. L. 86-780, § 6(b)(1), Sept. 14, 1960, 74 Stat. 1015, added item 6038, and redesignated former item 6038 as 6039.

1958—Pub. L. 85-866, title I, § 64(d)(4), Sept. 2, 1958, 72 Stat. 1657 added item 6037, and redesignated former item 6037 as 6038.

§ 6031. Return of partnership income.

Every partnership (as defined in section 761 (a)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. (Aug. 16, 1954, ch. 736, 68A Stat. 741.)

CROSS REFERENCES

Signing of partnership return, see section 6063 of this title.

Time for filing income tax returns, see section 6072 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6063, 6072 of this title.

§ 6032. Returns of banks with respect to common trust funds.

Every bank (as defined in section 581) maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by subtitle A, and shall include in the return the names and addresses of the participants who would be entitled to share in the taxable income if distributed and the amount of the proportionate share of each participant. The return shall be executed in the same manner as a return made by a corporation pursuant to the requirements of sections 6012 and 6062. (Aug. 16, 1954, ch. 736, 68A Stat. 741.)

§ 6033. Returns by exempt organizations.

(a) Organizations required to file.

(1) In general.

Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary or his delegate may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe; except that, in the discretion of the Secretary or his delegate, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

(2) Exceptions from filing.

(A) Mandatory exceptions.

Paragraph (1) shall not apply to—

(i) churches, their integrated auxiliaries, and conventions or associations of churches,

(ii) any organization (other than a private foundation, as defined in section 509(a)) described in subparagraph (C), the gross receipts of which in each taxable year are normally not more than $5,000, or

(iii) the exclusively religious activities of any religious order.

(B) Discretionary exceptions.

The Secretary or his delegate may relieve any organization required under paragraph (1) to file an information return from filing such a return where he determines that such filing is not

[1] Section catchline amended without corresponding amendment of subpart analysis.

necessary to the efficient administration of the internal revenue laws.

(C) Certain organizations.

The organizations referred to in subparagraph (A)(ii) are—

(i) a religious organization described in section 501(c)(3);

(ii) an educational organization described in section 170(b)(1)(A)(ii);

(iii) a charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;

(iv) an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i);

(v) an organization described in section 501(c)(8); and

(vi) an organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly-owned subsidiary of such a corporation.

(b) Certain organizations described in section 501 (c)(3).

Every organization described in section 501 (c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) its gross income for the year,

(2) its expenses attributable to such income and incurred within the year,

(3) its disbursements within the year for the purposes for which it is exempt,,

(4) a balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,

(5) the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) the names and addresses of its foundation managers (within the meaning of section 4946(b)(1)) and highly compensated employees, and

(7) the compensation and other payments made during the year to each individual described in paragraph (6).

(c) Cross reference.

For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

For reporting requirements as to certain liquidations, dissolutions, terminations, and contractions, see section 6043(b).

For provisions relating to penalties for failure to file a return required by this section, see section 6652(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 741; Sept. 2, 1958, Pub. L. 85-866, title I, § 75(b), 72 Stat. 1661; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(d)(1), (2), (j)(30), (31), 83 Stat. 519, 520, 529.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 101(d)(1), added churches, their integrated auxiliaries, conventions or associations of churches, religious activities of religious orders, and organizations that normally have gross yearly receipts of not more than $5,000, to the list of exempt organizations that were excepted from filing information returns, gave the Secretary or his delegate discretion to so except any such organization, and shortened the list of educational organizations so excepted.

Subsec. (b)(3). Pub. L. 91-172, § 101(d)(2)(A), struck out "out of income" following "its disbursements".

Subsec. (b)(4). Pub. L. 91-172, § 101(d)(2)(B), (j)(30), redesignated former subsec. (b)(7) as subsec. (b)(4), and in subsec. (b)(4) as so redesignated, struck out "and" at the end thereof. Former subsec. (b)(4), making the accumulation of income within the year as an item of information to be furnished, was stricken.

Subsec. (b)(5). Pub. L. 91-172, § 101(d)(2)(B), (C), substituted the total of contributions and gifts received during the year and the contributors' names and addresses for the aggregate accumulation of income at the beginning of the year as the item of information to be furnished.

Subsec. (b)(6). Pub. L. 91-172, § 101(d)(2)(B), (C), substituted the names and addresses of foundation managers for disbursements out of principal in the current and prior years as the item of information to be furnished.

Subsec. (b)(7). Pub. L. 91-172, § 101(d)(2)(B), (C), added subsec. (b)(7). Former subsec. (b)(7) was redesignated subsec. (b)(4).

Subsec. (b)(8). Pub. L. 91-172, § 101(d)(2)(B), struck out former subsec. (b)(8) which made the total of the contributions and gifts received during the year as the item of information to be furnished.

Subsec. (c). Pub. L. 91-172, § 101(j)(31), inserted cross references to section 6043(b) and 6652(d).

1958—Subsec. (b)(8). Pub. L. 85-866 added subsec. (b)(8).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866, which added subsec. (b)(8), applicable to taxable years ending on or after Dec. 31, 1958, see note set out under section 6104 of this title.

CROSS REFERENCES

Limitations on assessment and collection, see section 6501 of this title.

Publicity of information, see section 6104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6056, 6104, 6501, 6652 of this title.

§ 6034. Returns by trusts described in section 4947(a) or claiming charitable deductions under section 642(c).

(a) General rule.

Every trust described in section 4947(a) or claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary or his delegate may by forms or regulations prescribe, including—

(1) the amount of the charitable, etc., deduction taken under section 642(c) within such year,

(2) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642 (c) have been taken in prior years,

(3) the amount for which charitable, etc., deductions have been taken in prior years but which

has not been paid out at the beginning of such year,

(4) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

(5) the total income of the trust within such year and the expenses attributable thereto, and

(6) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

(b) Exception.

This section shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.

(c) Cross reference.

For provisions relating to penalties for failure to file a return required by this section, see section 6652(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 742; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(32)–(34), 83 Stat. 529.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 101(j)(32), (33), inserted, in the section catchline and in subsec. (a), reference to trusts described in section 4947(a), and, in par. (1), struck out provisions requiring the separate showing of the amount of deduction paid out, and the amount permanently set aside for charitable, etc., purposes.

Subsec. (c). Pub. L. 91–172, § 101(j)(34), added subsec. (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6104, 6652 of this title.

§ 6035. Returns of officers, directors, and shareholders of foreign personal holding companies.

(a) Officers and directors.

(1) Monthly returns.

On the 15th day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year in which such month occurs, was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the individuals who on such day are officers or directors of the corporation.

(2) Annual returns.

On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552), each individual who on such 60th day is an officer or director of the corporation shall make a return setting forth—

(A) in complete detail the gross income, deductions and credits, taxable income, and undistributed foreign personal holding company income of such foreign personal holding company for such taxable year; and

(B) the same information with respect to such taxable year as is required in paragraph (1), except that if all the required returns with respect to such year have been filed under paragraph (1), no information under this subparagraph need be set forth in the return filed under this paragraph.

(b) Shareholders.

(1) Monthly returns.

On the 15th day of each month each United States shareholder, by or for whom 50 percent or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including, in the case of an individual, stock owned by the members of his family as defined in section 544 (a) (2)), if such foreign corporation with respect to its taxable year preceding the taxable year in which such month occurs was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the persons who on such day are United States shareholders.

(2) Annual returns.

On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552) each United States shareholder by or for whom on such 60th day 50 percent or more in value of the outstanding stock of such company is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544 (a) (2)) shall make a return setting forth the same information with respect to such taxable year as is required in paragraph (1), except that, if all the required returns with respect to such year have been made under paragraph (1), no return shall be required under this paragraph.

(Aug. 16, 1954, ch. 736, 68A Stat. 743.)

CROSS REFERENCES

Publicity of information, see section 6104 of this title.

§ 6036. Notice of qualification as executor or receiver.

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, and every executor (as defined in section 2203), shall give notice of his qualification as such to the Secretary or his delegate in such manner and at such time as may be required by regulations of the Secretary or his delegate. The Secretary or his delegate may by regulation provide such exemptions from the requirements of this section as the Secretary or his delegate deems proper. (Aug. 16, 1954, ch. 736, 68A Stat. 744.)

CROSS REFERENCES

Bankruptcy and receiverships, see sections 6871—6873 of this title.

Failure to produce records, penalty for, see section 7269 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7269 of this title.

§ 6037. Return of electing small business corporation.

Every electing small business corporation (as defined in section 1371 (a) (2)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, and such other information, for the purpose of carrying out the provisions of subchapter S of chapter 1, as the Secretary or his delegate may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012. (Added Pub. L. 85-866, title I, § 64 (c), Sept. 2, 1958, 72 Stat. 1656.)

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64 (e) of Pub. L. 85-866, set out as a note under section 172 of this title.

§ 6038. Information with respect to certain foreign corporations.

(a) Requirement.

(1) In general.

Every United States person shall furnish, with respect to any foreign corporation which such person controls (within the meaning of subsection (d)(1)), such information as the Secretary or his delegate may prescribe by regulations relating to—

(A) the name, the principal place of business, and the nature of business of such foreign corporation, and the country under whose laws incorporated;

(B) the accumulated profits (as defined in section 902(c)) of such foreign corporation, including the items of income (whether or not included in gross income under chapter 1), deductions (whether or not allowed in computing taxable income under chapter 1), and any other items taken into account in computing such accumulated profits;

(C) a balance sheet for such foreign corporation listing assets, liabilities, and capital;

(D) transactions between such foreign corporation and—

(i) such person,

(ii) any other corporation which such person controls, and

(iii) any United States person owning, at the time the transaction takes place, 10 percent or more of the value of any class of stock outstanding of such foreign corporation; and

(E) a description of the various classes of stock outstanding, and a list showing the name and address of, and number of shares held by, each United States person who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of stock outstanding of such foreign corporation.

The Secretary or his delegate may also require the furnishing of any other information which is similar or related in nature to that specified in the preceding sentence.

(2) Period for which information is to be furnished, etc.

The information required under paragraph (1) shall be furnished for the annual accounting period of the foreign corporation ending with or within the United States person's taxable year. The information so required shall be furnished at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) Limitation.

No information shall be required to be furnished under this subsection with respect to any foreign corporation for any annual accounting period unless such information was required to be furnished under regulations in effect on the first day of such annual accounting period.

(b) Effect of failure to furnish information.

(1) In general.

If a United States person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign corporation required under paragraph (1) of subsection (a), then—

(A) in applying section 901 (relating to taxes of foreign countries and possessions of the United States) to such United States person for the taxable year, the amount of taxes (other than taxes reduced under subparagraph (B)) paid or deemed paid (other than those deemed paid under section 904(d)) to any foreign country or possession of the United States for the taxable year shall be reduced by 10 percent, and

(B) in applying sections 902 (relating to foreign tax credit for corporate stockholder in foreign corporation) and 960 (relating to special rules for foreign tax credit) to any such United States person which is a corporation (or to any person who acquires from any other person any portion of the interest of such other person in any such foreign corporation, but only to the

extent of such portion) for any taxable year, the amount of taxes pair or deemed paid by each foreign corporation with respect to which such person is required to furnish information during the annual accounting period or periods with respect to which such information is required under paragraph (2) of subsection (a) shall be reduced by 10 percent.

If such failure continues 90 days or more after notice by the Secretary or his delegate to the United States person, then the amount of the reduction under this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure to furnish information continues after the expiration of such 90-day period.

(2) Limitation.

The amount of the reduction under paragraph (1) for each failure to furnish information with respect to a foreign corporation required under subsection (a)(1) shall not exceed whichever of the following amounts is the greater:

(A) $10,000, or

(B) the income of the foreign corporation for its annual accounting period with respect to which the failure occurs.

(3) Special rules.

(A) No taxes shall be reduced under this subsection more than once for the same failure.

(B) For purposes of this subsection, the time prescribed under paragraph (2) of subsection (a) to furnish information (and the beginning of the 90-day period after notice by the Secretary) shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the Secretary or his delegate) reasonable cause existed for failure to furnish such information.

(C) In applying subsections (a) and (b) of section 902, and in applying subsection (a) of section 960, the reduction provided by this subsection shall not apply for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes.

(c) Two or more persons required to furnish information with respect to same foreign corporation.

Where, but for this subsection, two or more United States persons would be required to furnish information under subsection (a) with respect to the same foreign corporation for the same period, the Secretary or his delegate may by regulations provide that such information shall be required only from one person. To the extent practicable, the determination of which person shall furnish the information shall be made on the basis of actual ownership of stock.

(d) Definitions.

For purposes of this section—

(1) Control.

A person is in control of a corporation if such person owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of a corporation. If a person is in control (within the meaning of the preceding sentence) of a corporation which in turn owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote of another corporation, or owns more than 50 percent of the total value of the shares of all classes of stock of another corporation, then such person shall be treated as in control of such other corporation. For purposes of this paragraph, the rules prescribed by section 318(a) for determining ownership of stock shall apply; except that—

(A) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person, and

(B) in applying subparagraph (C) of section 318(a)(2), the phrase "10 percent" shall be substituted for the phrase "50 percent" used in subparagraph (C).

(2) Annual accounting period.

The annual accounting period of a foreign corporation is the annual period on the basis of which such corporation regularly computes its income in keeping its books.

(e) Cross references.

(1) For provisions relating to penalties for violations of this section, see section 7203.

(2) For definition of the term "United States person", see section 7701(a)(30).

(Added Pub. L. 86–780, § 6(a), Sept. 14, 1960, 74 Stat. 1014, and amended Pub. L. 87–834, § 20(a), Oct. 16, 1962, 76 Stat. 1059; Pub. L. 88–554, § 4(b)(6), Aug. 31, 1964, 78 Stat. 764.)

AMENDMENTS

1964—Subsec. (d)(1). Pub. L. 88–554 substituted "subparagraphs (A), (B), and (C) of section 318(a)(3)" for "the second sentence of subparagraphs (A) and (B), and clause (ii) of subparagraph (C), of section 318(a)(2)" in subpar. (A), and deleted "clause (i) of" following "in applying" in subpar. (B).

1962—Subsec. (a)(1). Pub. L. 87–834, among other changes, substituted in the opening provisions "Every United States person shall furnish" for "A domestic corporation shall furnish", in subpar. (D)(i) "such person" for "any foreign corporation controlled by the domestic corporation", in subpar. (D)(ii) "any other corporation which such person controls" for "any foreign subsidiary of a foreign corporation controlled by the domestic corporation", in subpar. (D)(iii) "any United States person owning, at the time the transaction takes place, 10 percent or more of the value of any class of stock outstanding of such foreign corporation" for "the domestic corporation or any shareholder of the domestic corporation owning at the time the transaction takes place 10 percent or more of the value of any class of stock outstanding of the domestic corporation", and in subpar. (E) "each United States person who is a shareholder" for "each citizen or resident of the United States and each domestic corporation who is a shareholder", and eliminated provisions throughout the subsection which related to foreign subsidiaries.

Subsec. (a)(2). Pub. L. 87–834 substituted provisions requiring the information to be furnished for the annual accounting period ending with or within the United States person's taxable year for provisions which required such information to be furnished for the annual accounting period ending with or within the domestic corporation's taxable year, and eliminated provisions which related to the furnishing of information in the case of foreign subsidiaries.

Subsec. (a)(3). Pub. L. 87–834 eliminated provisions which related to foreign subsidiaries.

Subsec. (b). Pub. L. 87-834, among other changes, substituted "If a United States person fails to furnish" for "If a domestic corporation fails to furnish" in the opening provisions, inserted provisions relating to reduction of taxes in applying sections 901 and 960 of this title, to the maximum amount of reduction under par. (1) for each failure to furnish information with respect to a foreign corporation required under subsec. (a)(1), and making the reduction provided by subsec. (b) inapplicable, in applying subsecs. (a) and (b) of section 902 and subsec. (a) of section 960, for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes, and eliminated provisions which related to the furnishing of information with respect to foreign subsidiaries.

Subsec. (c). Pub. L. 87-834 substituted provisions empowering the Secretary to provide for the furnishing of information by only one person where two or more persons would be required to furnish information under subsec. (a) with respect to the same foreign corporation for the same period for provisions which required a domestic corporation if at any time during its taxable year owned more than 50 percent of the voting stock of a foreign corporation to be deemed to be in control of such foreign corporation, and in the case of a foreign corporation if at any time during its annual accounting period owned more than 50 percent of the voting stock of another foreign corporation, that such other corporation shall be considered a foreign subsidiary of the corporation owning such stock. The provisions relating to control are now contained in subsec. (d) of this section.

Subsec. (d). Pub. L. 87-834 added par. (1) which was formerly covered in part by subsec. (c) of this section, designated existing provisions as par. (2), and eliminated from par. (2) provisions which related to the annual accounting period of a foreign subsidiary.

Subsec. (e). Pub. L. 87-834 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by section 4 of Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 20(e)(1) of Pub. L. 87-834 provided that: "The amendments made by subsection (a) [enacting this section] shall apply with respect to annual accounting periods of foreign corporations beginning after December 31, 1962."

EFFECTIVE DATE

Section 6(c) of Pub. L. 86-780 provided that: "The amendments made by subsection (a) [amending this this section and section 902(e) of this title] shall apply to taxable years of domestic corporations beginning after December 31, 1960, with respect to information relating to a foreign corporation or a foreign subsidiary described in section 6038(a) of the Internal Revenue Code of 1954 (as added by subsection (a)) [this section] for its annual accounting periods beginning after December 31, 1960."

§ 6039. Information required in connection with certain options.

(a) Requirement of reporting.

Every corporation—

(1) which in any calendar year transfers a share of stock to any person pursuant to such person's exercise of a qualified stock option or a restricted stock option, or

(2) Which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock—

(A) acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock), or

(B) acquired by the transferor pursuant to his exercise of a restricted stock option described in section 424(c)(1) (relating to options under which option price is between 85 percent and 95 percent of value of stock),

shall, for such calendar year, make a return at such time and in such manner, and setting forth such information, as the Secretary or his delegate may by regulations prescribe. For purposes of the preceding sentence, any option which a corporation treats as a qualified stock option, a restricted stock option, or an option granted under an employee stock purchase plan, shall be deemed to be such an option. A return is required by reason of a transfer described in paragraph (2) of a share only with respect to the first transfer of such share by the person who exercised the option.

(b) Statements to be furnished to persons with respect to whom information is furnished.

Every corporation making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement setting forth such information as the Secretary or his delegate may by regulations prescribe. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(c) Identification of stock.

Any corporation which transfers any share of stock pursuant to the exercise of an option described in subsection (a)(2) shall identify such stock in a manner adequate to carry out the purposes of this section.

(d) Cross references.

For definition of—

(1) The term "qualified stock option", see section 422(b).

(2) The term "employee stock purchase plan", see section 423(b).

(3) The term "restricted stock option", see section 424(b).

(Added Pub. L. 88-272, title II, § 221(b)(1), Feb. 26, 1964, 78 Stat. 73.)

EFFECTIVE DATE

Section applicable to stock transferred pursuant to options exercised on or after Jan. 1, 1964, see section 221(e) of Pub. L. 88-272, set out as a note under section 421 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6652, 6678 of this title.

§ 6040. Cross references.

(1) For the notice required of persons acting in a fiduciary capacity for taxpayers or for transferees, see sections 6212, 6901 (g), and 6903.

(2) For application by fiduciary for determination of tax and discharge from personal liability therefor, see section 2204.

(3) For the notice required of taxpayers for redetermination of taxes claimed as credits, see sections 905 (c) and 2016.

(4) For exemption certificates required to be furnished to employers by employees, see section 3402 (f) (2), (3), (4), and (5).

(5) For receipts, constituting information returns, required to be furnished to employees, see section 6051.

(6) Repealed. Pub. L. 89-44, title III, § 305(b), June 21, 1965, 79 Stat. 148.

(7) For information required with respect to the redemption of stamps, see section 6805.

(8) For the statement required to be filed by a corporation expecting a net operating loss carryback or unused excess profits credit carryback, see section 6164.

(9) For the application, which a taxpayer may file for a tentative carryback adjustment of income taxes, see section 6411.

(Aug. 16, 1954, ch. 736, 68A Stat. 744, § 6040, formerly § 6037, renumbered § 6038, Sept. 2, 1958, Pub. L. 85-866, title I, § 64(c), 72 Stat. 1656; renumbered § 6039, Sept. 14, 1960, Pub. L. 86-780, § 6(a), 74 Stat. 1014; renumbered § 6040, Feb. 26, 1964, Pub. L. 88-272, title II, § 221(b)(1), 78 Stat. 73; amended June 21, 1965, Pub. L. 89-44, title III, § 305(b), 79 Stat. 148; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(d)(2), 84 Stat. 1837.)

AMENDMENTS

1970—Par. (2). Pub. L. 91-614 substituted "fiduciary" for "executor".

1965—Pub. L. 89-44 struck out par. (6), which cross referred to section 4234 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Repeal of par. (6) applicable with respect to admissions, services, and uses after noon, December 31, 1965, see section 701(b)(1) of Pub. L. 89-44, set out as a note under section 4291 of this title.

SUBPART B.—INFORMATION CONCERNING TRANSACTIONS WITH OTHER PERSONS

Sec.
6041. Information at source.
6042. Returns regarding payments of dividends, and corporate earnings and profits.
6043. Return regarding corporate dissolution or liquidation.[1]
6044. Returns regarding payments of patronage dividends.
6045. Returns of brokers.
6046. Returns as to organization or reorganization of foreign corporations, and as to acquisitions of their stock.
6047. Information relating to certain trusts and annuity and bond purchase plans.
6048. Returns as to creation of or transfers to certain foreign trusts.
6049. Returns regarding payments of interest.
6050. Returns relating to certain transfers to exempt organizations.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 121(e)(2), Dec. 30, 1969, 83 Stat. 548, added item 6050.

1962—Pub. 87-834, §§ 7(i)(2), 19(g)(1), 20(d)(2), Oct. 16, 1962, 76 Stat. 989, 1058, 1063, substituted "payments of dividends and corporate earnings and profits" for "corporate dividends, earnings and profits" in item 6042, and "organization or reorganization of foreign corporations and as to acquisitions of their stock" for "creation or organization, or reorganization, of foreign corporations" in item 6046, inserted words "payments of" in item 6044, and added items 6048 and 6049.

Pub. L. 87-792, § 7(m)(2), Oct. 10, 1962, 76 Stat. 831, added item 6047.

1960—Pub. L. 86-780, § 7(b), Sept. 14, 1960, 74 Stat. 1016, substituted "Returns as to creation or organization, or reorganization, of foreign corporations" for "Returns as to formation or reorganization of foreign corporations," in item 6046.

§ 6041. Information at source.

(a) Payments of $600 or more.

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), or 6049(a)(1) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), 6045, 6049(a)(2), or 6049(a)(3)), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary or his delegate, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary or his delegate, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) Collection of foreign items.

In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) Repealed. Pub. L. 87-834, § 19(f)(2), Oct. 16, 1962, 76 Stat. 1058.

(d) Recipient to furnish name and address.

When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income. (Aug. 16, 1954, ch. 736, 68A Stat. 745; Oct. 16, 1962, Pub. L. 87-834, § 19(b), 76 Stat. 1058.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-834, § 19(f)(1), substituted "(other than payments to which section 6042(a)(1), 6044(a)(1), or 6049(a)(1) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), 6045, 6049(a)(2), or 6049(a)(3))" for "other than payments described in section 6042(1) or section 6045)."

Subsec. (c). Pub. L. 87-834, § 19(f)(2), repealed former (c) which related to returns of payments of interest by corporations.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (a) of this section and repeal of subsec. (c) of this section by Pub. L. 87-834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87-834, set out as a note under section 6042 of this title.

CROSS REFERENCES

Attempt to evade or defeat tax, punishment for, see section 7201 of this title.

Failure to file income tax return, additions to tax for, see section 6652 of this title.

Wilful failure to supply information, punishment for, see section 7203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6652 of this title.

[1] Section catchline amended without corresponding amendment of subpart analysis.

§ 6042. Returns regarding payments of dividends and corporate earnings and profits.

(a) Requirement of reporting.

(1) In general.

Every person—

(A) who makes payments of dividends aggregating $10 or more to any other person during any calendar year, or

(B) who receives payments of dividends as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the dividends so received,

shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) Returns required by the secretary.

Every person who makes payments of dividends aggregating less than $10 to any other person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments, and the name and address of the person to whom paid.

(b) Dividend defined.

(1) General rule.

For purposes of this section, the term "dividend" means—

(A) any distribution by a corporation which is a dividend (as defined in section 316); and

(B) any payment made by a stockbroker to any person as a substitute for a dividend (as so defined).

(2) Exceptions.

For purposes of this section, the term "dividend" does not include—

(A) to the extent provided in regulations prescribed by the Secretary or his delegate, any distribution or payment—

(i) by a foreign corporation, or

(ii) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

(B) any amount described in section 1373 (relating to undistributed taxable income of electing small business corporations).

(3) Special rule.

If the person making any payment described in subsection (a)(1) (A) or (B) is unable to determine the portion of such payment which is a dividend or is paid with respect to a dividend, he shall, for purposes of subsection (a)(1), treat the entire amount of such payment as a dividend or as an amount paid with respect to a dividend.

(c) Statements to be furnished to persons with respect to whom information is furnished.

Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the person making such return, and

(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than $10.

(d) Statements to be furnished by corporations to Secretary.

Every corporation shall, when required by the Secretary or his delegate—

(1) furnish to the Secretary or his delegate a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder;

(2) furnish to the Secretary or his delegate a statement of such facts as will enable him to determine the portion of the earnings and profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary or his delegate may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary or his delegate may specify; and

(3) furnish to the Secretary or his delegate a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

(Aug. 16, 1954, ch. 736, 68A Stat. 746; Oct. 16, 1962, Pub. L. 87-834, § 19(a), 76 Stat. 1053.)

AMENDMENTS

1962—Pub. L. 87-834 substituted "Returns regarding payments of dividends and corporate earnings and profits" for "Returns regarding corporate dividends, earnings, and profits" in the section catchline, added subsecs. (a)—(c), designated existing provisions of section as subsec. (d), and substituted in par. (1) of subsec. (d) "furnish to the Secretary or his delegate a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder" for "Make a return of its payments of dividends, stating the name and address of, the number of shares owned by, and the amount of dividends paid to, each shareholder."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 19(h) of Pub. L. 87-834 provided that:

"(1) **Dividends and interest.**—The amendments made by this section [adding sections 6049 and 6678 of this title and amending this section and sections 6041, 6044 and 6052 of this title] shall apply to payments of dividends and interest made on or after January 1, 1963.

"(2) **Patronage dividends.**—The amendments made by this section [adding sections 6049 and 6678 of this title and amending this section and sections 6041, 6044 and 6052 of this title] shall apply to payments of amounts described in section 6044(b) of the Internal Revenue Code of 1954 made on or after January 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after January 1, 1963."

CROSS REFERENCES

Failure to file income tax return, additions to tax for, see section 6652 of this title.

Wilful failure to supply information, punishment for, see section 7203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6041, 6652, 6678 of this title.

§ 6043. Returns regarding liquidation, dissolution, termination, or contraction.

(a) Corporations.

Every corporation shall—

(1) Within 30 days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, make a return setting forth the terms of such resolution or plan and such other information as the Secretary or his delegate shall by forms or regulations prescribe; and

(2) When required by the Secretary or his delegate, make a return regarding its distributions in liquidation, stating the name and address of, the number and class of shares owned by, and the amount paid to, each shareholder, or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to each shareholder.

(b) Exempt organizations.

Every organization which for any of its last 5 taxable years preceding its liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file such return and other information with respect to such liquidation, dissolution, termination, or substantial contraction as the Secretary or his delegate shall by forms or regulations prescribe; except that—

(1) no return shall be required under this subsection from churches, their integrated auxiliaries, conventions or associations of churches, or any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000, and

(2) the Secretary or his delegate may relieve any organization from such filing where he determines that such filing is not necessary to the efficient administration of the internal revenue laws or, with respect to an organization described in section 401(a), where the employer who established such organization files such a return.

(c) Cross reference.

For provisions relating to penalties for failure to file a return required by subsection (b), see section 6652(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 746; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(35), 83 Stat. 529.)

AMENDMENTS

1969—Pub. L. 91–172 inserted references to termination and contraction in the section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

CROSS REFERENCES

Partial liquidation defined, see section 346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 346, 6652 of this title.

§ 6044. Returns regarding payments of patronage dividends.

(a) Requirement of reporting.

(1) In general.

Except as otherwise provided in this section, every cooperative to which part I of subchapter T of chapter 1 applies, which makes payments of amounts described in subsection (b) aggregating $10 or more to any person during any calendar year, shall make a return according to the forms of regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) Returns required by the Secretary.

Every such cooperative which makes payments of amounts described in subsection (b) aggregating less than $10 to any person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Amounts subject to reporting.

(1) General rule.

Except as otherwise provided in this section, the amounts subject to reporting under subsection (a) are—

(A) the amount of any patronage dividend (as defined in section 1388(a)) which is paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation as defined in section 1388(d)),

(B) any amount described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions) which is paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) by an organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax),

(C) any amount described in section 1382(b)(2) (relating to redemption of nonqualified written notices of allocation) and, in the case of an organization described in section 1381(a)(1), any amount described in section 1382(c)(2)(B) (relating to redemption of nonqualified written notices of allocation paid with respect to earnings derived from sources other than patronage), and

(D) the amount of any per-unit retain allocation (as defined in section 1388(f)) which is paid in qualified per-unit retain certificates (as defined in section 1388(h)), and

(E) any amount described in section 1382(b)(4) (relating to redemption of nonqualified per-unit retain certificates).

(2) Exceptions.

The provisions of subsection (a) shall not apply, to the extent provided in regulations prescribed by the Secretary or his delegate, to any payment—

(A) by a foreign corporation, or

(B) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens.

(c) Exemption for certain consumer cooperatives.

A cooperative which the Secretary or his delegate determines is primarily engaged in selling at retail goods or services of a type that are generally for personal, living, or family use shall, upon application to the Secretary or his delegate, be granted exemption from the reporting requirements imposed by subsection (a). Application for exemption under this subsection shall be made in accordance with regulations prescribed by the Secretary or his delegate.

(d) Determination of amount paid.

For purposes of this section, in determining the amount of any payment—

(1) property (other than a qualified written notice of allocation or a qualified per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or a qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(e) Statements to be furnished to persons with respect to whom information is furnished.

Every cooperative making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the cooperative making such return, and

(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than $10. (Aug. 16, 1954, ch. 736, 68A Stat. 746; Oct. 16, 1962, Pub. L. 87-834, § 19(b), 76 Stat. 1054; Nov. 13, 1966, Pub. L. 89-809, title II, § 211(d), 80 Stat. 1584.)

AMENDMENTS

1966—Subsec. (b)(1). Pub. L. 89-809, § 211(d)(1), added subpars. (D) and (E).

Subsec. (d). Pub. L. 89-809, § 211(d)(2), inserted references to qualified per-unit retain certificates.

1962—Pub. L. 87-834 substituted "Returns regarding payments of patronage dividends" for "Returns regarding patronage dividends" in section catchline.

Subsec. (a). Pub. L. 87-834 amended subsection generally to read as above set forth. Prior to such amendment, subsection read as follows:

"(a) Payments of $100 or more.—Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall make a return showing—

"(1) The name and address of each patron to whom it has made such allocations amounting to $100 or more during the calendar year; and

"(2) The amount of such allocations to each patron."

Subsec. (b). Pub. L. 87-834 amended subsection generally to read as above set forth. Prior to such amendment, subsection read as follows:

"(b) Payments regardless of amount.—If required by the Secretary or his delegate, any such corporation shall make a return of all patronage dividends, rebates, or refunds made during the calendar year to its patrons."

Subsec. (c). Pub. L. 87-834 amended subsection generally to read as above set forth. Prior to such amendment, subsection read as follows:

"(c) Exceptions.—This section shall not apply in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c) (12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L of chapter 1."

Subsecs. (d), (e). Pub. L. 87-834 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by section 211 of Pub. L. 89-809 applicable with respect to calendar years after 1966, see section 211(e)(2) of Pub. L. 89-809, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in subsection (b) of this section made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87-834, set out as a note under section 6042 of this title.

CROSS REFERENCES

Failure to file income tax return, additions to tax for, see section 6652 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6041, 6652, 6678 of this title.

§ 6045. Returns of brokers.

Every person doing business as a broker shall, when required by the Secretary or his delegate, make a return, in accordance with such regulations as the Secretary or his delegate may prescribe, showing the names of customers for whom such person has transacted any business, with such details regarding the profits and losses and such other information as the Secretary or his delegate may by forms or regulations require with respect to each customer as will enable the Secretary or his delegate to determine the amount of such profits or losses. (Aug. 16, 1954, ch. 736, 68A Stat. 747.)

CROSS REFERENCES

Failure to file income tax return, additions to tax for, see section 6652 of this title.

Willful failure to supply information, punishment for, see section 7203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6041 of this title.

§ 6046. Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

(a) Requirement of return.

A return complying with the requirements of subsection (b) shall be made by—

(1) each United States citizen or resident who is on January 1, 1963, an officer or director of a

foreign corporation, 5 percent or more in value of the stock of which is owned by a United States person (as defined in section 7701(a)(30)), or who becomes such an officer or director at any time after such date,

(2) each United States person who on January 1, 1963, owns 5 percent or more in value of the stock of a foreign corporation, or who, at any time after such date—

(A) acquires stock which, when added to any stock owned on January 1, 1963, has a value equal to 5 percent or more of the value of the stock of a foreign corporation, or

(B) acquires an additional 5 percent or more in value of the stock of a foreign corporation, and

(3) each person who at any time after January 1, 1963, becomes a United States person while owning 5 percent or more in value of the stock of a foreign corporation.

(b) Form and contents of returns.

The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign corporation, such information as the Secretary or his delegate prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws, except that in the case of persons described only in subsection (a)(1) the information required shall be limited to the names and addresses of persons described in subsection (a)(2).

(c) Ownership of stock.

For purposes of subsection (a), stock owned directly or indirectly by a person (including, in the case of an individual, stock owned by members of his family) shall be taken into account. For purposes of the preceding sentence, the family of an individual shall be considered as including only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(d) Time for filing.

Any return required by subsection (a) shall be filed on or before the 90th day after the day on which, under any provision of subsection (a), the United States citizen, resident, or person becomes liable to file such return.

(e) Limitation.

(1) General rule.

Except as provided in paragraph (2), no information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations which have been in effect for at least 90 days before the date on which the United States citizen, resident, or person becomes liable to file a return required under subsection (a).

(2) Exception.

In the case of liability to file a return under subsection (a) arising on or after January 1, 1963, and before June 1, 1963—

(A) no information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations in effect on or before March 1, 1963, and

(B) if the date on which regulations become effective is later than the day on which such liability arose, any return required by subsection (a) shall (in lieu of the time prescribed by subsection (d)) be filed on or before the 90th day after such date.

(f) Cross reference.

For provisions relating to penalties for violations of this section, sections 6679 and 7203.

(Aug. 16, 1954, ch. 736, 68A Stat. 747; Sept. 14, 1960, Pub. L. 86-780, § 7(a), 74 Stat. 1016; Oct. 16, 1962, Pub. L. 87-834, § 20(b), 76 Stat. 1061.)

AMENDMENTS

1962—Pub. L. 87-834 substituted "organization or reorganization of foreign corporations and as to acquisitions of their stock" for "creation or organization, or reorganization, of foreign corporations" in section catchline.

Subsec. (a). Pub. L. 87-834 amended subsection generally to read as above set forth. Prior to such amendment, subsection read as follows:

"(a) General rule.—On or before the 90th day after the creation or organization, or reorganization, of any foreign corporation—

"(1) Each United States citizen or resident who was an officer or director of the corporation at any time within 60 days after the creation or organization, or reorganization thereof, and

"(2) Each United States shareholder of the corporation by or for whom, at any time within 60 days after the creation or organization or reorganization of the corporation, 5 percent or more in value of the stock of the corporation outstanding was owned directly or indirectly (including, in the case of an individual, stock owned by members of his family),

shall make a return in compliance with the provisions of subsection (b)."

Subsec. (b). Pub. L. 87-834 inserted the exception providing that in the case of persons described only in subsec. (a)(1) the information required shall be limited to the names and addresses of persons described in subsec. (a)(2).

Subsec. (c). Pub. L. 87-834 substituted provisions requiring, for purposes of subsec. (a), stock owned directly or indirectly by a person (including, in the case of an individual, stock owned by members of his family) to be taken into account for provisions which defined "United States shareholder."

Subsec. (d). Pub. L. 87-834 added subsec. (d) and redesignated former subsec. (d) as (f).

Subsec. (e). Pub. L. 87-834 added subsec. (e).

Subsec. (f). Pub. L. 87-834 redesignated former subsec. (d) as (f) and inserted a reference to section 6679 of this title.

1960—Catchline amended by Pub. L. 86-780 which substituted "Returns as to creation or organization, or reorganization, of foreign corporations" for "Returns as to formation or reorganization of foreign corporations."

Subsec. (a). Pub. L. 86-780 substituted requirement that returns relating to the creation, organization, or reorganization of foreign corporations be made by every citizen or resident of the United States who was an officer or director of the corporation at any time within 60 days after its creation, organization, or reorganization, and by every United States shareholder of the corporation owning at least 5 percent of its outstanding stock at any time within such 60 days for requirement that every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who advises as to the formation or reorganization of a foreign corporation, file a return in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

Subsec. (b). Pub. L. 86-780 reenacted the substance of subsec. (b), eliminating the phrase "to the full extent of the information within the possession or knowledge or under the control of the person required to make the return" preceding "such information."

Subsec. (c). Pub. L. 86-780 added the provisions defining United States shareholder and members of family and eliminated provision relating to the making

of a return by an attorney-at-law with respect to privileged communications.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 20(e)(2) of Pub. L. 87-834 provided that: "The amendments made by subsection (b) [to this section] shall take effect on January 1, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8 of Pub. L. 86-780 provided that: "The amendments made by section 7 [to this section] shall apply only with respect to foreign corporations created or organized, or reorganized, after the date of the enactment of this Act [Sept. 14, 1960]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6679 of this title.

§ 6047. Information relating to certain trusts and annuity and bond purchase plans.

(a) Trustees and insurance companies.

The trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) to which contributions have been paid under a plan on behalf of any owner-employee (as defined in section 401(c)(3)), and each insurance company or other person which is the issuer of a contract purchased by such a trust, or purchased under a plan described in section 403(a), contributions for which have been paid on behalf of any owner-employee, shall file such returns (in such form and at such times), keep such records, make such identification of contracts and funds (and accounts within such funds), and supply such information, as the Secretary or his delegate shall by forms or regulations prescribe.

(b) Owner-employees.

Every individual on whose behalf contributions have been paid as an owner-employee (as defined in section 401(c)(3))—

(1) to a trust described in section 401(a) which is exempt from tax under section 501(a), or

(2) to an insurance company or other person under a plan described in section 403(a),

shall furnish the trustee, insurance company, or other person, as the case may be, such information at such times and in such form and manner as the Secretary or his delegate shall prescribe by forms or regulations.

(c) Employees under qualified bond purchase plans.

Every individual in whose name a bond described in section 405(b)(1) is purchased by his employer under a qualified bond purchase plan described in section 401(a), or by a trust described in section 401(a) which is exempt from tax under section 501(a), shall furnish—

(1) to his employer or to such trust, and

(2) to the Secretary (or to such person as the Secretary may by regulations prescribe),

such information as the Secretary or his delegate shall by forms or regulations prescribe.

(d) Cross reference.

For criminal penalty for furnishing fraudulent information, see section 7207.

(Added Pub. L. 87-792, § 7(m)(1), Oct. 10, 1962, 76 Stat. 830.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7207 of this title.

§ 6048. Returns as to creation of or transfers to certain foreign trusts.

(a) General rule.

On or before the 90th day after—

(1) the creation of any foreign trust by a United States person, or

(2) the transfer of any money or property to a foreign trust by a United States person,

the grantor in the case of an inter vivos trust, the fiduciary of an estate in the case of a testamentary trust, or the transferor, as the case may be, shall make a return in compliance with the provisions of subsection (b).

(b) Form and contents of returns.

The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign trust, such information as the Secretary or his delegate prescribes by regulation as necessary for carrying out the provisions of the income tax laws.

(c) Cross references.

(1) For provisions relating to penalties for violations of this section, see sections 6677 and 7203.

(2) For definition of the term "foreign trust created by a United States person", see section 643(d).

(Added Pub. L. 87-834, § 7(f), Oct. 16, 1962, 76 Stat. 987.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6677 of this title.

§ 6049. Returns regarding payments of interest.

(a) Requirement of reporting.

(1) In general.

Every person—

(A) who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year,

(B) who receives payments of interest as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received, or

(C) which is a corporation that has outstanding any bond, debenture, note, or certificate or other evidence of indebtedness in registered form as to which there is during any calendar year an amount of original issue discount aggregating $10 or more includible in the gross income of any holder under section 1232(a)(3) without regard to subparagraph (B) thereof,

shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and such aggregate amount includible in the gross income of any holder and the name and address of the person to whom paid or such holder.

(2) Returns required by the Secretary.

Every person who makes payments of interest (as defined in subsection (b)) aggregating less than $10 to any other person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggre-

gate amount of such payments and the name and address of the person to whom paid.

(3) Other returns required by Secretary.

Every corporation making payments, regardless of amounts, of interest other than interest as defined in subsection (b) shall, when required by regulations prescribed by the Secretary or his delegate, make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(b) Interest defined.

(1) General rule.

For purposes of subsections (a)(1) and (2), the term "interest" means—

(A) interest on evidences of indebtedness (including bonds, debentures, notes, and certificates) issued by a corporation in registered form, and, to the extent provided in regulations prescribed by the Secretary or his delegate, interest on other evidences of indebtedness issued by a corporation of a type offered by corporations to the public;

(B) interest on deposits with persons carrying on the banking business;

(C) amounts (whether or not designated as interest) paid by a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares;

(D) interest on amounts held by an insurance company under an agreement to pay interest thereon; and

(E) interest on deposits with stockbrokers and dealers in securities.

(2) Exceptions.

For purposes of subsections (a) (1) and (2), the term "interest" does not include—

(A) interest on obligations described in section 103(a) (1) or (3) (relating to interest on certain governmental obligations);

(B) to the extent provided in regulations prescribed by the Secretary or his delegate, any amount paid by or to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

(C) any amount on which the person making payment is required to deduct and withhold a tax under section 1451 (relating to tax-free convenant[1] bonds), or would be so required but for section 1451(d) (relating to benefit of personal exemptions).

(c) Statements to be furnished to persons with respect to whom information is furnished.

Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the person making such return, and

(2) the aggregate amount of payments to, or the aggregate amount includible in the gross income of, the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to, or the aggregate amount includible in the gross income of, such person shown on the return made with respect to subparagraph (A), (B), or (C), as the case may be, of subsection (a)(1) is less than $10. (Added Pub. L. 87–834, § 19(c), Oct. 16, 1962, 76 Stat. 1055, and amended Pub. L. 91–172, title IV, § 413(c), (d), Dec. 30, 1969, 83 Stat. 611, 612.)

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91–172, § 413(c), added subpar. (C).

Subsec. (c). Pub. L. 91–172, § 413(d), further qualified the requirement to furnish statement by reference to the aggregate amount includible in the gross income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to bonds and other evidences of indebtedness issued after May 27, 1969 (other than evidences of indebtedness issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter), see section 413(e) of Pub. L. 91–172, set out as a note under section 1232 of this title.

EFFECTIVE DATE

Section applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as a note under section 6042 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6041, 6652, 6678 of this title.

§ 6050. Returns relating to certain transfers to exempt organizations.

(a) General rule.

On or before the 90th day after the transfer of income producing property, the transferor shall make a return in compliance with the provisions of subsection (b) if the transferee is known by the transferor to be an organization referred to in section 511(a) or (b) and the property (without regard to any lien) has a fair market value in excess of $50,000.

(b) Form and contents of returns.

The return required by subsection (a) shall be in such form and shall set forth, in respect of the transfer, such information as the Secretary or his delegate prescribes by regulations as necessary for carrying out the provisions of the income tax laws. (Added Pub. L. 91–172, title I, § 121(e)(1), Dec. 30, 1969, 83 Stat. 548.)

EFFECTIVE DATE

Section applicable with respect to transfer of property after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

[1] So in original.

SUBPART C.—INFORMATION REGARDING WAGES PAID EMPLOYEES

Sec.
6051. Receipts for employees.
6052. Returns regarding payment of wages in the form of group-term life insurance.
6053. Reporting of tips.

AMENDMENTS

1965—Pub. L. 89-97, title III, § 318(e)(2)(D), July 30, 1965, 79 Stat. 385, added item 6053.

1964—Pub. L. 88-272, title II, § 204(c)(3), Feb. 26, 1964, 78 Stat. 37, added item 6052.

§ 6051. Receipts for employees.

(a) Requirement.

Every person required to deduct and withhold from an employee a tax under section 3101, 3201, or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) the name of such person,

(2) the name of the employee (and his social security account number if wages as defined in section 3121 (a) have been paid),

(3) the total amount of wages as defined in section 3401 (a),

(4) the total amount deducted and withheld as tax under section 3402,

(5) the total amount of wages as defined in section 3121(a),

(6) the total amount deducted and withheld as tax under section 3101, and

(7) the total amount of compensation with respect to which the tax imposed by section 3201 was deducted, and

(8) the total amount deducted as tax under section 3201.

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) shall include only such tips as are included in statements furnished to the employer pursuant to section 6053(a).

(b) Special rule as to compensation of members of Armed Forces.

In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401 (a)).

(c) Additional requirements.

The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under sections 3101 and 3201 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

(d) Statements to constitute information returns.

A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 747; Aug. 1, 1956, ch. 837, title IV, § 412, 70 Stat. 879; Sept. 22, 1961, Pub. L. 87-293, title II, § 202(a)(4), 75 Stat. 626; July 30, 1965, Pub. L. 89-97, title I, § 107, title III, § 313(e)(1), 79 Stat. 337, 384; Jan. 2, 1968, Pub. L. 90-934; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 805(f)(2), 83 Stat. 708.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a), is classified to chapter 34 of Title 22, Foreign Relations and Intercourse.

Part A of title XVIII of the Social Security Act, referred to in subsec. (c), is classified to sections 1395c—1395i of Title 42, The Public Health and Welfare.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172 inserted "(determined without regard to subsection (n))" after "withhold a tax under section 3402" in the material preceding par. (1).

1968—Subsec. (a). Pub. L. 90-248, § 502(c)(1), included reference to section 3201 in the text prec. par. (1) and added pars. (7) and (8).

Subsec. (c). Pub. L. 90-248, § 502(c)(2), included reference to section 3201 in the second sentence.

1965—Subsec. (a). Pub. L. 89-97, § 313(e)(1), added final sentence providing for inclusion of tips received by an employee in the course of his employment.

Subsec. (c). Pub. L. 89-97, § 107, required the statements to show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

1961—Subsec. (a). Pub. L. 87-293 provided a special rule with respect to the information to be contained on employees' tax receipts in the case of remuneration paid to volunteers and volunteer leaders in the Peace Corps

1956—Subsec. (a). Act Aug. 1, 1956, § 412(a), added provisions prescribing contents of statement in the case of compensation paid for service as a member of the uniformed services.

Subsec. (b). Act Aug. 1, 1956, § 412(b), required the furnishing of a statement if during the calendar year any

amount was required to be withheld as tax under section 3101 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to wages paid after Apr. 30, 1970, see section 805(h) of Pub. L. 91–172, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 502(c)(3) of Pub. L. 90–248 provided that: "The amendments made by paragraphs (1) and (2) [to subsecs. (a) and (c) of the section] shall apply in respect of remuneration paid after December 31, 1967."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) of this section by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of this section by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Aug. 1, 1956, effective Jan. 1, 1957, see section 603 (a) of act Aug. 1, 1956.

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(4) of Pub. L. 87–293 repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Failure to file income tax return, additions to tax for, see section 6652 of this title.

Fraudulent statement or failure to furnish statement to employee, see sections 6674, 7204 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6652, 6674, 7204 of this title.

§ 6052. Returns regarding payment of wages in the form of group-term life insurance.

(a) Requirement of reporting.

Every employer who during any calendar year provides group-term life insurance on the life of an employee during part or all of such calendar year under a policy (or policies) carried directly or indirectly by such employer shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the cost of such insurance and the name and address of the employee on whose life such insurance is provided, but only to the extent that the cost of such insurance is includible in the employee's gross income under section 79(a). For purposes of this section, the extent to which the cost of group-term life insurance is includible in the employee's gross income under section 79(a) shall be determined as if the employer were the only employer paying such employee remuneration in the form of such insurance.

(b) Statements to be furnished to employees with respect to whom information is furnished.

Every employer making a return under subsection (a) shall furnish to each employee whose name is set forth in such return a written statement showing the cost of the group-term life insurance shown on such return. The written statement required under the preceding sentence shall be furnished to the employee on or before January 31 of the year following the calendar year for which the return under subsection (a) was made. (Added Pub. L. 88–272, title II, § 204(c)(1), Feb. 26, 1964, 78 Stat. 37.)

EFFECTIVE DATE

Section applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as a note under section 79 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79, 6652, 6678 of this title.

§ 6053. Reporting of tips.

(a) Reports by employees.

Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a)) or which are compensation (as defined in section 3231(e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary or his delegate.

(b) Statements furnished by employers.

If the tax imposed by section 3101 or section 3201 (as the case may be) with respect to tips reported by an employee pursuant to subsection (a) exceeds the tax which can be collected by the employer pursuant to section 3102 or section 3202 (as the case may be), the employer shall furnish to the employee a written statement showing the amount of such excess. The statement required to be furnished pursuant to this subsection shall be furnished at such time, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe. When required by such regulations, a duplicate of any such statement shall be filed with the Secretary or his delegate. (Added Pub. L. 89–97, title III, § 313(e)(2)(A), July 30, 1965, 79 Stat. 384, and amended Pub. L. 89–212, § 2(d), Sept. 29, 1965, 79 Stat. 859.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–212, § 2(d)(1), inserted "or which are compensation (as defined in section 3231(e)."

Subsec. (b). Pub. L. 89–212, § 2(d)(2), inserted "or section 3201 (as the case may be)" and "or section 3202 (as the case may be)."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–212 effective only with respect to tips received after 1965, see note under section 3201 of this title.

EFFECTIVE DATE

Section 313(f) of Pub. L. 89–97 provided that: "The amendments made by this section [adding this section and amending sections 451(c), 3102 (a), (c), 3121 (a), (q), 3401 (a), (b), 3402 (a), (h), 6051(a), 6652 (b), (c) and 6674 of this title and section 409 of Title 42] shall apply only with respect to tips received by employees after 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 3102, 3202, 3231, 3401, 3402, 6051, 6652, 6674 of this title; title 42 section 409; title 45 section 228a.

SUBPART D.—INFORMATION CONCERNING PRIVATE FOUNDATIONS

Sec.
6056. Annual reports by private foundations.

AMENDMENTS

1969—Pub. L. 91–172, title I, § 101(d)(3), Dec. 30, 1969, 83 Stat. 521, added the subpart heading and analysis.

§ 6056. Annual reports by private foundations.

(a) General.

The foundation managers (within the meaning of section 4946(b)) of every organization which is a private foundation (within the meaning of section 509(a)) having at least $5,000 of assets at any time during a taxable year shall file an annual report as of the close of the taxable year at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

(b) Contents.

The foundation managers of the private foundation shall set forth in the annual report required under subsection (a) the following information:

(1) its gross income for the year,

(2) its expenses attributable to such income and incurred within the year,

(3) its disbursements (including administrative expenses) within the year,

(4) a balance sheet showing its assets, liabilities, and net worth as of the beginning of the year,

(5) an itemized statement of its securities and all other assets at the close of the year, showing both book and market value,

(6) the total of the contributions and gifts received by it during the year,

(7) an itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient, any relationship between any individual recipient and the foundation's managers or substantial contributors, and a concise statement of the purpose of each such grant or contribution,

(8) the address of the principal office of the foundation and (if different) of the place where its books and records are maintained,

(9) the names and addresses of its foundation managers (within the meaning of section 4946(b)), and

(10) a list of all persons described in paragraph (9) that are substantial contributors (within the meaning of section 507(d)(2)) or that own 10 percent or more of the stock of any corporation of which the foundation owns 10 percent or more of the stock, or corresponding interests in partnerships or other entities, in which the foundation has a 10 percent or greater interest.

(c) Form.

The annual report may be prepared in printed, typewritten, or any other legible form the foundation chooses. The Secretary or his delegate shall provide forms which may be used by a private foundation for purposes of the annual report.

(d) Special rules.

(1) The annual report required to be filed under this section is in addition to and not in lieu of the information required to be filed under section 6033 (relating to returns by exempt organizations) and shall be filed at the same time as such information.

(2) A copy of the notice required by section 6104 (d) (relating to public inspection of private foundations' annual reports), together with proof of publication thereof, shall be filed by the foundation managers together with the annual report.

(3) The foundation managers shall furnish copies of the annual report required by this section to such State officials and other persons, at such times and under such conditions, as the Secretary or his delegate may by regulations prescribe.

(Added Pub. L. 91–172, title I, § 101(d)(3), Dec. 30, 1969, 83 Stat. 521.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6104, 6652, 7207 of this title.

PART IV.—SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

Sec.
6061. Signing of returns and other documents.
6062. Signing of corporation returns.
6063. Signing of partnership returns.
6064. Signature presumed authentic.
6065. Verification of returns.

§ 6061. Signing of returns and other documents.

Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch, 736, 68A Stat. 748.)

CROSS REFERENCES

Attempt to evade or defeat tax, punishment for, see section 7201 of this title.

Fraud and false statements, punishment for, see section 7206 of this title.

§ 6062. Signing of corporation returns.

The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012 (b) (3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation. (Aug. 16, 1954, ch. 736, 68A Stat. 748.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6061 of this title.

§ 6063. Signing of partnership returns.

The return of a partnership made under section 6031 shall be signed by any one of the partners.

The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership. (Aug. 16, 1954, ch. 736, 68A Stat. 748.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6061 of this title.

§ 6064. Signature presumed authentic.

The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him. (Aug. 16, 1954, ch. 736, 68A Stat. 749.)

§ 6065. Verification of returns.

(a) Penalties of perjury.

Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) Oath.

The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals. (Aug. 16, 1954, ch. 736, 68A Stat. 749.)

CROSS REFERENCES

Fraud and false statements, punishment for, see section 7206 of this title.

Individuals—

Declaration of estimated income tax by, see section 6015 of this title.

Income tax of, see section 6012 of this title.

Joint income tax by husband and wife, see section 6013 of this title.

Perjury, punishment for, see section 1621 of Title 18, Crimes and Criminal Procedure.

Subornation of perjury, punishment for, see section 1622 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6411, 6425 of this title.

PART V.—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

Sec.
6071. Time for filing returns and other documents.
6072. Time for filing income tax returns.
6073. Time for filing declarations of estimated income tax by individuals.
6075. Time for filing estate and gift tax returns.
6076. Time for filing interest equalization tax returns.

AMENDMENTS

1968—Pub. L. 90-364, title I, § 103(e)(8), June 28, 1968, 82 Stat. 264, struck out item 6074 "Time for filing declarations of estimated income tax by corporations."

1964—Pub. L. 88-563, § 3(d), Sept. 2, 1964, 78 Stat. 845, inserted item 6076.

§ 6071. Time for filing returns and other documents.

(a) General rule.

When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) Special taxes.

For payment of special taxes before engaging in certain trades and businesses, see section 4901 and section 5142.

(Aug. 16, 1954, ch. 736, 68A Stat. 749; Sept. 2, 1958, Pub. L. 85-859, title II, § 204(1), 72 Stat. 1428.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-859 inserted a reference to section 5142 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 58-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Extension of time for filing any return, declaration or other document, see section 6081 (a) of this title.

Income tax returns generally, see section 6012 et seq. of this title.

Information returns generally, see section 6031 et seq. of this title.

Time and place for paying tax shown on returns, see section 6151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title.

§ 6072. Time for filing income tax returns.

(a) General rule.

In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

(b) Returns of corporations.

Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year.

(c) Returns by certain nonresident alien individuals and foreign corporations.

Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

(d) Returns of cooperative associations.

In the case of an income tax return of—

(1) an exempt cooperative association described in section 1381(a)(1), or

(2) an organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388 (a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business

done with or for patrons during the most recent taxable year for which it had such net earnings,

a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

(e) Income tax due dates postponed in case of China Trade Act corporations.

In the case of any taxable year beginning after December 31, 1948, and ending before October 1, 1956, no Federal income tax return of any corporation organized under the China Trade Act, 1922 (42 Stat. 849, U. S. C., title 15, chapter 4), as amended, shall become due until December 31, 1956, but only with respect to any such corporation and any such taxable year which the Secretary or his delegate may determine reasonable under the circumstances in China pursuant to such regulations as may be prescribed. Such due date shall be subject to the power of the Secretary or his delegate to extend the time for filing such return, as in other cases. (Aug. 16, 1954, ch. 736, 68A Stat. 749; Oct. 16, 1962, Pub. L. 87-834, § 17(b)(3), 76 Stat. 1051.)

AMENDMENTS

1962—Subsec. (d). Pub. L. 87-834 substituted provisions relating to returns by an exempt cooperative association described in section 1381(a)(1), or by an organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings for provisions which related to returns of exempt cooperative associations taxable under the provisions of section 522.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (d) of this section by Pub. L. 87-834 applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87-834, set out as a note under section 1381 of this title.

FILING OF INCOME TAX RETURNS FOR 1958 BY LIFE INSURANCE COMPANIES

Section 3(i) of Pub. L. 86-69, June 25, 1959, 73 Stat. 140, provided that: "Every life insurance company subject to the tax imposed by section 802(a) of the Internal Revenue Code of 1954 (as amended by section 2 of this Act) shall, after the date of the enactment of this Act [June 25, 1959] and on or before September 15, 1959 (in lieu of at the time prescribed by section 6072(b) of such Code [subsec. (b) of this section]), make a return for its taxable year beginning in 1958 with respect to the tax imposed by such section (as amended by section 2 of this Act). The return required by this subsection for such taxable year shall constitute the return for such taxable year for all purposes of the Internal Revenue Code of 1954; and no return for such taxable year, with respect to the tax imposed by part I of subchapter L of chapter 1 of such Code (as in effect prior to the effective date of the amendment made by section 2 of this Act [see effective date note under section 801 of this title]), filed on or before the date of the enactment of this Act [June 25, 1959] shall be considered for any of such purposes as a return for such taxable year. All payments made on or before the date of the enactment of this Act [June 25, 1959] with respect to the tax for such taxable year imposed by part I of subchapter L of chapter 1 of such Code (as in effect prior to the effective date of the amendment made by section 2 of this Act), to the extent that such payments have not been credited or refunded, shall be deemed to be payments made on September 15, 1959, on account of the tax for such taxable year imposed by section 802(a) of such Code (as amended by section 2 of this Act). The provisions of section 6152(a)(1) of such Code shall not apply with respect to the tax for such taxable year imposed by section 802(a) of such Code (as amended by section 2 of this Act)."

CROSS REFERENCES

Automatic extension of time for filing corporation income tax returns, see section 6081 (b) of this title.

Extension of time for filing returns, see section 6081 (a) of this title.

Income tax returns—

Corporations required to file, see section 6012 (a) (2) of this title.

Estate having gross income of $600 or more required to file, see section 6012 (a) (3) of this title.

Estate or trust of which beneficiary is a nonresident alien required to file, see section 6012 (a) (5) of this title.

Individuals required to file, see section 6012 (a) (1) of this title.

Joint returns by husband and wife permitted, see section 6013 of this title.

Trust having gross income of $600 or over, required to file, see section 6012 (a) (4) of this title.

§ 6073. Time for filing declarations of estimated income tax by individuals.

(a) Individuals other than farmers or fishermen.

Declarations of estimated tax required by section 6015 from individuals regarded as neither farmers nor fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 6015 are first met—

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(b) Farmers or fishermen.

Declarations of estimated tax required by section 6015 from individuals whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the succeeding taxable year.

(c) Amendment.

An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

(d) Short taxable years.

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) Fiscal years.

In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto. (Aug. 16, 1954, ch. 736, 68A Stat.

750; Sept. 25, 1962, Pub. L. 87-682, § 1 (a)(2), (b), (c), 76 Stat. 575.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-682, § 1(b), (c), substituted "individuals regarded as neither farmers nor fishermen" for "individuals not regarded as farmers" in the text, and inserted "or Fishermen" in the catchline.

Subsec. (b). Pub. L. 87-682, § 1(a)(2), (c), inserted "or fishing" following "from farming" in the text, and "or Fishermen" in the catchline.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-682 effective with respect to taxable years beginning after Dec. 31, 1962, see section 2 of Pub. L. 87-682, set out as a note under section 6015 of this title.

CROSS REFERENCES

Extension of time for filing declarations, see section 6081 (a) of this title.

Failure by individual to pay estimated income tax, additions to tax for, see section 6654 of this title.

Installment payments of estimated income tax by individuals, see section 6153 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6015, 6153, 6411, 6654 of this title.

§ 6074. Repealed. Pub. L. 90-364, title I, § 103(a), June 28, 1968, 82 Stat. 260.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 751; Feb. 26, 1964, Pub. L. 88-272, Title I, § 122(b), 78 Stat. 27, provided for the time of filing declarations of estimated income tax by corporations.

EFFECTIVE DATE OF REPEAL

Repeal of section effective with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90-364, set out as a note under section 6154 of this title.

§ 6075. Time for filing estate and gift tax returns.

(a) Estate tax returns.

Returns made under section 6018 (a) (relating to estate taxes) shall be filed within 9 months after the date of the decedent's death.

(b) Gift tax returns.

Returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of the second month following the close of the calendar quarter. (Aug. 16, 1954, ch. 736, 68A Stat. 751; Dec. 31, 1970, Pub. L. 91-614, title I, §§ 101(b), 102(d)(4), 84 Stat. 1836, 1842.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-614, § 101(b), substituted "9 months" for "15 months".

Subsec. (b). Pub. L. 91-614, § 102(d)(4), substituted "the 15th day of the second month following the close of the calendar quarter" for "the 15th day of April following the close of the calendar year".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

CROSS REFERENCES

Estate tax return, persons required to file, see section 6018 of this title.

Extension of time for filing returns, see section 6081 (a) of this title.

Failure to produce records, penalty for, see section 7269 of this title.

Gift tax return, persons required to file, see section 6019 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is refered to in sections 6166, 7269 of this title.

§ 6076. Time for filing interest equalization tax returns.

(a) Each return made under section 6011(d)(1)(A) shall be filed on or before the last day of the first month following the period for which it is made.

(b) Each return made under section 6011(d)(1)(B) shall be filed on or before the date of disposition of the stock or debt obligation with respect to which such return is made. (Added Pub. L. 88-563, § 3(f), Sept. 2, 1964, 78 Stat. 844, and amended Pub. L. 90-59, § 4(c), July 31, 1967, 81 Stat. 155.)

AMENDMENTS

1967—Pub. L. 90-59 denominated existing provisions as subsec. (a), added subsec. (b), and in subsec. (a) as so denominated substituted "section 6011(d)(1)(A)" for "section 6011(d)(1) (relating to interest equalization tax)".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-59 applicable with respect to acquisitions of stock and debt obligations made after July 14, 1967, see section 4(h) of Pub. L. 90-59, set out as a note under section 4918 of this title.

TIME FOR FILING FIRST RETURNS

Section 3(d)(2) of Pub. L. 89-243, Oct. 9, 1965, 79 Stat. 955, provided that: "Notwithstanding any provision of section 6076 of the Internal Revenue Code of 1954, the first return with respect to acquisitions made subject to tax by this section shall be filed on or before the last day of the first month following the close of the calendar quarter in which the enactment of this Act [Oct. 9, 1965] occurs, or at such later time as may be provided in regulations prescribed by the Secretary or his delegate."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6011, 6080 of this title.

PART VI.—EXTENSION OF TIME FOR FILING RETURNS

Sec.
6081. Extension of time for filing returns.

§ 6081. Extension of time for filing returns.

(a) General rule.

The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

(b) Automatic extension for corporation income tax returns.

An extension of 3 months for the filing of the return of income taxes imposed by subtitle A shall be allowed any corporation if, in such manner and at such time as the Secretary or his delegate may by regulations prescribe, there is filed on behalf of such corporation the form prescribed by the Secretary or his delegate, and if such corporation pays, on or before the date prescribed for payment of the tax, the amount properly estimated as its tax or the first installment thereof required under section 6152; but this extension may be terminated at any time by the Secretary or his delegate by mailing to the taxpayer notice of such termination at least

10 days prior to the date for termination fixed in such notice.

(c) Postponement by reason of war.

For time for performing certain acts postponed by reason of war, see section 7508.

(Aug. 16, 1954, ch. 736, 68A Stat. 751.)

CROSS REFERENCES

Extension of time for paying tax, see section 6161 of this title.

Time and place for paying tax generally, see section 6151 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6153, 6154 of this title.

PART VII.—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

Sec.
6091. Place for filing returns or other documents.

§ 6091. Place for filing returns or other documents.

(a) General rule.

When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) Tax returns.

In the case of returns of tax required under authority of part II of this subchapter—

(1) Persons other than corporations.

(A) General rule.

Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate—

(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) Exception.

Returns of—

(i) persons who have no legal residence or principal place of business in any internal revenue district,

(ii) citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) nonresident alien persons,

shall be made at such place as the Secretary or his delegate may by regulations designate.

(2) Corporations.

(A) General rule.

Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate—

(i) in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) Exception.

Returns of—

(i) corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) foreign corporations,

shall be made at such place as the Secretary or his delegate may by regulations designate.

(3) Estate tax returns.

(A) General rule.

Except as provided in subparagraph (B), returns of estate tax required under section 6018 shall be made to the Secretary or his delegate—

(i) in the internal revenue district in which was the domicile of the decedent at the time of his death, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary or his delegate may by regulations designate.

(B) Exception.

If the domicile of the decedent was not in an internal revenue district, or if he had no domicile, the estate tax return required under section 6018 shall be made at such place as the Secretary or his delegate may by regulations designate.

(4) Hand-carried returns.

Notwithstanding paragraph (1), (2), or (3), a return to which paragraph (1)(A), (2)(A), or (3)(A) would apply, but for this paragraph, which is made to the Secretary or his delegate by hand-carrying shall, under regulations prescribed by the Secretary or his delegate, be made in the internal revenue district referred to in paragraph (1)(A)(i), (2)(A)(i), or (3)(A)(i), as the case may be.

(5) Exceptional cases.

Notwithstanding paragraph (1), (2), (3), or (4) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

(Aug. 16, 1954, ch. 736, 68A Stat. 752; Nov. 2, 1966, Pub. L. 89-713, § 1(a), 80 Stat. 1107; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(i), 84 Stat. 1838.)

AMENDMENTS

1970—Subsec. (b)(3). Pub. L. 91-614, § 101(i)(1), substituted provisions requiring an estate tax return to be filed in the internal revenue district in which the decedent was domiciled at the time of his death or at a service center serving that district, as the Secretary or his delegate may determine by regulations, and in the case of a decedent who was not domiciled in an internal revenue district, or who had no domicile, his return is to be filed at such place as the Secretary or his delegate designates for provisions requiring estate tax returns to be filed in the internal revenue district in which the decedent was domiciled at the time of his death or, if there was no such domicile in an internal revenue district, then at such place as the Secretary or his delegate by regulations designates.

Subsec. (b)(4). Pub. L. 91-614, § 101(i)(2), permitted the executor, who desires to file an estate tax return in person, to do so by hand carrying it to the appropriate internal revenue district office.

1966—Subsec. (b)(1). Pub. L. 89-713, § 1(a)(1), authorized the Secretary to promulgate regulations allowing individuals to file tax returns either in the internal revenue district in which the taxpayer's legal residence or principal place of business is located or at a service center serving that district, designated as subpar. (B)(1) the existing provisions which authorized the Secretary to prescribe the place without limitations as to the Secretary's range of alternative choices for the filing of returns of persons who have no legal residence or principal place of business in any internal revenue district, and added subpar. (B)(ii)—(iv).

Subsec. (b)(2). Pub. L. 89-713, § 1(a)(1), authorized the Secretary to promulgate regulations allowing corporations to file tax returns either in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation or at a service center serving that district, designated as subpar. (B)(i) the existing provisions which authorized the Secretary to prescribe the place without limitations as to the Secretary's range of alternative choices for the filing of returns of corporations having no principal place of business or principal office or agency of the corporation, and added subpar. (B)(ii), (iii).

Subsec. (b)(4). Pub. L. 89-713, § 1(a)(3), added subsec. (b)(4). Former subsec. (b)(4) redesignated as subsec. (b)(5).

Subsec. (b)(5). Pub. L 89-713, § 1(a)(2), redesignated former subsec. (b)(4) as subsec. (b)(5), and, in subsec. (b)(5) as so redesignated, substituted "paragraph (1), (2), (3), or (4)" for "paragraph (1), (2), or (3)".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6 of Pub. L. 89-713 provided that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section and sections 6103, 6107, and 6151 of this title, section 3237(b) of Title 18, Crimes and Criminal Procedure, and section 1395x(v)(1) of Title 42, The Public Health and Welfare] shall take effect upon the date of the enactment of this Act [Nov. 2, 1966]."

CROSS REFERENCES

Time and place for paying tax shown on returns, see section 6151 of this title.

PART VIII.—DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND

Sec.
6096. Designation by individuals.

AMENDMENTS

1966—Pub. L. 89-809, title III, § 302(a), Nov. 13, 1966, 80 Stat. 1587, added Part VIII and analysis.

§ 6096. Designation by individuals.

(a) In general.

Every individual (other than a nonresident alien) whose income tax liability for any taxable year is $1 or more may designate that $1 shall be paid into the Presidential Election Campaign Fund established by section 303 of the Presidential Election Campaign Fund Act of 1966.

(b) Income tax liability.

For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown in his return) allowable under sections 32(2), 33, 35, 37, and 38.

(c) Manner and time of designation.

A designation under subsection (a) may be made with respect to any taxable year, in such manner as the Secretary or his delegate may prescribe by regulations—

(1) at the time of filing the return of the tax imposed by chapter 1 for such taxable year, or

(2) at any other time (after the time of filing the return of the tax imposed by chapter 1 for such taxable year) specified in regulations prescribed by the Secretary or his delegate.

(Added Pub. L. 89-809, title III, § 302(a), Nov. 13, 1966, 80 Stat. 1587.)

EFFECTIVE DATE

Section 302(c) of Pub. L. 89-809 provided that: "The amendments made by this section [adding this section] shall apply with respect to income tax liability for taxable years beginning after December 31, 1966."

SHORT TITLE

Section 301 of Pub. L. 89-809 provided that: "This title [adding Part VIII of this subchapter and section 6096 of this title and sections 971, 972, and 973 of Title 31, Money and Finance] may be cited as the 'Presidential Election Campaign Fund Act of 1966'."

DISBURSEMENT OF FUNDS DEPENDENT UPON ADOPTION OF GUIDELINES

Applicability upon adoption of guidelines, see section 5 of Pub. L. 90-26, June 13, 1967, 81 Stat. 58, set out as a note under section 971 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 971.

Subchapter B.—Miscellaneous Provisions

Sec.
6101. Period covered by returns or other documents.
6102. Computations on returns or other documents.
6103. Publicity of returns and disclosure of information as to persons filing income tax returns.
6104. Publicity of information required from certain exempt organizations and certain trusts.
6105. Compilation of relief from excess profits tax cases.
6106. Publicity of unemployment tax returns.
6108. Publication of statistics of income.
6109. Identifying numbers.
6110. Cross references.

AMENDMENTS

1968—Pub. L. 90-618, title II, § 203(b), Oct. 22, 1968, 82 Stat. 1235, struck out item 6107 "List of special taxpayers for public inspection".

1966—Pub. L. 89-713, § 4(b), Nov. 2, 1966, 80 Stat. 1109, substituted "disclosure of information as to persons filing income tax returns" for "lists of taxpayers" in item 6103.

1961—Pub. L. 87-397, § 1(c)(1), Oct. 5, 1961, 75 Stat. 829, added item 6109 and redesignated former item 6109 as 6110.

§ 6101. Period covered by returns or other documents.

When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made. (Aug. 16, 1954, ch. 736, 68A Stat. 753.)

§ 6102. Computations on returns or other documents.

(a) Amounts shown on Internal Revenue forms.

The Secretary or his delegate is authorized to provide with respect to any amount required to be shown on a form prescribed for any internal revenue return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) the fractional part of a dollar shall be disregarded; or

(2) the fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1.

(b) Election not to use whole dollar amounts.

Any person making a return, statement, or other document shall be allowed, under regulations prescribed by the Secretary or his delegate, to make such return, statement, or other document without regard to subsection (a).

(c) Inapplicability to computation of amount.

The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount. (Aug. 16, 1954, ch. 736, 68A Stat. 753.)

CROSS REFERENCES

Fractional parts of a cent, see section 6313 of this title.

Fractional parts of a dollar, see section 7504 of this title.

§ 6103. Publicity of returns and disclosure of information as to persons filing income tax returns.

(a) Public record and inspection.

(1) Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

(2) All returns made with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B and C of chapter 33, subchapter B of chapter 37, and chapter 41, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Secretary or his delegate. The Secretary or his delegate may prescribe a reasonable fee for furnishing such copy.

(b) Inspection by States.

(1) State officers.

The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of any corporation, at such times and in such manner as the Secretary or his delegate may prescribe.

(2) State bodies or commissions.

All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

(c) Inspection by shareholders.

All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) Inspection by Committees of Congress.

(1) Committee on Ways and Means and Finance.

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or

appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) Joint Committee on Internal Revenue Taxation.

The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) Declarations of estimated tax.

For purposes of this section, a declaration of estimated tax shall be held and considered a return under this chapter.

(f) Disclosure of information as to persons filing income tax returns.

The Secretary or his delegate shall, upon inquiry as to whether any person has filed an income tax return in a designated internal revenue district for a particular taxable year, furnish to the inquirer, in such manner as the Secretary or his delegate may determine, information showing that such person has, or has not, filed an income tax return in such district for such taxable year. (Aug. 16, 1954, ch. 736, 68A Stat. 753; Sept. 2, 1964, Pub. L. 88–563, § 3(c), 78 Stat. 844; June 21, 1965, Pub. L. 89–44, title VI, § 601(a), 79 Stat. 153; Nov. 2, 1966, Pub. L. 89–713, § 4(a), 80 Stat. 1109.)

AMENDMENTS

1966—Pub. L. 89–713 substituted "disclosure of information as to persons filing income tax returns" for "lists of taxpayers" in the section catchline and, in subsec. (f), substituted provisions authorizing the furnishing to an inquirer of the information as to whether or not a person has filed an income tax return in a designated internal revenue district for a particular taxable year for provisions directing the preparation of lists containing the name and post-office address of each person making an income tax return in an internal revenue district to be made available for public inspection in the office of the principal internal revenue officer for the internal revenue district in which the return was filed.

1965—Subsec. (a)(2). Pub. L. 89–44 struck out "B, C, and D" and inserted in lieu thereof "B and C".

1964—Subsec. (a)(2). Pub. L. 88–563 inserted the reference to chapter 41.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89–713 to take effect on the date of enactment of Pub. L. 89–713, which was approved on Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(e) of Pub. L. 89–44 provided that: "Each amendment made by title VI [repealing section 7275 and amending this section and sections 6415, 6416, 6802, 6806, 6808, 7012, 7272, and 7326 of this title], to the extent that it relates to any tax provision changed by this Act shall take effect in a manner consistent with the effective date for such changed tax provision."

INSPECTION OF TAX RETURNS

The Executive Orders listed below authorized inspection of returns for certain specified purposes:

Ex. Ord. No.	Date	Federal Register
10699	Feb. 20, 1957	22 F.R. 1059
10701	Mar. 14, 1957	22 F.R. 1629
10703	Mar. 18, 1957	22 F.R. 1797
10706	Apr. 29, 1957	22 F.R. 3027
10712	May 17, 1957	22 F.R. 3499
10801	Jan. 21, 1959	24 F.R. 521
10806	Mar. 11, 1959	24 F.R. 1823
10808	Mar. 19, 1959	24 F.R. 2221
10815	Apr. 29, 1959	24 F.R. 3474
10818	May 11, 1959	24 F.R. 3799
10846	Oct. 13, 1959	24 F.R. 8318
10855	Nov. 30, 1959	24 F.R. 9565
10871	Mar. 16, 1960	25 F.R. 2251
10876	Apr. 25, 1960	25 F.R. 3569
10906	Jan. 18, 1961	26 F.R. 508
10916	Jan. 25, 1961	26 F.R. 781
10935	Apr. 24, 1961	26 F.R. 3507
10947	June 13, 1961	26 F.R. 5283
10954	July 26, 1961	26 F.R. 6759
10962	Aug. 24, 1961	26 F.R. 8001
10966	Oct. 11, 1961	26 F.R. 9667
10981	Dec. 29, 1961	26 F.R. 12749
11020	May 8, 1962	27 F.R. 4407
11055	Oct. 10, 1962	27 F.R. 9981
11065	Nov. 23, 1962	27 F.R. 11581
11080	Jan. 30, 1963	28 F.R. 903
11082	Feb. 4, 1963	28 F.R. 1131
11083	Feb. 7, 1963	28 F.R. 1245
11099	Mar. 18, 1963	28 F.R. 2619
11102	Apr. 5, 1963	28 F.R. 3373
11109	May 28, 1963	28 F.R. 5351
11133	Dec. 17, 1963	28 F.R. 13835
11153	Apr. 17, 1964	29 F.R. 5335
11192	Jan. 13, 1965	30 F.R. 521
11194	Jan. 26, 1965	30 F.R. 877
11201	Mar. 4, 1965	30 F.R. 2921
11204	Mar. 12, 1965	30 F.R. 3417
11206	Mar. 18, 1965	30 F.R. 3741
11213	Apr. 2, 1965	30 F.R. 4389
11217	Apr. 24, 1965	30 F.R. 5819
11235	July 21, 1965	30 F.R. 9199
11332	Mar. 7, 1967	32 F.R. 3877
11337	Mar. 25, 1967	32 F.R. 5245
11358	June 6, 1967	32 F.R. 8227
11370	Aug. 30, 1967	32 F.R. 12665
11383	Nov. 30, 1967	32 F.R. 17421
11454	Feb. 7, 1969	34 F.R. 1935
11457	Mar. 4, 1969	34 F.R. 3793
11461	Mar. 27, 1969	34 F.R. 5901
11465	Apr. 10, 1969	34 F.R. 6415
11483	Sept. 23, 1969	34 F.R. 14757
11505	Jan. 21, 1970	35 F.R. 939
11535	June 12, 1970	35 F.R. 9809

CROSS REFERENCES

Unauthorized disclosure, punishment for, see section 7213 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6104, 6106, 7213 of this title.

§ 6104. Publicity of information required from certain exempt organizations and certain trusts.

(a) Inspection of applications for tax exemption.

(1) Public Inspection.

(A) In general.

If an organization described in section 501 (c) or (d) is exempt from taxation under section 501 (a) for any taxable year, the application filed by the organization with respect to which the Secretary or his delegate made his determination that such organization was entitled to exemption under section 501 (a), together with any paper submitted in support of such application, shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application shall be open to public inspection at the appropriate filed office of the Internal Revenue Service (determined under regulations prescribed by the Secretary or his delegate). Any inspection under this subparagraph

may be made at such times, and in such manner, as the Secretary or his delegate shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary or his delegate shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) Withholding of certain information.

Upon request of the organization submitting any supporting papers described in subparagraph (A), the Secretary or his delegate shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary or his delegate shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) the public disclosure of which he determines would adversely affect the national defense.

(2) Inspection by committees of Congress.

Section 6103 (d) shall apply with respect to—

(A) the application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501 (a) for any taxable year, and

(B) any other papers which are in the possession of the Secretary or his delegate and which relate to such application,

as if such papers constituted returns.

(b) Inspection of annual information returns.

The information required to be furnished by sections 6033, 6034, and 6056, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary or his delegate may prescribe. Nothing in this subsection shall authorize the Secretary or his delegate to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information.

(c) Publication to State officials.

(1) General rule.

In case of any organization which is described in section 501(c)(3) and exempt from taxation under section 501(a), or has applied under section 508(a) for recognition as an organization described in section 501(c)(3), the Secretary or his delegate at such times and in such manner as he may by regulations prescribe shall—

(A) notify the appropriate State officer of a refusal to recognize such organization as an organization described in section 501(c)(3), or of the operation of such organization in a manner which does not meet, or no longer meets, the requirements of its exemption,

(B) notify the appropriate State officer of the mailing of a notice of deficiency of tax imposed under section 507 or chapter 42, and

(C) at the request of such appropriate State officer, make available for inspection and copying such returns, filed statements, records, reports, and other information, relating to a determination under subparagraph (A) or (B) as are relevant to any determination under State law.

(2) Appropriate State officer.

For purposes of this subsection, the term "appropriate State officer" means the State attorney general, State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c)(3).

(d) Public inspection of private foundations' annual reports.

The annual report required to be filed under section 6056 (relating to annual reports by private foundations) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual report (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual report of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address of the private foundation's principal office and the name of its principal manager. (Aug. 16, 1954, ch. 736, 68A Stat. 755; Sept. 2, 1958, Pub. L. 85-866, title I, § 75(a), 72 Stat. 1660; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(e)(1)-(3), (j)(36), 83 Stat. 523, 530.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172, § 101(e)(1), (j)(36), added provision prohibiting disclosure by the Secretary or his delegate of the name or address of any contributor to any organization or trust other than a private foundation and inserted reference to section 6056.

Subsec. (c). Pub. L. 91-172, § 101(e)(2), added subsec. (c).

Subsec. (d). Pub. L. 91-172, § 101(e)(3), added subsec. (d).

1958—Pub. L. 85-866 designated existing provisions as subsec. (b), and added subsec. (a).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 75 (c) of Pub. L. 85-866 provided that: "The amendments made by subsection (a) [to this section] shall take effect on the 60th day after the day on which this Act is enacted [Sept. 2, 1958]. The amendments made by subsection (b) [adding section 6033 (b) (8) of this title] shall apply to taxable years ending on or after December 31, 1958."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 4945, 6056, 6652, 7207 of this title.

§ 6105. Compilation of relief from excess profits tax cases.

The Secretary or his delegate shall compile for each fiscal year beginning after June 30, 1941, by internal revenue districts, and alphabetically arranged, all cases in which relief has been allowed during such year under the provisions of section 722 of the Internal Revenue Code of 1939, as amended, by the Secretary or his delegate and by the Tax Court of the United States, as the case may be. Such compilation shall contain the name and address of each taxpayer to which relief has been so allowed, the business in which the taxpayer is engaged, the amount of the excess profits credit before such allowance, the increase in such credit claimed, the increase in such credit allowed, and the amount of the gross reduction in the tax under subchapter E of chapter 2 of the Internal Revenue Code of 1939, as amended, and of the gross increase in the tax under chapter 1 of such Code, which results from the operation of section 722 of the Internal Revenue Code of 1939, as amended. In the case of relief allowed by the Tax Court of the United States, the Secretary or his delegate shall set forth the data previously reported under this section or section 722 (g) of the Internal Revenue Code of 1939, as amended, with respect to relief previously allowed in such case by the Secretary or his delegate. Such compilation shall be published in the Federal Register. (Aug. 16, 1954, ch. 736, 68A Stat. 755.)

§ 6106. Publicity of unemployment tax returns.

Returns filed with respect to the tax imposed by chapter 23 shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns described in section 6103, except that paragraph (2) of subsections (a) and (b) of section 6103 and section 7213 (a) (2) shall not apply. (Aug. 16, 1954, ch. 736, 68A Stat. 756.)

CROSS REFERENCES

Unauthorized disclosure of information, punishment for, see section 7213 of this title.

§ 6107. Repealed. Pub. L. 90-618, title II, § 203(a), Oct. 22, 1968, 82 Stat. 1235.

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 756; Nov. 2, 1966, Pub. L. 89-713, § 4(c) 80 Stat. 1110, authorized an alphabetical list of the names of all persons who have paid special taxes under subtitle D or E of this title to be kept for public inspection.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 90-618 effective Oct. 22, 1968, see section 207 of Pub. L. 90-618, set out as a note under section 5801 of this title.

§ 6108. Publication of statistics of income.

The Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable. (Aug. 16, 1954, ch. 736, 68A Stat. 756.)

§ 6109. Identifying numbers.

(a) Supplying of identifying numbers.

When required by regulations prescribed by the Secretary or his delegate:

(1) Inclusion in returns.

Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) Furnishing number to other persons.

Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) Furnishing number of another person.

Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(b) Limitation.

(1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(c) Requirement of information.

For purposes of this section, the Secretary or his delegate is authorized to require such information as may be necessary to assign an identifying number to any person. (Added Pub. L. 87-397, § 1(a), Oct. 5, 1961, 75 Stat. 828.)

EFFECTIVE DATE

Section 1(d) of Pub. L. 87-397 provided that: "Paragraph (1) of section 6109(a) of the Internal Revenue Code of 1954 [subsec. (a)(1) of this section], as added by subsection (a) of this section, shall apply only in respect of returns, statements, and other documents relating to periods commencing after December 31, 1961. Paragraphs (2) and (3) of such section 6109(a) [subsec. (a) (2), (3) of this section] shall apply only in respect of returns, statements, or other documents relating to periods commencing after December 31, 1962."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6678 of this title.

§ 6110. Cross references.

(1) For reports of Secretary of Agriculture concerning cotton futures, see section 4876.

(2) For inspection of returns, order forms, and prescriptions concerning narcotics, see section 4773.

(3) For inspection of returns, order forms, and prescriptions concerning marihuana, see section 4773.

(4) For authority of Secretary or his delegate to furnish list of special taxpayers, see section 4775.

(5) For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.

(Aug. 16, 1954, ch. 736, § 6110, formerly § 6109, 68A Stat. 756, renumbered Oct. 5, 1961, Pub. L. 87-397, § 1(a), 75 Stat. 828.)

Chapter 62.—TIME AND PLACE FOR PAYING TAX

Subchapter
A. Place and due date for payment of tax.
B. Extensions of time for payment.

Subchapter A.—Place and Due Date for Payment of Tax

Sec.
6151. Time and place for paying tax shown on returns.
6152. Installment payments.
6153. Installment payments of estimated income tax by individuals.
6154. Installment payments of estimated income tax by corporations.
6155. Payment on notice and demand.
6156. Installment payments of tax on use of highway motor vehicles and civil aircraft.
6157. Payment of Federal unemployment tax on quarterly or other time period basis.

AMENDMENTS

1970—Pub. L. 91-258, title II, § 206(d)(3), May 21, 1970, 84 Stat. 246, inserted "and civil aircraft" in item 6156.

1969—Pub. L. 91-53, § 2(f)(1), Aug. 7, 1969, 83 Stat. 93, substituted in item 6157 "Payment of Federal unemployment tax on quarterly or other time period basis" for "Payment of taxes under provisions of the Tariff Act."

1961—Pub. L. 87-61, title II, § 203(c)(3), June 29, 1961, 75 Stat. 126, added item 6156 and redesignated former item 6156 as 6157.

§ 6151. Time and place for paying tax shown on returns.

(a) General rule.

Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time or filing the return).

(b) Exceptions.

(1) Income tax not computed by taxpayer.

If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary or his delegate as payable shall be paid within 30 days after the mailing by the Secretary or his delegate to the taxpayer of a notice stating such amount and making demand therefor.

(2) Use of government depositaries.

For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302 (c).

(c) Date fixed for payment of tax.

In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax.) (Aug. 16, 1954, ch. 736, 68A Stat. 757; Nov. 2, 1966, Pub. L. 89-713, § 1(b), 80 Stat. 1108.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-713 substituted the revenue officer with whom the return is filed for the principal internal revenue officer for the internal revenue district in which the return is required to be filed as the description of the person to whom the tax is paid.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by Pub. L. 89-713 to take effect on the date of enactment of Pub. L. 89-713, which was approved on Nov. 2, 1966, see section 6 of Pub. L. 89-713, set out as a note under section 6091 of this title.

CROSS REFERENCES

Addition to tax for failure to pay tax, see section 6653 of this title.

Assessment of taxes shown on return, see section 6201 (a) (1) of this title.

Extension of time—

Filing returns, see section 6081 of this title.

Paying tax, see section 6161 et seq. of this title.

Internal revenue districts, see section 7621 of this title.

Notice and demand for tax, see section 6303 of this title.

Payment on notice and demand, see section 6155 of this title.

Place for filing returns or other documents generally, see section 6091 of this title.

Time for filing returns—

Estate and gift tax, see section 6075 of this title.

Income tax, see section 6072 of this title.

Time return deemed filed and tax considered paid, see section 6513 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6161, 6166 of this title.

§ 6152. Installment payments.

(a) Privilege to elect to make installment payments.

(1) Corporations.

A corporation subject to the taxes imposed by chapter 1 may elect to pay the unpaid amount of such taxes in installments as follows:

(A) with respect to taxable years ending before December 31, 1954, four installments, the first two of which shall be 45 percent, respectively, of such taxes and the last two of which shall be 5 percent, respectively, of such taxes;

(B) with respect to taxable years ending on or after December 31, 1954, two equal installments.

(2) Estates of decedents.

A decedent's estate subject to the tax imposed by chapter 1 may elect to pay such tax in four equal installments.

(b) Dates prescribed for payment of installments.

(1) Four installments.

In any case (other than payment of estimated income tax) in which the tax may be paid in four installments, the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on or before 3 months, the third installment on or before 6 months, and the fourth installment on or before 9 months, after such date.

(2) Two installments.

In any case (other than payment of estimated income tax) in which the tax may be paid in two installments, the first installment shall be paid on the date prescribed for the payment of the tax, and the second installment shall be paid on or before 3 months after such date.

(c) Proration of deficiency to installments.

If an election has been made to pay the tax imposed by chapter 1 in installments and a deficiency

has been assessed, the deficiency shall be prorated to such installments. Except as provided in section 6861 (relating to jeopardy assessments), that part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate.

(d) Acceleration of payment.

If any installment (other than an installment of estimated income tax) is not paid on or before the date fixed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 757; Sept. 1, 1954, ch. 1212, § 3, 68 Stat. 1130.)

AMENDMENTS

1954—Subsec. (a)(3). Act Sept. 1, 1954 repealed subsec. (a)(3), which related to employees subject to unemployment tax.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 3 of act Sept. 1, 1954, provided in part that the repeal of subsec. (a)(3) shall be effective with respect to taxable year 1955 and succeeding taxable years.

CROSS REFERENCES

Overpayment of installment, see section 6403 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 832, 6081, 6164, 6601 of this title.

§ 6153. Installment payments of estimated income tax by individuals.

(a) General rule.

The amount of estimated tax (as defined in section 6015 (c)) with respect to which a declaration is required under section 6015 shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by section 6073 (a) to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by section 6073 (a) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year, and is not required by section 6073 (a) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in section 6073 (a) (including cases in which an extension of time for filing the declaration has been granted under section 6081), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 6073 (a), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(b) Farmers or fishermen.

If an individual referred to in section 6073(b) (relating to income from farming or fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amendments of declaration.

If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) Application to short taxable years.

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) Fiscal years.

In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(f) Installments paid in advance.

At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment. (Aug. 16, 1954, ch. 736, 68A Stat. 758; Sept. 25, 1962, Pub. L. 87-682, § 1 (a)(3), (c), 76 Stat. 575.)

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-682 inserted "or fishing" following "from farming" in the text, and "or fishermen" in the catchline.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-682 effective with respect to taxable years beginning after Dec. 31, 1962, see section 2 of Pub. L. 87-682, set out as a note under section 6015 of this title.

DECLARATIONS OF ESTIMATED TAX

Pub. L. 91-172, title IX, § 946(b), Dec. 30, 1969, 83 Stat. 729, provided that: "In the case of a taxable year beginning before the date of the enactment of this Act [Dec. 30, 1969], if any taxpayer is required to make a declaration or amended declaration of estimated tax, or to pay any amount or additional amount of estimated

tax, by reason of the amendments made by this Act [see Short Title note set out under section 1 of this title], such amount or additional amount shall be paid ratably on or before each of the remaining installment dates for the taxable year beginning with the first installment date on or after the 30th day after such date of enactment. With respect to any declaration or payment of estimated tax before such first installment date, sections 6015, 6154, 6654, and 6655 of the Internal Revenue Code of 1954 [sections 6015, 6154, 6654, and 6655 of this title], shall be applied without regard to the amendments made by this Act. For purposes of this subsection, the term 'installment date' means any date on which, under section 6153 or 6154 of such Code (whichever is applicable) [this section or section 6154 of this title], an installment payment of estimated tax is required to be made by the taxpayer."

CROSS REFERENCES

Additions to tax for failure by individual to pay estimated income tax, see section 6654 of this title.

Overpayment of installment, see section 6403 of this title.

Payment of estimated income tax, see section 6315 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3102, 6201, 6601, 6651, 6654 of this title.

§ 6154. Installment payments of estimated income tax by corporations.

(a) Corporations required to pay estimated income tax.

Every corporation subject to taxation under section 11 or 1201(a), or subchapter L of chapter 1 (relating to insurance companies), shall make payments of estimated tax (as defined in subsection (c)) during its taxable year as provided in subsection (b) if its estimated tax for such taxable year can reasonably be expected to be $40 or more.

(b) Payment in installments.

Any corporation required under subsection (a) to make payments of estimated tax (as defined in subsection (c)) shall make such payments in installments as follows:

If the requirements of subsection (a) are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year	25	25	25	25
After the last day of the 3d month and before the 1st day of the 6th month of the taxable year		33⅓	33⅓	33⅓
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year			50	50
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year				100

(c) Estimated tax defined.

(1) In general.

For purposes of this title, in the case of a corporation the term "estimated tax" means the excess of—

(A) the amount which the corporation estimates as the amount of the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(B) the sum of—

(i) the amount which the corporation estimates as the sum of the credits against tax provided by part IV of subchapter A of chapter 1,

(ii) in the case of a taxable year beginning after December 31, 1967, and before January 1, 1977, the amount of the corporation's temporary estimated tax exemption for such year, and

(iii) in the case of a taxable year beginning after December 31, 1967, and before January 1, 1972, the amount of the corporation's transitional exemption for such year.

(2) Temporary estimated tax exemption.

(A) In general.

For purposes of clause (ii) of paragraph (1)(B), the amount of a corporation's temporary estimated tax exemption for a taxable year equals the applicable percentage (determined under subparagraph (B)) multiplied by the lesser of—

(i) an amount equal to 22 percent of the amount which the corporation estimates as its surtax exemption (as defined in section 11(d)) for such year, or

(ii) the excess determined under paragraph (1) without regard to clauses (ii) and (iii) of paragraph (1)(B).

(B) Applicable percentage.

For purposes of subparagraph (A) and section 6655(e)(2), the applicable percentage is—

In the case of a taxable year beginning in—	
1968, 1969, 1970, 1971, and 1972	100 percent
1973	80 percent
1974	60 percent
1975	40 percent
1976	20 percent.

(3) Transitional exemption.

(A) In general.

For purposes of clause (iii) of paragraph (1)(B), the amount of a corporation's transitional exemption for a taxable year equals the exclusion percentage (determined under subparagraph (B)) multiplied by the lesser of—

(i) $100,000, reduced by the amount of the corporation's temporary estimated tax exemption for such year, or

(ii) the excess determined under paragraph (1) without regard to clause (iii) of paragraph (1)(B).

(B) Exclusion percentage.

For purposes of subparagraph (A) and section 6655(e)(3), the exclusion percentage is—

In the case of a taxable year beginning in—	
1968	80 percent
1969	60 percent
1970	40 percent
1971	20 percent.

(d) Recomputation of estimated tax.

If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased

(as the case may be) by the amount computed by dividing—

(1) the difference between—

(A) the amount of estimated tax required to be paid before the date on which the new estimate is made, and

(B) the amount of estimated tax which would have been required to be paid before such date if the new estimate had been made when the first estimate was made, by

(2) the number of installments remaining to be paid on or after the date on which the new estimate is made.

(e) Application to short taxable year.

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(f) Installments paid in advance.

At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

(g) Certain foreign corporations.

For purposes of this section and section 6655, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11. (Aug. 16, 1954, ch. 736, 68A Stat. 760; Feb. 26, 1964, Pub. L. 88–272, title I, § 122(a), 78 Stat. 25; Mar. 15, 1966, Pub. L. 89–368, title I, § 104(a), 80 Stat. 64; June 28, 1968, Pub. L. 90–364, title I, § 103(b), 82 Stat. 260.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–364 substituted provisions setting out the requirement that payments of estimated tax be made for provisions setting the amount and time for payment of each installment.

Subsec. (b). Pub. L. 90–364 substituted provisions for the payment of estimated tax in installments for provisions covering recomputation of estimated tax.

Subsec. (c). Pub. L. 90–364 substituted provisions defining estimated tax, including provision for the reduction in five annual stages of the $100,000 exemption granted corporations in the payment of estimated income tax and for its complete elimination in five additional stages, for provisions covering the application to a short taxable year.

Subsec. (d). Pub. L. 90–364 redesignated as subsec. (d) provisions covering recomputation of estimated tax formerly contained in subsec. (b). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 90–364 redesignated former subsec. (c) as (e).

Subsec. (f). Pub. L. 90–364 redesignated former subsec. (d) as (f).

Subsec. (g). Pub. L. 90–364 added subsec. (g).

1966—Subsec. (a). Pub. L. 89–368 increased the percentage of estimated income tax due in the first and in the second of the required four yearly installments from 9 to 12 percent in 1966, from 14 to 25 percent in 1967, from 19 to 25 percent in 1968, and from 22 to 25 percent in 1969, and made comparable changes for those corporations which are required to pay estimated income tax in three, two, or one installments with the net effect that, for taxable years beginning in 1966, 74 percent of the estimated tax will be payable in installments and, for taxable years beginning after 1966, 100 percent will be payable in installments.

1964—Subsec. (a). Pub. L. 88–272 combined former subsecs. (a) and (b) into a new subsec. (a) and amended such subsection generally to provide that over the seven year period of 1964–70, the former system of paying two quarterly installments with respect to part of the tax liability in excess of $100,000 in the year in which the liability arises, will be changed by graduated steps into a pay-as-you-go system wherein corporations will pay all of their tax liability in excess of $100,000, by any of the four methods required by section 6074(a), in the year in which it arises, and added par. (5) relating to late filing.

Subsec. (b). Pub. L. 88–272 redesignated former subsec. (c) as (b), and amended the provisions generally to conform to the provisions of subsec. (a), providing that instead of ratably increasing or decreasing payments on the 15th day of the 12th month to adjust for any amendment, the changes must be arrived at by dividing the difference between the original estimate and the amended estimate, by the number of installments remaining to be paid on or after the date the amendment is made. Former subsec. (b) was combined with former subsec. (a), and amended generally.

Subsec. (c). Pub. L. 88–272 redesignated former subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 88–272 redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 103(f) of Pub. L. 90–364 provided that: "Except as provided by section 104 [set out as notes under this section and section 51 of this title], the amendments made by this section [enacting section 6425, amending this section and sections 243, 6020, 6651, 6655, 7203, and 7701, and repealing sections 6016 and 6074 of this title] shall apply with respect to taxable years beginning after December 31, 1967."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 104(b) of Pub. L. 89–368 provided that: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply with respect to taxable years beginning after December 31, 1965."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purpose of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

DECLARATION OF ESTIMATED TAX

With respect to taxable years beginning before Dec. 30, 1969, if a taxpayer is required to make a declaration, or to pay any amount of estimated tax by reason of amendments made by Pub. L. 91–172, such amount shall be paid ratably on each of the remaining installment dates for the taxable year beginning with the first installment date on or after Dec. 30, 1969; as to any declaration or payment of estimated tax before the first installment date, this section, and sections 6015, 6654, and 6655 of this title shall be applied without regard to amendments made by Pub. L. 91–172, see section 946(b) of Pub. L. 91–172, set out as a note under section 6153 of this title.

TAX SURCHARGE EXTENSION; DECLARATIONS OF ESTIMATED TAX

Requirement of making a declaration or amended declaration of estimated tax or of payment of any amount or additional amount of estimated tax by reason of amendment of sections 51(a)(1)(A), (B), (2)(A) and 963(b) of this title as calling for payment of such amount or additional amount ratably on or before each of remaining installment dates for taxable year beginning with first installment date on or after the 30th day after Aug. 7, 1969; application of this section without regard to such amendment with respect to any declaration or payment of estimated tax before such first installment date; and definition of "installment date", see section 5(c) of Pub. L. 91–53, set out as an Effective Date of 1969 Amendment note under section 51 of this title.

PAYMENT OF ESTIMATED TAX FOR TAXABLE YEARS BEGINNING BEFORE JUNE 28, 1968

Section 104(a) of Pub. L. 90–364 provided that:

"In determining whether any taxpayer is required to make a declaration or amended declaration of estimated tax, or to pay any amount or additional amount of estimated tax, by reason of the amendments made by sections 102 and 103 [enacting sections 51 and 6425, amending this

section and sections 243, 963, 3402, 6020, 6651, 6655, 7203, and 7701, and repealing sections 6016 and 6074 by this title]—

"(1) such amendments shall apply (A) in the case of an individual, only if the taxable year ends on or after September 30, 1968, and (B) in the case of a corporation, only if the taxable year ends on or after June 30, 1968,

"(2) in applying sections 6015, 6073, and 6654 of the Internal Revenue Code of 1954, such amendments shall first be taken into account as of September 1, 1968, and

"(3) in applying sections 6016, 6074, 6154, and 6655 of such Code, such amendments shall first be taken into account as of May 31, 1968.

In the case of any amount or additional amount of estimated tax payable, by reason of such amendments, by a corporation on or after June 15, 1968, and before the 15th day after the date of the enactment of this Act [June 28, 1968], the time prescribed for payments of such amount or additional amount shall not expire before such date (not earlier than the 15th day after the date of the enactment of this Act) as the Secretary of the Treasury or his delegate shall prescribe."

CROSS REFERENCES

Addition to tax for failure by corporation to pay estimated income tax, see section 6655 of this title.

Overpayment of installment, see section 6403 of this title.

Payment of estimated income tax, see section 6315 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 6201, 6601, 6651, 6655, 7701 of this title.

§ 6155. Payment on notice and demand.

(a) General rule.

Upon receipt of notice and demand from the Secretary or his delegate, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to tax, and assessable penalties) stated in such notice and demand.

(b) Cross references.

(1) For restrictions on assessment and collection of deficiency assessments of taxes subject to the jurisdiction of the Tax Court, see sections 6212 and 6213.

(2) For provisions relating to assessment of claims allowed in a bankruptcy or receivership proceeding, see section 6873.

(3) For provisions relating to jeopardy assessments, see subchapter A of chapter 70.

(Aug. 16, 1954, ch. 736, 68A Stat. 760.)

CROSS REFERENCES

Additions to tax and additional amounts generally, see section 6651 et seq. of this title.

Interest on underpayment or nonpayment of tax, see section 6601 of this title.

Lien for taxes, see section 6321 of this title.

Notice and demand for tax, see section 6303 of this title.

§ 6156. Installment payments of tax on use of highway motor vehicles and civil aircraft.

(a) Privilege to pay tax in installments.

If the taxpayer files a return of the tax imposed by section 4481 or 4491 on or before the date prescribed for the filing of such return, he may elect to pay the tax shown on such return in equal installments in accordance with the following table:

If liability is incurred in—	The number of installments shall be—
July, August, or September	4
October, November, or December	3
January, February, or March	2

(b) Dates for paying installments.

In the case of any tax payable in installments by reason of an election under subsection (a)—

(1) the first installment shall be paid on the date prescribed for payment of the tax,

(2) the second installment shall be paid on or before the last day of the third month following the calendar quarter in which the liability was incurred,

(3) the third installment (if any) shall be paid on or before the last day of the sixth month following the calendar quarter in which the liability was incurred, and

(4) the fourth installment (if any) shall be paid on or before the last day of the ninth month following the calendar quarter in which the liability was incurred.

(c) Proration of additional tax to installments.

If an election has been made under subsection (a) in respect of tax reported on a return filed by the taxpayer and tax required to be shown but not shown on such return is assessed before the date prescribed for payment of the last installment, the additional tax shall be prorated equally to the installments for which the election was made. That part of the additional tax so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the additional tax so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate.

(d) Acceleration of payments.

If the taxpayer does not pay any installment under this section on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary or his delegate.

(e) Section inapplicable to certain liabilities.

This section shall not apply to any liability for tax incurred in—

(1) April, May, or June of any year, or

(2) July, August, or September of 1977; in the case of the tax imposed by section 4481.

(Added Pub. L. 87-61, title II, § 203(c)(1), June 29, 1961, 75 Stat. 124, and amended Pub. L. 91-258, title II, § 206(b), (d)(2), May 21, 1970, 84 Stat. 245, 246; Pub. L. 91-605, title III, § 303(a)(10), Dec. 31, 1970, 84 Stat. 1744.)

AMENDMENTS

1970—Pub. L. 91-258, § 206(d)(2), included reference to civil aircraft in the catchline.

Subsec. (a). Pub. L. 91-258, § 206(b)(1), inserted reference to section 4491.

Subsec. (e)(2). Pub. L. 91-605 substituted "1977" for "1972".

Pub. L. 91-258, § 206(b)(2), inserted ", in the case of the tax imposed by section 4481."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE

Section effective on July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6601 of this title.

§ 6157. Payment of Federal unemployment tax on quarterly or other time period basis.

(a) General rule.

Every person who for the calendar year is an employer (as defined in section 3306(a)) shall—

(1) if the person—

(A) during any calendar quarter in the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment,

compute the tax imposed by section 3301 for each of the first three calendar quarters in the calendar year, and

(2) if paragraph (1) does not apply, compute the tax imposed by section 3301—

(A) for the period beginning with the first day of the calendar year and ending with the last day of the calendar quarter (excluding the last calendar quarter) in which such person becomes such an employer, and

(B) for the third calendar quarter of such year, if the period specified in subparagraph (A) includes only the first two calendar quarters of the calendar year.

The tax for any calendar quarter or other period shall be computed as provided in subsection (b) and the tax as so computed shall, except as otherwise provided in subsections (c) and (d), be paid in such manner and at such time as may be provided in regulations prescribed by the Secretary or his delegate.

(b) Computation of tax

The tax for any calendar quarter or other period referred to in paragraph (1) or (2) of subsection (a) shall be computed by multiplying the amount of wages (as defined in section 3306(b)) paid in such calendar quarter or other period by 0.5 percent.

(c) Special rule for calendar years 1970 and 1971

For purposes of subsection (a), the tax computed as provided in subsection (b) for any calendar quarter or other period shall be reduced (1) by 66⅔ percent if such quarter or period is in 1970, and (2) by 33⅓ percent if such quarter or period is in 1971.

(d) Special rule where accumulated amount does not exceed $100

Nothing in this section shall require the payment of tax with respect to any calendar quarter or other period if the tax under section 3301 for such period, plus any unpaid amounts for prior periods in the calender year, does not exceed $100. (Added Pub. L. 91–53, § 2(a), Aug. 7, 1969, 83 Stat. 91, and amended Pub. L. 91–373, title I, § 101(b)(1), (2), Aug. 10, 1970, 84 Stat. 696.)

CODIFICATION

A prior section 6157, act Aug. 16, 1954, c. 736, 68A Stat. 761, formerly § 6156, renumbered June 29, 1961, Pub. L. 87–61, title II, § 203(c)(1), 75 Stat. 125, striken Aug. 7, 1969, Pub. L. 91–53, § 2(a), 83 Stat. 91, was a cross reference provision for payment of taxes under provisions of the Tariff Act.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–373, § 101(b)(1), reduced from 4 to 1 the number of individuals which a person had to employ on each of some 20 days during the preceding calendar year and added provision covering persons who, during any calendar quarter in the preceding calendar year, paid wages of $1,500 or more.

Subsec. (b). Pub. L. 91–373, § 101(b)(2), substituted "0.5 percent" for "the number of percentage points (including fractional points) by which the rate of tax specified in section 3301 exceeds .7 percent".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of subsec. (a)(1) of this section by section 101(b)(1) of Pub. L. 91–373 applicable with respect to calendar years beginning after Dec. 31, 1971, see section 101(c)(1) of Pub. L. 91–373, set out as a note under section 3306 of this title.

Section 101(c)(2) of Pub. L. 91–373 provided that: "The amendment made by subsection (b)(2) [amending subsec. (b) of this section] shall apply with respect to calendar years beginning after December 31, 1969."

EFFECTIVE DATE

Section 4(a) of Pub. L. 91–53 provided that: "The amendments made by the first two sections of this Act [enacting section 6317 and amending sections 3306, 6157, 6201, 6513, and 6601 of this title] shall apply with respect to calendar years beginning after December 31, 1969."

WAGES PAID IN 1970 CALENDAR QUARTERS ENDING BEFORE AUG. 10, 1970

Section 301(b) of Pub. L. 91–373 provided that: "For purposes of section 6157 of the Internal Revenue Code of 1954 (relating to payment of Federal unemployment tax on quarterly or other time period basis) [this section], in computing tax as required by subsections (a) (1) and (2) of such section, the percentage contained in subsection (b) of such section applicable with respect to wages paid in any calendar quarter in 1970 ending before the date of the enactment of this Act [Aug. 10, 1970] shall be treated as being 0.4 percent."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6201, 6317, 6513, 6601 of this title.

Subchapter B.—Extensions of Time for Payment

Sec.
6161. Extension of time for paying tax.
6162. Extension of time for payment of tax on gain attributable to liquidation of personal holding companies.
6163. Extension of time for payment of estate tax on value of reversionary or remainder interest in property.
6164. Extension of time for payment of taxes by corporations expecting carrybacks.
6165. Bonds where time to pay tax or deficiency has been extended.
6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business.
6167. Extension of time for payment of tax attributable to recovery of foreign expropriation losses.

AMENDMENTS

1966—Pub. L. 89–384, § 1(g)(2), Apr. 8, 1966, 80 Stat. 104, added item 6167.

1958—Pub. L. 85–866, title II, § 206(b), Sept. 2, 1958, 72 Stat. 1684, added item 6166.

§ 6161. Extension of time for paying tax.

(a) Amount determined by taxpayer on return.

(1) General rule.

The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or

required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months (12 months in the case of estate tax) from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

(2) Estate tax.

If the Secretary or his delegate finds—

(A) that the payment, on the due date, of any part of the amount determined by the executor as the tax imposed by chapter 11,

(B) that the payment, on the date fixed for the payment of any installment under section 6166, of any part of such installment (including any part of a deficiency prorated to an installment the date for payment of which had not arrived), or

(C) that the payment upon notice and demand of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived,

would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 10 years from the date prescribed by section 6151 (a) for payment of the tax.

(b) Amount determined as deficiency.

Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(1) In the case of a tax imposed by chapter 1, 12, or 42, for a period not to exceed 18 months from the date fixed for payment of the deficiency, and, in exceptional cases, for a further period not to exceed 12 months;

(2) In the case of a tax imposed by chapter 11, for a period not to exceed 4 years from the date otherwise fixed for payment of the deficiency.

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1 or 42, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(c) Claims in bankruptcy or receivership proceedings.

Extensions of time for payment of any portion of a claim for tax under chapter 1 or chapter 12, allowed in bankruptcy or receivership proceedings, which is unpaid, may be had in the same manner and subject to the same provisions and limitations as provided in subsection (b) in respect of a deficiency in such tax.

(d) Cross references.

(1) Period of limitation.

For extension of the period of limitation in case of an extension under subsection (a) (2) or subsection (b) (2), see section 6503 (d).

(2) Security.

For authority of the Secretary or his delegate to require security in case of an extension under subsection (a) (2) or subsection (b), see section 6165.

(Aug. 16, 1954, ch. 736, 68A Stat. 762; Sept. 2, 1958, Pub. L. 85-866, title II, § 206(c), 72 Stat. 1684; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(37), 83 Stat. 530; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(h), 84 Stat. 1838.)

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91-614 substituted "6 months (12 months in the case of estate tax)" for "6 months".

1969—Subsec. (b). Pub. L. 91-172 inserted references to chapter 42.

1958—Subsec. (a)(2). Pub. L. 85-866 added provisions allowing Secretary or his delegate to extend time for payment for reasonable period, not exceeding 10 years from date prescribed by section 6151(a), if he finds that payment on date fixed for payment of any installment under section 6166, of any part of such installment, or payment of any part of a deficiency prorated under section 6166 to installments the date for payment of which had arrived would result in undue hardship.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 206 (f) of Pub. L. 85-866 provided that: "The amendments made by this section [which amended subsec. (a) (2) of this section and sections 6503 (d) and 6601 (b) of this title and added section 6166 of this title] shall apply to estates of decedents with respect to which the date for the filing of the estate tax return (including extensions thereof) prescribed by section 6075 (a) of the Internal Revenue Code of 1954 is after the date of the enactment of this Act [Sept. 2, 1958]; except that (1) section 6166 (i) of such Code as added by this section shall apply to estates of decedents dying after August 16, 1954, but only if the date for the filing of the estate tax return (including extensions thereof) expired on or before the date of the enactment of this Act [Sept. 2, 1958], and (2) notwithstanding section 6166 (a) of such Code, if an election under such section is required to be made before the sixtieth day after the date of the enactment of this Act [Sept. 2, 1958] such an election shall be considered timely if made on or before such sixtieth day."

CROSS REFERENCES

Time for filing returns—

Estate and gift tax, see section 6075 of this title.

Extension of time, see section 6081 of this title.

Income tax, see section 6072 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2011, 2014, 2204, 6503, 6601 of this title.

§ 6162. Extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

(a) Extension permitted.

The Secretary or his delegate may (under regulations prescribed by the Secretary or his delegate) extend (for a period not to exceed 5 years from the date fixed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax under chapter 1 by the taxpayer for any taxable year beginning before January 1, 1956, as is attributable to the short-term or long-term capital gain derived by the taxpayer from the

receipt by him of property other than money on a complete liquidation of a corporation to which section 331 (a) (1) or 342 applies. This section shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions in complete liquidation), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this section shall be granted only if it is shown to the satisfaction of the Secretary or his delegate that the failure to grant the extension will result in undue hardship to the taxpayer.

(b) Security.

For authority of the Secretary or his delegate to require security in the case of such an extension, see section 6165.

(Aug. 16, 1954, ch. 736, 68A Stat. 763.)

§ 6163. Extension of time for payment of estate tax on value of reversionary or remainder interest in property.

(a) Extension permitted.

If the value of a reversionary or remainder interest in property is included under chapter 11 in the value of the gross estate, the payment of the part of the tax under chapter 11 attributable to such interest may, at the election of the executor, be postponed until 6 months after the termination of the precedent interest or interests in the property, under such regulations as the Secretary or his delegate may prescribe.

(b) Extension to prevent undue hardship.

If the Secretary or his delegate finds that the payment of the tax at the expiration of the period of postponement provided for in subsection (a) would result in undue hardship to the estate, he may extend the time for payment for a reasonable period or periods not in excess of 3 years from the expiration of such period of postponement.

(c) Cross references.

(1) Interest.

For provisions requiring the payment of interest for the period of such extension, see section 6601 (b).

(2) Security.

For authority of the Secretary or his delegate to require security in the case of such extension, see section 6165.

(Aug. 16, 1954, ch. 736, 68A Stat. 763; Sept. 2, 1958, Pub. L. 85–866, title I. § 66(b)(1), 72 Stat. 1658; Feb. 26, 1964, Pub. L. 88–272, title II, § 240(a), 78 Stat. 129.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–272 substituted "or periods not in excess of 3" for "not in excess of 2."

1958—Subsec. (b). Pub. L. 85–866 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–866 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 240(c) of Pub. L. 88–272 provided that:

"(1) The amendment made by subsection (a) [to this section] shall apply in the case of any reversionary or remainder interest only if the time for payment of the tax under chapter 11 of the Internal Revenue Code of 1954 attributable to such interest, including any extensions thereof, has not expired on the date of the enactment of this Act [Feb. 26, 1964].

"(2) The amendment made by subsection (b) [to section 925, Internal Revenue Code, 1939] shall apply in the case of any reversionary or remainder interest only if the time for payment of the tax under chapter 3 of the Internal Revenue Code of 1939 attributable to such interest, including any extensions thereof, has not expired on the date of the enactment of this Act [Feb. 26, 1964]."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 66 (b) (3) of Pub. L. 85–866 provided that: "The amendments made by paragraphs (1) and (2) [to subsecs. (b) and (c) of this section and sections 925 and 926 of I. R. C. 1939] shall apply in the case of any reversionary or remainder interest only if the precedent interest or interests in the property did not terminate before the beginning of the 6-month period which ends on the date of the enactment of this Act [Sept. 2, 1958]."

CROSS REFERENCES

Time for filing estate tax return, see section 6075 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2015, 2204, 6601 of this title.

§ 6164. Extension of time for payment of taxes by corporations expecting carrybacks.

(a) In general.

If a corporation, in any taxable year, files with the Secretary or his delegate a statement, as provided in subsection (b), with respect to an expected net operating loss carryback from such taxable year, the time for payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

(b) Contents of statement.

The statement shall be filed at such time and in such manner and form as the Secretary or his delegate may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carryback, as provided in section 172 (b), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) the estimated amount of the expected net operating loss;

(2) the reasons, facts, and circumstances which cause the corporation to expect such net operating loss;

(3) the amount of the reduction of the tax previously determined attributable to the expected carryback, such tax previously determined being ascertained in accordance with the method prescribed in section 1314 (a); and such reduction being determined by applying the expected carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) the tax and the part thereof the time for payment of which is to be extended; and

(5) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

The Secretary or his delegate shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

(c) Amount to which extension relates and installment payments.

The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax

shown on the return, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the tax the time for payment of which may be extended shall not exceed the amount stated under subsection (b) (3). For purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or addition to the tax) shall be considered to be required to be paid prior to the date of filing of the statement if the 10th day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of the tax, the time for payment of the remainder shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(d) Period of extension.

The extension of time for payment provided in this section shall expire—

(1) on the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss, or

(2) if an application for tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period prescribed in paragraph (1), on the date on which notice is mailed by certified mail or registered mail by the Secretary or his delegate to the taxpayer that such application is allowed or disallowed in whole or in part.

(e) Revised statements.

Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed, the extension of time shall be terminated as to the difference between the two amounts.

(f) Termination.

The Secretary or his delegate is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Secretary or his delegate shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

(g) Payments on termination.

If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) no further extension of time shall be made under this section with respect to such amount, and

(2) the time for payment of such amount shall be considered to be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(h) Jeopardy.

If the Secretary or his delegate believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension, and notice and demand shall be made by him for payment of such amount.

(i) Consolidated returns.

If the corporation seeking an extension of time under this section made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises or for the preceding taxable year affected by such loss, the provisions of such section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 764; Sept. 2, 1958, Pub. L. 85–866, title I, § 89(b), 72 Stat. 1665.)

AMENDMENTS

1958—Subsec. (d)(2). Pub. L. 85–866 inserted "certified mail or" preceding "registered mail".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d)(2) by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89 (d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6411 of this title.

§ 6165. Bonds where time to pay tax or deficiency has been extended.

In the event the Secretary or his delegate grants any extension of time within which to pay any tax or any deficiency therein, the Secretary or his delegate may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension. (Aug. 16, 1954, ch. 736, 68A Stat. 766.)

CROSS REFERENCES

Form of bond, see section 7101 of this title.

Jurisdiction of district court of action by the United States, see section 1345 of Title 28, Judiciary and Judicial Procedure.

§ 6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business.

(a) Extension permitted.

If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds either—

(1) 35 percent of the value of the gross estate of such decedent, or

(2) 50 percent of the taxable estate of such decedent,

the executor may elect to pay part or all of the tax imposed by section 2001 in two or more (but not

exceeding 10) equal installments. Any such election shall be made not later than the time prescribed by section 6075 (a) for filing the return of such tax (including extensions thereof), and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe. If an election under this section is made, the provisions of this subtitle shall apply as though the Secretary or his delegate were extending the time for payment of the tax. For purposes of this section, value shall be value determined for Federal estate tax purposes.

(b) Limitation.

The maximum amount of tax which may be paid in installments as provided in this section shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as the value of the interest in a closely held business which qualifies under subsection (a) bears to the value of the gross estate.

(c) Closely held business.

For purposes of this section, the term "interest in a closely held business" means—

(1) an interest as a proprietor in a trade or business carried on as a proprietorship.

(2) an interest as a partner in a partnership carrying on a trade or business, if—

(A) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(B) such partnership had 10 or less partners,

(3) stock in a corporation carrying on a trade or business, if—

(A) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(B) such corporation had 10 or less shareholders.

For purposes of this subsection, determinations shall be made as of the time immediately before the decedent's death.

(d) Special rule for interests in two or more closely held businesses.

For purposes of subsections (a), (b), and (h) (1), interests in two or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate more than 50 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 50 percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(e) Date for payment of installments.

If an election is made under subsection (a), the first installment shall be paid on or before the date prescribed by section 6151 (a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this subsection for payment of the preceding installment.

(f) Proration of deficiency to installments.

If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(g) Time for payment of interest.

If the time for payment of any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as a part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary or his delegate. In applying section 6601 (b) (relating to the application of the 4-percent rate of interest in the case of certain extensions of time to pay estate tax) in the case of a deficiency, the entire amount which is prorated to installments under this section shall be treated as an amount of tax the payment of which is extended under this section.

(h) Acceleration of payment.

(1) Withdrawal of funds from business; disposition of interest.

(A) If—

(i) aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a), made with respect to such interest, equal or exceed 50 percent of the value of such trade or business, or

(ii) 50 percent or more in value of an interest in a closely held business which qualifies under subsection (a) is distributed, sold, exchanged, or otherwise disposed of,

then the extension of time for payment of tax provided in this section shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

(i) subparagraph (A) (i) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed, and

(ii) subparagraph (A) (ii) does not apply with respect to the stock redeemed; and for

purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (e) for payment of the first installment which becomes due after the date of the distribution, there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

(C) Subparagraph (A) (ii) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368 (a) (1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of such subparagraph as an interest qualifying under subsection (a).

(D) Subparagraph (A) (ii) does not apply to a transfer of property of the decedent by the executor to a person entitled to receive such property under the decedent's will or under the applicable law of descent and distribution.

(2) Undistributed income of estate.

(A) If an election is made under this section and the estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

(i) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661 (a) (relating to deduction for distributions, etc.);

(ii) the amount of tax imposed for the taxable year on the estate under chapter 1; and

(iii) the amount of the Federal estate tax (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(3) Failure to pay installment.

If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(i) Transitional rules.

(1) In general.

If—

(A) a deficiency in the tax imposed by section 2001 is assessed after the date of the enactment of this section, and

(B) the estate qualifies under paragraph (1) or (2) of subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) Time of election.

An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary or his delegate for the payment of the deficiency, and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) Effect of election on payment.

If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to the installments which would have been due if an election had been timely made under this section at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(4) Application of subsection (h) (2).

In the case of an election under this subsection, subsection (h) (2) shall not apply with respect to undistributed net income for any taxable year ending before January 1, 1960.

(j) Regulations.

The Secretary or his delegate shall prescribe such regulations as may be necessary to the application of this section.

(k) Cross references.

(1) Interest.

For provisions requiring the payment of interest at the rate of 4 percent per annum for the period of an extension, see section 6601 (b).

(2) Security.

For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(3) Period of limitation.

For extension of the period of limitation in the case of an extension under this section, see section 6503 (d).

(Added Pub. L. 85–866, title II, § 206 (a), Sept. 2, 1958, 72 Stat. 1681.)

REFERENCES IN TEXT

Date of enactment of this section, referred to in text of subsec. (i) (1) (A) of this section, is Sept. 2, 1958.

EFFECTIVE DATE

Effective date of this section, see section 206 (f) of Pub. L. 85–866, set out as a note under section 6161 of this title.

SHORT TITLE

Section as part of the Small Business Tax Revision Act of 1958, see section 201 of Pub. L. 85–866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2204, 6161, 6503, 6601 of this title.

§ 6167. Extension of time for payment of tax attributable to recovery of foreign expropriation losses.

(a) Extension allowed by election.

If—

(1) a corporation has a recovery of a foreign expropriation loss to which section 1351 applies, and

(2) the portion of the recovery received in money is less than 25 percent of the amount of such recovery (as defined in section 1351(c)) and is not greater than the tax attributable to such recovery,

the tax attributable to such recovery shall, at the election of the taxpayer, be payable in 10 equal installments on the 15th day of the third month of each of the taxable years following the taxable year of the recovery. Such election shall be made at such time and in such manner as the Secretary or his delegate may prescribe by regulations. If an election is made under this subsection, the provisions of this subtitle shall apply as though the Secretary or his delegate were extending the time for payment of such tax.

(b) Extension permitted by Secretary.

If a corporation has a recovery of a foreign expropriation loss to which section 1351 applies and if an election is not made under subsection (a), the Secretary or his delegate may, upon finding that the payment of the tax attributable to such recovery at the time otherwise provided in this subtitle would result in undue hardship, extend the time for payment of such tax for a reasonable period or periods not in excess of 9 years from the date on which such tax is otherwise payable.

(c) Acceleration of payments.

If—

(1) an election is made under subsection (a),

(2) during any taxable year before the tax attributable to such recovery is paid in full—

(A) any property (other than money) received on such recovery is sold or exchanged, or

(B) any property (other than money) received on any sale or exchange described in subparagraph (A) is sold or exchanged, and

(3) the amount of money received on such sale or exchange (reduced by the amount of the tax imposed under chapter 1 with respect to such sale or exchange), when added to the amount of money—

(A) received on such recovery, and

(B) received on previous sales or exchanges described in subparagraphs (A) and (B) of paragraph (2) (as so reduced),

exceeds the amount of money which may be received under subsection (a)(2),

an amount of the tax attributable to such recovery equal to such excess shall be payable on the 15th day of the third month of the taxable year following the taxable year in which such sale or exchange occurs. The amount of such tax so paid shall be treated, for purposes of this section, as a payment of the first unpaid installment or installments (or portion thereof) which become payable under subsection (a) following such taxable year.

(d) Proration of deficiency to installments.

If an election is made under subsection (a), and a deficiency attributable to the recovery of a foreign expropriation loss has been assessed, the deficiency shall be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(e) Time for payment of interest.

If the time for payment for any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary or his delegate. In applying section 6601(j) (relating to the application of the 4-percent rate of interest in the case of recoveries of foreign expropriation losses to which this section applies) in the case of a deficiency, the entire amount which is prorated to installments under this section shall be treated as an amount of tax the payment of which is extended under this section.

(f) Tax attributable to recovery of foreign expropriation loss.

For purposes of this section, the tax attributable to a recovery of a foreign expropriation loss is the sum of—

(1) the additional tax imposed by section 1351 (d)(1) on such recovery, and

(2) the amount by which the tax imposed under subtitle A is increased by reason of the gain on such recovery which under section 1351(e) is considered as gain on the involuntary conversion of property.

(g) Failure to pay installment.

If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(h) Cross-references.

(1) Interest.—For provisions requiring the payment of interest at the rate of 4 percent per annum for the period of an extension, see section 6601(j).

(2) Security.—For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(3) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(f).

(Added Pub. L. 89-384, § 1(d), Apr. 8, 1966, 80 Stat. 102.)

EFFECTIVE DATE

Section applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89-384, set out as a note under section 1351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6503, 6601 of this title.

Chapter 63.—ASSESSMENT

Subchapter
A. In general.
B. Deficiency procedures in the case of income, estate, gift, and certain excise taxes.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(j)(63), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise taxes in item relating to Subchapter B.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6682 of this title.

Subchapter A.—In General

Sec.
6201. Assessment authority.
6202. Establishment by regulations of mode or time of assessment.
6203. Method of assessment.
6204. Supplemental assessments.
6205. Special rules applicable to certain employment taxes.
6206. Special rules applicable to excessive claims under sections 6420, 6421, 6424, and 6427.
6207. Cross references.

AMENDMENTS

1970—Pub. L. 91-258, title II, § 207(d)(11), May 21, 1970, 84 Stat. 249, inserted reference to section 6427 in item 6206.

1965—Pub. L. 89-44, title II, § 202(c)(2)(B), June 21, 1965, 79 Stat. 139, substituted "6420, 6421, and 6424" for "6420 and 6421" in item 6206.

1956—Act Apr. 2, 1956, ch. 160, § 4(b)(2), 70 Stat. 91, inserted item "6206. Special rules applicable to excessive claims under section 6420", and renumbered former item "6206" as "6207".

Act June 29, 1956, ch. 62, title II, § 208(c)(3), substituted "sections 6420 and 6421" for "section 6420" in item "6206".

§ 6201. Assessment authority.

(a) Authority of Secretary or delegate.

The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return.

The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp.

(A) Omitted stamps.

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary or his delegate determines to be liable for such tax.

(B) Check or money order not duly paid.

In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) Erroneous income tax prepayment credits.

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(4) Erroneous credit under section 39.

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit allowable by section 39 (relating to certain uses of gasoline, special fuels, and lubricating oil), the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) Amount not to be assessed.

(1) Estimated income tax.

No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

(2) Federal unemployment tax.

No unpaid amount of Federal unemployment tax for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

(c) Compensation of child.

Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73 (a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) Deficiency proceedings.

For special rules applicable to deficiencies of income, estate, gift, and chapter 42 taxes, see subchapter B.

(Aug. 16, 1954, ch. 736, 68A Stat. 767; June 21, 1965, Pub. L. 89-44, title VIII, § 809(d)(4)(A), 79 Stat. 168; Aug. 7, 1969, Pub. L. 91-53, § 2(b), 83 Stat. 92; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(38), 83 Stat. 530; May 21, 1970, Pub. L. 91-258, title II, § 207(d)(1), (2), 84 Stat. 248.)

AMENDMENTS

1970—Subsec. (a)(4). Pub. L. 91–258 included provision for overstatement of credit allowable by section 39 (relating to certain uses of special fuels) and substituted "under section 39" for "for use of gasoline" in par. (4) heading, respectively.

1969—Subsec. (b). Pub. L. 91–53 added subsec. (b) catchline and par. (2), and redesignated former subsec. (b), including its catchline, as par. (1).

Subsec. (d). Pub. L. 91–172 inserted reference to chapter 42 taxes.

1965—Subsec. (a)(4). Pub. L. 89–44 added subsec. (a)(4).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENTS

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as a note under section 6157 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Subsec. (a)(4) applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

CROSS REFERENCES

Application of laws relating to assessment, see section 7851 (a) (6) (B) of this title.

Assessment of—

Penalties, see section 6659 (a) (1) of this title.

Transferees, see section 6901 et seq. of this title.

Collection after assessment, see section 6502 of this title.

False or no return, collection without assessment, see section 6501 (c) of this title.

Limitation on assessment, see section 6501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 73 of this title.

§ 6202. Establishment by regulations of mode or time of assessment.

If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary or his delegate may establish the same by regulations. (Aug. 16, 1954, ch. 736, 68A Stat. 768.)

CROSS REFERENCES

Rules and regulations for collection of taxes, see section 7805 of this title.

§ 6203. Method of assessment.

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary or his delegate in accordance with rules or regulations prescribed by the Secretary or his delegate. Upon request of the taxpayer, the Secretary or his delegate shall furnish the taxpayer a copy of the record of the assessment. (Aug. 16, 1954, ch. 736, 68A Stat. 768.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6303 of this title.

§ 6204. Supplemental assessments.

(a) General rule.

The Secretary or his delegate may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) Restrictions on assessment.

For restrictions on assessment of deficiencies in income, estate, and gift taxes, see section 6213.

(Aug. 16, 1954, ch. 736, 68A Stat. 768.)

§ 6205. Special rules applicable to certain employment taxes.

(a) Adjustment of tax.

(1) General rule.

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) United States as employer.

For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or American Samoa as employer.

For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of Columbia as employer.

For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Underpayments.

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 768; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(r)(1), 74 Stat. 940; July 30, 1965, Pub. L. 89–97, title III, § 317(d), 79 Stat. 389.)

AMENDMENTS

1695—Subsec. (a)(4). Pub. L. 89–97 added subsec. (a)(4).

1960—Subsec. (a)(3). Pub. L. 86-778 added subsec. (a)(3).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 317 of Pub. L. 89-97 applicable with respect to services performed after the quarter ending September 30, 1965, and after the quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under the provisions of such amendments, see section 317(g) of Pub. L. 89-97, set out as a note under section 410 of Title 42.

EFFECTIVE DATE OF 1960 AMENDMENT

Subsec. (a)(3) of this section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6653 of this title.

§ 6206. Special rules applicable to excessive claims under sections 6420, 6421, 6424, and 6427.

Any portion of a payment made under section 6420, 6421, 6424, or 6427 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed by section 4081 (with respect to payments under sections 6420 and 6421), 4091 (with respect to payments under section 6424), or 4041 (with respect to payments under section 6427) and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6420, 6421, 6424, or 6427, as the case may be. (Added Apr. 2, 1956, ch. 160, § 4(b)(1), 70 Stat. 90, and amended June 29, 1956, ch. 462, title II, § 208(d)(1), 70 Stat. 396; June 21, 1965, Pub. L. 89-44, title II, § 202(c)(2)(A), 79 Stat. 139; May 21, 1970, Pub. L. 91-258, title II, § 207(d)(3), 84 Stat. 248.)

AMENDMENTS

1970—Pub. L. 91-258 included reference to section 6427 in the catchline, included reference to section 6427 in first and second sentences, and substituted "by section 4081 (with respect to payments under sections 6420 and 6421), 4091 (with respect to payments under section 6424), or 4041 (with respect to payments under section 6427)" for "by section 4081 (or, in the case of lubricating oil, by section 4091)", in first sentence, respectively.

1965—Pub. L. 89-44 struck out "6420 and 6421" wherever it appeared in the heading and in the text and substituted therefor "6420, 6421, and 6424" and inserted "(or, in the case of lubricating oil, by section 4091)" after "4081" in the text.

1956—Act June 29, 1956, in the catchline and section, included excessive claims under section 6421.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 to take effect January 1, 1966, see section 701(a)(1), (2), of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§ 6207. Cross references.

(1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment with respect to taxes required to be paid by chapter 52, see section 5703.

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006 (c).

(6) For period of limitation upon assessment, see chapter 66.

(7) For assessment under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501 (b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

(Aug. 16, 1954, ch. 736, 68A Stat. 768, formerly § 6206, renumbered § 6207, Apr. 2, 1956, ch. 160, § 4(b)(1), 70 Stat. 90, and amended Sept. 2, 1958, Pub. L. 85-859, title II, § 204 (2), (3), 72 Stat. 1428.)

REFERENCES IN TEXT

Sections 4504 and 4601 of this title, referred to in par. (7), were repealed by Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

AMENDMENTS

1958—Par. (4). Pub. L. 85-859, § 204(2), substituted "with respect to taxes required to be paid by chapter 52, see section 5703" for "in case of sale or removal of tobacco, snuff, cigars, and cigarettes without the use of the proper stamps, see section 5703(d)".

Pars. (6) and (7). Pub. L. 85-859, § 204(3) redesignated former pars. (8) and (9) as (6) and (7) respectively and struck out former pars. (6) and (7) which contained cross references relating to assessments in case of certain spirits subject to excessive leakage, and to assessment of deficiencies in production of distilled spirits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

Subchapter B.—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

Sec.
6211. Definition of a deficiency.
6212. Notice of deficiency.
6213. Restrictions applicable to deficiencies; petition to Tax Court.
6214. Determinations by Tax Court.
6215. Assessment of deficiency found by Tax Court.
6216. Cross references.

AMENDMENTS

1969—Pub. L. 91-172, title I, § 101(j)(62), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise taxes in subchapter heading.

§ 6211. Definition of a deficiency.

(a) In general.

For purposes of this title in the case of income, estate, gift, and excise taxes, imposed by subtitles A and B, and chapter 42, the term "deficiency" means the amount by which the tax imposed by subtitle A or B or chapter 42 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b) (2), made.

(b) Rules for application of subsection (a).

For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 42 was less than the excess of the amount specified in subsection (a) (1) over the rebates previously made.

(3) The computation by the Secretary or his delegate, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to the credit under section 39, unless, without regard to such credit, the tax imposed by subtitle A exceeds the excess of the amount specified in subsection (a) (1) over the amount specified in subsection (a) (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 770; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d) (5) (A), 79 Stat. 168; Mar. 15, 1966, Pub. L. 89–368, title I, § 102(b) (4), 80 Stat. 64; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(f) (1), (j) (39), 83 Stat. 524, 530.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 101(f) (1), inserted references to excise taxes and chapter 42.

Subsec. (b) (2). Pub. L. 91–172, § 101(j) (39), inserted reference to chapter 42.

1966—Subsec. (b) (1). Pub. L. 89–368 substituted "subtitle A" for "chapter 1".

1965—Subsec. (b). Pub. L. 89–44 added par. (4).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(f) (1), (j) (39) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k) (1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (b) (1) by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Subsec. (b) (4) applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1314, 1481, 6213, 6503, 6601, 6653, 6656, 6802 of this title.

§ 6212. Notice of deficiency.

(a) In general.

If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 42, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

(b) Address for notice of deficiency.

(1) Income and gift taxes and taxes imposed by chapter 42.

In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, or chapter 42, if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 42, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return.

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary or his delegate has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax.

In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted.

(1) General rule.

If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213 (a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar quarter, of estate tax in respect of the taxable estate of the same decedent, of section 4940 tax for the same taxable year, or of chapter 42 tax (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater de-

ficiencies before the Tax Court), in section 6213 (b)(1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references.

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of election with respect to the standard deduction where taxpayer and his spouse made separate returns, see section 144 (b).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033 (a) (3) (C) and (D).

(C) Deficiency attributable to gain on sale or exchange of personal residence, see section 1034 (j).

(D) Deficiency attributable to war loss recoveries where prior benefit rule is elected, see section 1335.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 76, 89(b), 72 Stat. 1661, 1665; Feb. 26, 1964, Pub. L. 88–272, title I, § 112(d)(1), 78 Stat. 24; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(f)(2), (j)(40), (41), 83 Stat. 524, 530; Dec. 31, 1970, Pub. L. 91–614, title I, § 102(d)(5) 84 Stat. 1842.)

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91–614 substituted "calendar quarter" for "calendar year".

1969—Subsec. (a). Pub. L. 91–172, § 101(j)(40), inserted reference to chapter 42.

Subsec. (b)(1). Pub. L. 91–172, § 101(j)(41), inserted reference to chapter 42 taxes in subsec. catchline and text.

Subsec. (c)(1), Pub. L. 91–172, § 101(f)(2), included section 4940 tax and chapter 42 tax (other than under section 4940), among the classes of taxes with respect to which the Secretary cannot determine additional deficiencies after the taxpayer has filed a petition for redetermination of any deficiency about which he has been notified.

1964—Subsec. (c)(2)(A). Pub. L. 88–272 substituted "with respect to the" for "to take."

1958—Subsec. (a). Pub. L. 85–866, § 89(b), inserted "certified mail or" preceding "registered mail".

Subsec. (b)(1). Pub. L. 85–866, § 76, substituted "subtitle A or chapter 12" for "chapter 1 or 12" and "subtitle A, chapter 12," for "such chapter".

Subsec. (b)(2). Pub. L. 85–866, § 89(b), inserted "certified mail or" preceding "registered mail".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a), (b) (2) by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89 (d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

Amendment of subsec. (b) (1) of this section by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Deficiency letters in jeopardy assessments of income, estate, and gift taxes, see section 6861 (b) of this title.

Jeopardy assessment of taxes other than income, estate, and gift taxes, see section 6862 of this title.

Jurisdiction of Tax Court involving deficiencies, see section 7442 of this title.

Notice of liability to transferees, see section 6901 (g) of this title.

Prohibition of suits to restrain assessment or collection, see section 7421 of this title.

Suspension of running of period of limitation by issuance of notice of deficiency, see section 6503 (a) of this title.

RULES OF PRACTICE IN THE TAX COURT

Copy of notice of deficiency to be appended to petition and each copy required, see rule 7 (c) (4) (E), Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1033, 1039, 1311, 2513, 4941, 4942, 4943, 4944, 4945, 6013, 6213, 6503, 6512, 6802, 6901, 7421 of this title.

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court.

(a) Time for filing petition and restriction on assessment.

Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) Exceptions to restrictions on assessment.

(1) Mathematical errors.

If the taxpayer is notified that, on account of a mathematical error appearing upon the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212 (c) (1) (restricting further deficiency letters), or section 6512 (a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(2) Assessments arising out of tentative carryback adjustments.

If the Secretary or his delegate determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback with respect to which such amount was applied, credited, or refunded, he may assess the amount of the excess as a de-

ficiency as if it were due to a mathematical error appearing on the return.

(3) Assessment of amount paid.

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) Failure to file petition.

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary or his delegate.

(d) Waiver of restrictions.

The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary or his delegate, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) Suspension of filing period for certain chapter 42 taxes.

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), or 4945 (relating to taxes on taxable expenditures) shall be suspended for any period during which the Secretary or his delegate has extended the time allowed for making correction under section 4941(e)(4), 4942 (j)(2), 4943(d)(3), 4944(e)(3), or 4945(h)(2).

(f) Cross references.

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201 (a) (3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905 (c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For assessment as if a mathematical error on the return, in the case of erroneous claims for credits under section 39, see section 6201(a)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 771; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d)(4)(B), 79 Stat. 168; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(f)(3), (j)(42), 83 Stat. 524, 530.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 101(j)(42), inserted reference to chapter 42.

Subsec. (e). Pub. L. 91–172, § 101(f)(3) added subsec. (e). Former subsec. (e) was redesignated as subsec. (f).

Subsec. (f). Pub. L. 91–172, § 101(f)(3), redesignated former subsec. (e) as subsec. (f).

1965—Subsec. (e). Pub. L. 89–44 added par. (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (e)(3) by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

CROSS REFERENCES

Authority to bring civil action for estate taxes as subject to this section, see section 7404 of this title.

Bond to stay assessment and collection, see section 7485 of this title.

Civil actions for refund, see section 7422 of this title.

Date when Tax Court decision becomes final, see section 7481 of this title.

Jurisdiction of district court—

Tax refunds, actions for, see sections 1340 and 1346 of Title 28, Judiciary and Judicial Procedure.

United States, actions by, see section 1345 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of Tax Court, see section 7442 of this title.

Limitation in case of petition to Tax Court, see section 6512 of this title.

Prohibition of suits to restrain assessment or collection, see section 7421 of this title.

Stay of proceedings in district court upon mailing notice of deficiency, see section 7422 (e) of this title.

Time for performance of acts where last day falls on Saturday, Sunday or legal holiday, see section 7503 of this title.

Timely mailing treated as timely filed, see section 7502 of this title.

RULES OF PRACTICE IN THE TAX COURT

Extension of time on filing petition excepted, see rule 20 (a), Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 2011, 2014, 4941, 4942, 4943, 4944, 4945, 6013, 6212, 6501, 6512, 6601, 6651, 6802, 6863, 6871, 7404, 7421 of this title.

§ 6214. Determinations by Tax Court.

(a) Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax.

Except as provided by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or addition to the tax should be assessed, if claim therefor is asserted by the Secretary or his delegate at or before the hearing or a rehearing.

(b) Jurisdiction over other years and quarters.

The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year or calendar quarter shall consider such facts with relation to the taxes for other years or calendar quarters as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid.

(c) Taxes imposed by section 507 or chapter 42.

The Tax Court, in redetermining a deficiency of any tax imposed by section 507 or chapter 42 for any period, act, or failure to act, shall consider such facts with relation to the taxes under chapter 42 for other periods, acts, or failures to act as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the taxes under chapter 42 for any other period, act, or failure to act have been overpaid or underpaid.

(d) Final decisions of Tax Court.

For purposes of this chapter, chapter 42, and subtitles A or B the date on which a decision of the Tax

Court becomes final shall be determined according to the provisions of section 7481. (Aug. 16, 1954, ch. 736, 68A Stat. 773; Dec 30, 1969, Pub. L. 91–172, title I, § 101(j)(43), (44), title IX, § 960(a), 83 Stat. 530, 531, 734; Dec. 31, 1970, Pub. L. 91–614, title I, § 102(d)(6), 84 Stat. 1842.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–614 added reference to calendar quarters in the subsec. catchline and body of the subsec. in regard to gift tax deficiencies.

1969—Subsec. (a). Pub. L. 91–172, § 960(a), inserted reference to the exception provided for in section 7463 of this title.

Subsec. (c). Pub. L. 91–172, § 101(j)(43), added subsec. (c). Former subsec. (c) redesignated as (d).

Subsec. (d). Pub. L. 91–172, § 101(j)(43), (44), redesignated former subsec. (c) as (d), and, in subsec. (d) as so redesignated, inserted reference to chapter 42.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (a) of this section by section 960(a) of Pub. L. 91–172 to take effect one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as a note under section 7463 of this title.

Amendment of subsecs. (c), (d) by section 101(j)(43), (44) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

CROSS REFERENCES

Jurisdiction of Tax Court, see section 7442 of this title.

Procedure before Tax Court generally, see section 7451 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6212, 7463 of this title.

§ 6215. Assessment of deficiency found by Tax Court.

(a) General rule.

If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary or his delegate. No part of the amount determined as a deficiency by the Secretary or his delegate but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) Cross references.

(1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary or his delegate, see section 7459 (d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459 (e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-built vessels, see section 9 (b) (8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U. S. C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For proration of deficiency to installments, see section 6152 (c).

(8) For extension of time for paying amount determined as deficiency, see section 6161 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 773.)

CROSS REFERENCES

Date when Tax Court decisions become final, see section 7481 of this title.

§ 6216. Cross references.

(1) For procedures relating to bankruptcy and receivership, see subchapter B of chapter 70.

(2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.

(3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.

(Aug. 16, 1954, ch. 736, 68A Stat. 773.)

Chapter 64.—COLLECTION

Subchapter
A. General provisions.
B. Receipt of payment.
C. Lien for taxes.
D. Seizure of property for collection of taxes.

Subchapter A.—General Provisions

Sec.
6301. Collection authority.
6302. Mode or time of collection.
6303. Notice and demand for tax.
6304. Collection under the Tariff Act.

§ 6301. Collection authority.

The Secretary or his delegate shall collect the taxes imposed by the internal revenue laws. (Aug. 16, 1954, ch. 736, 68A Stat. 775.)

CROSS REFERENCES

General powers and duties of officers and employees of Treasury Department, see section 7621 et seq. of this title.

§ 6302. Mode or time of collection.

(a) Establishment by regulations.

If the mode or time for collecting any tax is not provided for by this title, the Secretary or his delegate may establish the same by regulations.

(b) Discretionary method.

Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, section 4481 of chapter 36, sections 4501(a) or 4511 of chapter 37, or sections 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

(c) Use of Government depositaries.

The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 775; June 29, 1956, ch. 462, title II, § 206 (b), 70 Stat. 391.)

AMENDMENTS

1956—Subsec. (b). Act June 29, 1956, included any tax imposed by section 4481 of chapter 36.

CROSS REFERENCES

Bonds of employees, see section 7803 (c) of this title.

Deposit of collections, see section 7809 of this title.

Depositaries for collections, see section 7808 of this title.

Rules and regulations, see section 7805 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6656, 6802, 7502, 7652 of this title.

§ 6303. Notice and demand for tax.

(a) General rule.

Where it is not otherwise provided by this title, the Secretary or his delegate shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) Assessment prior to last date for payment.

Except where the Secretary or his delegate believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date. (Aug. 16, 1954, ch. 736, 68A Stat. 775.)

CROSS REFERENCES

Interest payable on notice and demand, see section 6601 (f) (4) of this title.

Levy and distraint within ten days after notice and demand, see section 6331 (a) of this title.

Notice and demand to delinquent internal revenue officer and employee, see section 7803 (d) of this title.

Payment on notice and demand, see section 6155 of this title.

Penalty payable on notice and demand, see section 6659 (a) (1) of this title.

§ 6304. Collection under the Tariff Act.

For collection under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501 (b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

(Aug. 16, 1954, ch. 736, 68A Stat. 776.)

REFERENCES IN TEXT

Sections 4504 and 4601 of this title, referred to in text, were repealed by Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Subchapter B.—Receipt of Payment

Sec.
6311. Payment by check or money order.
6312. Payment by United States notes and certificates of indebtedness.
6313. Fractional parts of a cent.
6314. Receipt for taxes.
6315. Payments of estimated income tax.
6316. Payment by foreign currency.
6317. Payments of Federal unemployment tax for calendar quarter.

AMENDMENTS

1969—Pub. L. 91-53, § 2(f)(2), Aug. 7, 1969, 83 Stat. 93, added item 6317.

§ 6311. Payment by check or money order.

(a) Authority to receive.

It shall be lawful for the Secretary or his delegate to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) Check or money order unpaid.

(1) Ultimate liability.

If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) Liability of banks and others.

If any certified, treasurer's, or cashier's check or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank or trust company on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(Aug. 16, 1954, ch. 736, 68A Stat. 777.)

CROSS REFERENCES

Penalty for tendering bad checks, see section 6657 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6201 of this title.

§ 6312. Payment by United States notes and certificates of indebtedness.

(a) General rule.

It shall be lawful for the Secretary or his delegate to receive, at par with an adjustment for accrued interest, Treasury bills, notes and certificates of indebtedness issued by the United States in payment of any internal revenue taxes, or in payment for internal revenue stamps, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) Cross references.

(1) For authority to receive silver certificates, see section 5 of the act of June 19, 1934 (48 Stat. 1178; 31 U. S. C. 405a).

(2) For full legal tender status of all coins and currencies of the United States, see section 43 (b) (1) of the Agricultural Adjustment Act, as amended (48 Stat. 52, 113; 31 U. S. C. 462).

(3) For authority to receive obligations under the Second Liberty Bond Act, see section 20 (b) of that act, as amended (56 Stat. 189; 31 U. S. C. 754b).

(Aug. 16, 1954, ch. 736, 68A Stat. 777.)

REFERENCES IN TEXT

Section 5 of the act of June 19, 1934 (48 Stat. 1178; 31 U.S.C. 405a), referred to in subsec. (b)(1), was repealed by Pub. L. 88-36, Title I, § 1, June 4, 1963, 77 Stat. 54.

§ 6313. Fractional parts of a cent.

In the payment of any tax imposed by this title not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. (Aug. 16, 1954, ch. 736, 68A Stat. 778.)

CROSS REFERENCES

Fractional parts of a dollar, see section 7504 of this title.

§ 6314. Receipt for taxes.

(a) General rule.

The Secretary or his delegate shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold

and delivered; but no receipt shall be issued in lieu of a stamp representing a tax.

(b) Duplicate receipts for payment of estate taxes.

The Secretary or his delegate shall, upon request, give to the person paying the tax under chapter 11 (relating to the estate tax) duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(c) Cross references.

(1) For receipt required to be furnished by employer to employee with respect to employment taxes, see section 6051.

(2) For receipt of discharge of fiduciary from personal liability, see section 2204.

(Aug. 16, 1954, ch. 736, 68A Stat. 778; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(d)(2), 84 Stat. 1837.)

AMENDMENTS

1970—Subsec. (c)(2). Pub. L. 91-614 substituted "fiduciary" for "executor".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

§ 6315. Payments of estimated income tax.

Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year. (Aug. 16, 1954, ch. 736, 68A Stat. 778.)

CROSS REFERENCES

Declaration of estimated income tax by individuals, see section 6015 of this title.

Declaration of estimated income tax by corporations, see section 6016 of this title.

Installment payments of estimated income tax by corporations, see section 6154 of this title.

Installment payments of estimated income tax by individuals, see section 6153 of this title.

§ 6316. Payment by foreign currency.

The Secretary or his delegate is authorized in his discretion to allow payment of taxes in the currency of a foreign country under such circumstances and subject to such conditions as the Secretary or his delegate may by regulations prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 778.)

§ 6317. Payments of Federal unemployment tax for calendar quarter.

Payment of Federal unemployment tax for a calendar quarter or other period within a calendar year pursuant to section 6157 shall be considered payment on account of the tax imposed by chapter 23 of such calendar year. (Added Pub. L. 91-53, § 2(c), Aug. 7, 1969, 83 Stat. 92.)

EFFECTIVE DATE

Section applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91-53, set out as a note under section 6157 of this title.

Subchapter C.—Lien for Taxes

Sec.
6321. Lien for taxes.
6322. Period of lien.
6323. Validity and priority against certain persons.
6324. Special liens for estate and gift taxes.
6325. Release or lien or discharge of property.
6326. Cross references.

AMENDMENTS

1966—Pub. L. 89-719, title I, §§ 101(b)(1), 103(b), Nov. 2, 1966, 80 Stat. 1131, 1135, substituted "Validity and priority against certain persons" for "Validity against mortgagees, pledgees, purchasers, and judgment creditors" in item 6323, and eliminated "partial" which preceded "discharge" in item 6325.

§ 6321. Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (Aug. 16, 1954, ch. 736, 68A Stat. 779.)

CROSS REFERENCES

Action to enforce lien or to subject property to payment of tax, see section 7403 of this title.

Additions to tax and additional amounts generally, see section 6651 et seq. of this title.

Assessable penalties, see section 6671 et seq. of this title.

Interest on nonpayment of tax, see section 6601 of this title.

Notice and demand for tax, see section 6303 of this title.

Payment on notice and demand, see section 6155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6322, 6323, 6325 of this title.

§ 6322. Period of lien.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time. (Aug. 16, 1954, ch. 736, 68A Stat.; Nov. 2, 1966, Pub. L. 89-719, title I, § 113(a), 80 Stat. 1146.)

AMENDMENTS

1966—Pub. L. 89-719 inserted phrase "(or a judgment against the taxpayer arising out of such liability)."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114 (a)—(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Action to enforce lien or to subject property to payment of tax, see section 7403 of this title.

§ 6323. Validity and priority against certain persons.

(a) Purchases,[1] holders of security interests, mechanic's lienors, and judgment lien creditors.

The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security in-

[1] So in original. Probably should be "Purchasers".

terest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) Protection for certain interests even though notice filed.

Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) Securities.

With respect to a security (as defined in subsection (h)(4))—

(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) Motor vehicles.

With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) Personal property purchased at retail.

With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) Personal property purchased in casual sale.

With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) Personal property subject to possessory lien.

With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) Real property tax and special assessment liens.

With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) a tax of general application levied by any taxing authority based upon the value of such property;

(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) Residential property subject to a mechanic's lien for certain repairs and improvements.

With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) Attorneys' liens.

With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) Certain insurance contracts.

With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) before such organization had actual notice or knowledge of the existence of such lien;

(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) Passbook loans.

With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) Protection for certain commercial transactions financing agreements, etc.

(1) In general.

To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) a commercial transactions financing agreement,

(ii) a real property construction or improvement financing agreement, or

(iii) an obligatory disbursement agreement, and

(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) Commercial transactions financing agreement.

For purposes of this subsection—

(A) Definition.

The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) Limitation on qualified property.

The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) Commercial financing security defined.

The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) Purchaser treated as acquiring security interest.

A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) Real property construction or improvement financing agreement.

For purposes of this subsection—

(A) Definition.

The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) the construction or improvement of real property,

(ii) a contract to construct or improve real property, or

(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) Limitation on qualified property.

The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) Obligatory disbursement agreement.

For purposes of this subsection—

(A) Definition.

The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) Limitation on qualified property.

The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) Special rules for surety agreements.

Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

(i) the term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was ensured, and

(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property"

shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

(d) 45-day period for making disbursements.

Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) Priority of interest and expenses.

If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) any interest or carrying charges upon the obligation secured,

(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) the reasonable costs of insuring payment of the obligation secured, and

(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) Place for filing notice; form.

(1) Place for filing.

The notice referred to in subsection (a) shall be filed—

(A) Under State laws.

(i) Real property.

In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) Personal property.

In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) With clerk of district court.

In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) With Recorder of Deeds of the District of Columbia.

In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) Situs of property subject to lien.

For purposes of paragraph (1), property shall be deemed to be situated—

(A) Real property.

In the case of real property, at its physical location; or

(B) Personal property.

In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) Form.

The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) Refiling of notice.

For purposes of this section—

(1) General rule.

Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) Place for filing.

A notice of lien refiled during the required refiling period shall be effective only—

(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) Required refiling period.

In the case of any notice of lien, the term "required refiling period" means—

(A) the one-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) the one-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) Transitional rule.

Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) Definitions.

For purposes of this section and section 6324—

(1) Security interest.

The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) Mechanic's lienor.

The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) Motor vehicle.

The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) Security.

The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) Tax lien filing.

The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) Purchaser.

The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) a lease of property,

(B) a written executory contract to purchase or lease property,

(C) an option to purchase or lease property or any interest therein, or

(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) Special rules.

(1) Actual notice or knowledge.

For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) Subrogation.

Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) Disclosure of amount of outstanding lien.

If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

(Aug 16, 1954, ch. 736, 68A Stat. 779; Feb. 26, 1964, Pub. L. 88-272, title II, § 236(a), (c)(1), 78 Stat. 127, 128; July 5, 1966, Pub. L. 89-493, § 17(a), 80 Stat. 266; Nov. 2, 1966, Pub. L. 89-719, title I, § 101(a), 80 Stat. 1125.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-719 redesignated as the entire subsec. (a) that part of former subsec. (a) which preceded pars. (1)-(3) thereof, and, in subsec. (a) as so redesignated, substituted holder of a security interest, mechanic's lienor, and judgment lien creditor for mortgagee, pledgee, and judgment creditor, struck out reference to an exception provided in subsecs. (c) and (d), and inserted reference to the requirements of subsec. (f).

Subsec. (a)(3). Pub. L. 89-493 substituted the Recorder of Deeds of the District of Columbia for the clerk of the United States District Court for the District of Columbia.

Subsec. (b)(1). Pub. L. 89-719 redesignated provisions of former subsec. (c)(1) as subsec. (b)(1) and, in subsec. (b)(1) as so redesignated, substituted "holder of a security interest" for "mortgagee and pledgee" and purchaser of such security interest for purchaser of such

security for any adequate and full consideration in money or money's worth.

Subsec. (b)(2). Pub. L. 89–719 redesignated provisions of former subsec. (d)(1) as subsec. (b)(2) and, in subsec. (b)(2) as so redesignated, substituted purchaser of such motor vehicle for purchaser of such motor vehicle for an adequate and full consideration in money or money's worth and substituted actual notice or knowledge for notice or knowledge.

Subsec. (b)(3)—(10). Pub. L. 89–719 added subsec. (b)(3)—(10).

Subsecs. (c)—(e). Pub. L. 89–719 added subsecs. (c)—(e).

Subsec. (f)(1). Pub. L. 89–719 redesignated provisions of former subsec. (a)(1)—(3) as subsec. (f)(1).

Subsec. (f)(2). Pub. L. 89–719 added subsec. (f)(2).

Subsec. (f)(3). Pub. L. 89–719 redesignated provisions of former subsec. (b) as subsec. (f)(3) and, in subsec. (f)(3) as so redesignated, substituted provisions that the form and content of the notice be prescribed by the Secretary or his delegate for provisions limiting the effectiveness of the notice to situations in which the notice is in such form as would be valid if filed with the clerk of the United States district court when state or territory law fails to designate an office for the filing of notice.

Subsec. (g). Pub. L. 89–719 added subsec. (g).

Subsec. (h)(1), (2). Pub. L. 89–719 added subsec. (h)(1), (2).

Subsec. (h)(3). Pub. L. 89–719 redesignated provisions of former subsec. (d)(2) as subsec. (h)(3).

Subsec. (h)(4). Pub. L. 89–719 redesignated provisions of former subsec. (c)(2) as subsec. (h)(4).

Subsec. (h)(5), (6). Pub. L. 89–719 added subsec. (h)(5), (6).

Subsec. (i)(1), (2). Pub. L. 89–719 added subsec. (i)(1), (2).

Subsec. (i)(3). Pub. L. 89–719 redesignated the provisions of former subsec. (e) as subsec. (i)(3) and, in subsec. (i)(3) as so redesignated, substituted "regulations" for "rules and regulations".

1964—Subsec. (a). Pub. L. 88–272, § 236(c)(1), substituted "subsections (c) and (d)" for "subsection (c)."

Subsec. (d). Pub. L. 88–272, § 236(a), added subsec. (d). Former subsec. (d), redesignated (e).

Subsec. (e). Pub. L. 88–272, § 236(a), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 114(a)—(c) of Pub. L. 89–719 provided that:

"(a) **General rule.**—Except as otherwise provided, the amendments made by this title [enacting sections 3505, 7425, 7426, and 7810 of this title, amending this section and sections 545, 6322, 6324, 6325, 6331, 6332, 6334, 6335, 6337, 6338, 6339, 6342, 6343, 6502, 6503, 6532, 7402, 7403, 7421, 7424, 7505, 7506, and 7809 of this title and section 270a of Title 40, redesignated former section 7425 of this title as 7427, and enacting material set out as notes under this section and section 7424 of this title] shall apply after the date of enactment of this Act [Nov. 2, 1966], regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

"(b) **Exceptions.**—The amendments made by this title shall not apply in any case—

"(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

"(2) in which such amendments would—

"(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

"(B) operate to increase the liability of any such person; or

"(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

"(c) **Liability for withheld taxes.**—

"(1) The amendments made by section 105(a) (relating to effect on third parties) [adding section 3505 of this title] shall apply only with respect to wages paid on or after January 1, 1967.

"(2) The amendments made by section 105(b) (relating to performance bonds of contractors for public buildings or works) [amending section 270a of Title 40] shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967."

Section 21 of Pub. L. 89–493 provided that the amendment of this section shall take effect on the first day of the first month which is at least ninety days after July 5, 1966.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 236(d) of Pub. L. 88–272 provided that: "The amendments made by this section [to this section and section 6324 of this title] shall apply only with respect to purchases made after the date of the enactment of this Act [Feb. 26, 1964.]"

SHORT TITLE

Section 1(a) of Pub. L. 89–719 provided that: "This Act [enacting sections 3505, 7425, 7426 and 7810 of this title, amending this section and sections 545, 6322, 6324, 6325, 6331, 6332, 6334, 6335, 6337—6339, 6342, 6343, 6502, 6503, 6532, 7402, 7403, 7421, 7424, 7505, 7506 and 7809 of this title, sections 1346, 1402 and 2410 of Title 28, Judiciary and Judicial Procedure, and section 270a of Title 40, Public Buildings, Property and Works, redesignating former section 7425 of this title as 7427, and enacting provisions set out as notes under this section and section 7424 of this title, and under section 1346 of Title 28] may be cited as the 'Federal Tax Lien Act of 1966'."

CROSS REFERENCES

Action to enforce lien or to subject property to payment of tax, see section 7403 of this title.

Civil action to clear title to property, see section 7424 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6324, 6332 or this title.

§ 6324. Special liens for estate and gift taxes.

(a) Liens for estate tax.

Except as otherwise provided in subsection (c)—

(1) Upon gross estate.

Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) Liability of transferees and others.

If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then

attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

(3) Continuance after discharge of fiduciary.

The provisions of section 2204 (relating to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(b) Lien for gift tax.

Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the period for which the return was filed, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

(c) Exceptions.

(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323 (b) (relating to protection for certain interests even though notice filed), shall not be valid with respect to any lien or interest described in section 6323 (b).

(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323 (e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 780; Feb. 26, 1964, Pub. L. 88–272, title II, § 236(b), (c)(2), 78 Stat. 127, 128; Nov. 2, 1966, Pub. L. 89–719, title I, § 102, 80 Stat. 1132; Dec. 31, 1970, Pub. L. 91–614, title I, §§ 101(d)(2), 102(d)(7), 84 Stat. 1837, 1842.)

AMENDMENTS

1970—Subsec. (a)(3). Pub. L. 91–614, § 101(d)(2), substituted "fiduciary" for "executor" both in the par. catchline and in the body of the par.

Subsec. (b). Pub. L. 91–614, § 102(d)(7), substituted "period for which the return was filed" for "calendar year".

1966—Subsec. (a)(1). Pub. L. 89–719 inserted ", or becomes unenforceable by reason of lapse of time," following "sooner paid in full" and substituted "10 years from the date of death" for "10 years upon the gross estate of the decedent".

Subsec. (a)(2). Pub. L. 89–719 substituted "person in possession, or beneficiary, to a purchaser or holder of a security interest" for "person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money and money's worth" and "except any part transferred to a purchaser or a holder of a security interest" for "except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth".

Subsec. (a)(3). Pub. L. 89–719 substituted "purchaser or a holder of a security interest" for "bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth" and "purchaser or holder of a security interest" for "purchaser, motgagee, or pledgee".

Subsec. (b). Pub. L. 89–719 substituted reference to the exception provided in subsec. (c) for the reference to the exceptions provided in subsecs. (c) and (d), inserted reference to the tax becoming unenforceable by reason of lapse of time, and substituted "purchaser or holder of a security interest" for "bona-fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth".

Subsec. (c). Pub. L. 89–719 redesignated as par. (1) provisions formerly constituting the entire subsec. (c) and, in par. (1) as so redesignated, substituted "valid as against a mechanic's lienor and, subject to the conditions provided by section 6323(b) (relating to protection for certain interests even though noticed filed), shall not be valid with respect to any lien or interest described in section 6323(b)" for "valid with respect to a security, as defined in section 6323(c)(2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien", and added par. (2).

Subsec. (d). Pub. L. 89–719 struck out subsec. (d) dealing with exceptions in the case of motor vehicles. See subsec. (c) above and reference therein to section 6323(b).

1964—Subsec. (a). Pub. L. 88–272, § 236(c)(2), inserted "and subsection (d) (relating to purchases of motor vehicles)."

Subsec. (b). Pub. L. 88–272, § 236(c)(2), inserted "and subsection (d) (relating to purchases of motor vehicles)."

Subsec. (d). Pub. L. 88–272, § 236(b), added subsec. (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by section 101(d)(2) of Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

Amendment of section by section 102(d)(7) of Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to purchases made after Feb. 26, 1964, see section 236(d) of Pub. L. 88–272, set out as a note under section 6323 of this title.

CROSS REFERENCES

Definition of transferee under subsection (a) (2) of this section, see section 6901 (h) of this title

Liability for payment of estate tax, see section 2002 of this title.

Period of limitation in case of liability of initial transferee, see section 6901 (c) (1) of this title.

Time for filing estate and gift tax returns, see section 6075 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6325, 6901 of this title.

§ 6325. Release of lien or discharge of property.

(a) Release of lien.

Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) Liability satisfied or unenforceable.

The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) Bond accepted.

There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) Discharge of property.

(1) Property double the amount of the liability.

Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) Part payment; interest of United States valueless.

Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) there is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) Substitution of proceeds of sale.

Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) Estate or gift tax.

Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) Subordination of lien.

Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) Nonattachment of lien.

If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) Effect of certificate.

(1) Conclusiveness.

Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) Revocation of certificate of release or nonattachment.

If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) Certificates void under certain conditions.

Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) Filing of certificates and notices.

If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) Cross reference.

For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 783; Nov. 2, 1966, Pub. L. 85–866, title I, § 77, 72 Stat. 1662; Nov. 2, 1966, Pub. L. 89–719, title I, § 103(a), 80 Stat. 1133.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–719 added par. (3).

Subsecs. (d), (e). Pub. L. 89–719 added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated with amendments as subsecs. (f)(1) and (h) respectively.

Subsec. (f). Pub. L. 89–719 redesignated as par. (1) provisions formerly comprising the entire former subsec. (d) and, in par. (1) as so redesignated, inserted reference to exceptions provided in pars. (2) and (3) and reference to the filing of the certificate in the same office as the notice of lien to which it refers and expanded the types of certificates to include separate certificates of release, discharge, subordination, and nonattachment, and added pars. (2) and (3).

Subsec. (g). Pub. L. 89–719 added subsec. (g).

Subsec. (h). Pub. L. 89–719 redesignated as subsec. (h) provisions formerly set out as subsec. (e) and, in subsec. (h) as so redesignated, struck out cross references for single bonds, suits to enforce liens, and suits to clear title to realty.

1958—Subsec. (a)(1). Pub. L. 85–866, § 77(1) substituted "or" for "," following "satisfied" and deleted ", or, in the case of the estate tax imposed by chapter 11 or the gift tax imposed by chapter 12, has been fully satisfied or provided for" following "unenforceable".

Subsec. (c). Pub. L. 85–866, § 77(2) added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 85–866, § 77 (2), (3), redesignated former subsec. (c) as (d) and deleted preceding "discharge" in the catchline and text the word "partial". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85–866, § 77(2) redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–7719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) (1) of this section by Pub. L. 85–866, and subsec. (c), effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Authority to release levy, see section 6343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7426 of this title.

§ 6326. Cross references.

(1) For lien in case of tax on distilled spirits, see section 5004.

(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U. S. C. 35).

(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57 (j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U. S. C. 93).

(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876–877; 11 U. S. C. 107).

(5) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (52 Stat. 938; 11 U. S. C. 1080).

(6) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(7) For priority of lien of the United States in case of insolvency, see R. S. 3466 (31 U. S. C. 191).

(Aug. 16, 1954, ch. 736, 68A Stat. 782.)

Subchapter D.—Seizure of Property for Collection of Taxes

Sec.
6331. Levy and distraint.
6332. Surrender of property subject to levy.
6333. Production of books.
6334. Property exempt from levy.
6335. Sale of seized property.
6336. Sale of perishable goods.
6337. Redemption of property.
6338. Certificate of sale; deed of real property.
6339. Legal effect of certificate of sale of personal property and deed of real property.
6340. Records of sale.
6341. Expense of levy and sale.
6342. Application of proceeds of levy.
6343. Authority to release levy and return property.
6344. Cross references.

AMENDMENTS

1966—Pub. L. 89–719, title I, § 104(j), Nov. 2, 1966, 80 Stat. 1138, inserted "and return property" in item 6343.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 sections 770, 3101.

§ 6331. Levy and distraint.

(a) Authority of Secretary or delegate.

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property.

The term "levy" as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures.

Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Cross references.

(1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceedings applicable to sale of seized property, see section 6335.

(Aug. 16, 1954, ch. 736, 68A Stat. 783; Nov. 2, 1966, Pub. L. 89–719, title I, § 104(a), 80 Stat. 1135.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–719 inserted sentence providing that a levy shall extend only to property possessed and obligations existing at the time thereof.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Collection by levy where assessment made within limitation period, see section 6502 (a) of this title.

Levy, definition of, see section 7701 (a) (21) of this title.

Notice and demand for tax, see section 6303 of this title.

Penalty for sales to avoid tax, see section 7341 of this title.

Property—

Exempt from levy, see section 6334 of this title.

Subject to lien generally, see section 6321 of this title.

Punishment for removing, depositing, or concealing goods or commodities, see section 7206 (4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6335, 7206 of this title.

§ 6332. Surrender of property subject to levy.

(a) Requirement.

Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Special rule for life insurance and endowment contracts.

(1) In general.

A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary or his delegate for payment of the amount described in paragraph (2) and the exercise of the right of the person against

whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary or his delegate that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

(2) Satisfaction of levy.

Such levy shall be deemed to be satisfied if such organization pays over to the Secretary or his delegate the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

(3) Enforcement proceedings.

The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.

(c) Enforcement of levy.

(1) Extent of personal liability.

Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy. Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for violation.

In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(d) Effect of honoring levy.

Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary or his delegate, surrenders such property or rights to property (or discharges such obligation) to the Secretary or his delegate (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. In the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

(e) Person defined.

The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation. (Aug. 16, 1954, ch. 736, 68A Stat. 784; Nov. 2, 1966, Pub. L. 89-719, title I, § 104(b), 80 Stat. 1135.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-719, § 104(b)(1), substituted "Except as otherwise provided in subsection (b), any person" for "Any person."

Subsec. (b). Pub. L. 89-719, § 104(b)(2), added subsec. (b). Former subsec.(b) redesignated, with amendments, as subsec. (c)(1).

Subsec. (c). Pub. L. 89-719, § 104(b)(2)-(4), redesignated as par. (1) provisions formerly set out as subsec. (b) and, in par. (1) as so redesignated, added provisions that any amount other than costs recovered under par. (1) shall be credited against the tax liability for the collection of which the levy was made, added par. (2), and redesignated former subsec. (c) as subsec. (e).

Subsec. (d). Pub. L. 89-719, § 104(b)(4), added subsec. (d).

Subsec. (e). Pub. L. 89-719, § 104(b)(3), redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Application of proceeds of levy, see section 6342 of this title.

Notice and demand for tax, see section 6303 of this title.

Payment on notice and demand, see section 6155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6342, 6442 of this title.

§ 6333. Production of books.

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 784.)

§ 6334. Property exempt from levy.

(a) Enumeration.

There shall be exempt from levy—

(1) Wearing apparel and school books.

Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects.

If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

(3) Books and tools of a trade, business, or profession.

So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value;

(4) Unemployment benefits.

Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) Undelivered mail.

Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments.

Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation.

Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) Salary, wages, or other income.

If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(b) Appraisal.

The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary or his delegate shall summon three disinterested individuals who shall make the valuation.

(c) No other property exempt.

Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a). (Aug. 16, 1954, ch. 736, 68A Stat. 784; Aug. 28, 1958, Pub. L. 85–840, title IV, § 406, 72 Stat. 1047; June 21, 1965, Pub. L. 89–44, title VIII, § 812(a), 79 Stat. 170; Nov. 2, 1966, Pub. L. 89–719, title I, § 104(c), 80 Stat. 1137; Dec. 30, 1969, Pub. L. 91–172, title IX, § 945(a), 83 Stat. 729.)

AMENDMENTS

1969—Subsec. (a)(8). Pub. L. 91–172 added par. (8).

1966—Subsec. (a)(4). Pub. L. 89–719, § 104(c)(1), eliminated words "or Territory" which followed "of any State."

Subsecs. (a)(6), (7). Pub. L. 89–719, § 104(c)(2), added subsecs. (a)(6), (7).

1965—Subsec. (a)(5). Pub. L. 89–44 added par. (5).

1958—Subsec. (a)(4). Pub. L. 85–840 added subsec. (a)(4).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 945(b) of Pub. L. 91–172 provided that: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply with respect to levies made 30 days or more after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 812(b) of Pub. L. 89–44 provided that: "The amendment made by subsection (a) [to this section] shall take effect on the date of the enactment of this Act [June 21, 1965]."

CROSS REFERENCES

Property subject to levy and distraint, see section 6331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6331 of this title.

§ 6335. Sale of seized property.

(a) Notice of seizure.

As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of sale.

The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331 (a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

(c) Sale of indivisible property.

If any property liable to levy is not divisible, so as to enable the Secretary or his delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of such property shall be sold.

(d) Time and place of sale.

The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the property is seized, except by special order of the Secretary or his delegate.

(e) Manner and conditions of sale.

(1) Minimum price.

Before the sale the Secretary or his delegate shall determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale the amount of the minimum price, the property shall be declared to be purchased at such price for the United States; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Secretary or his delegate shall take into account the expense of making the levy and sale.

(2) Additional rules applicable to sale.

The Secretary or his delegate shall by regulations prescribe the manner and other conditions of the sale of property seized by levy. If one or more alternative methods or conditions are permitted by regulations, the Secretary or his delegate shall select the alternatives applicable to the sale. Such regulations shall provide:

(A) That the sale shall not be conducted in any manner other than—

(i) by public auction, or

(ii) by public sale under sealed bids.

(B) In the case of the seizure of several items of property, whether such items shall be offered separately, in groups, or in the aggregate; and whether such property shall be offered both separately (or in groups) and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) Whether the announcement of the minimum price determined by the Secretary or his delegate may be delayed until the receipt of the highest bid.

(D) Whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period (not to exceed 1 month) as may be determined by the Secretary or his delegate to be appropriate.

(E) The extent to which methods (including advertising) in addition to those prescribed in subsection (b) may be used in giving notice of the sale.

(F) Under what circumstances the Secretary or his delegate may adjourn the sale from time to time (but such adjournments shall not be for a period to exceed in all 1 month).

(3) Payment of amount bid.

If payment in full is required at the time of acceptance of a bid and is not then and there paid, the Secretary or his delegate shall forthwith proceed to again sell the property in the manner provided in this subsection. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the Secretary or his delegate, the sale may be declared by the Secretary or his delegate to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) and this subsection. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

(f) Stay of sale of seized property pending Tax Court decision.

For restrictions on sale of seized property pending Tax Court decision, see section 6863 (b) (3).

(Aug. 16, 1954, ch. 736, 68A Stat. 785; Nov. 2, 1966, Pub. L. 89–719, title I, § 104(d), 80 Stat. 1137.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–719 added an alternative to the publication of notice of sale to allow publication in a newspaper generally circulated within the county in which the property is seized even though the newspaper is not published in such county.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Date when levy is considered made, see section 6502 (b) of this title.

Real property purchased by United States, see section 6338 (c) of this title.

Sale of personal property purchased by the United States, see section 7505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6337, 6338, 6339, 6340, 6343, 7426 of this title.

§ 6336. Sale of perishable goods.

If the Secretary or his delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and—

(1) Return to owner.

If the owner of the property can be readily found, the Secretary or his delegate shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner—

(A) Pays to the Secretary or his delegate an amount equal to the appraised value, or

(B) Gives bond in such form, with such sureties, and in such amount as the Secretary or his delegate shall prescribe, to pay the appraised amount at such time as the Secretary or his delegate determines to be appropriate in the circumstances.

(2) Immediate sale.

If the owner does not pay such amount or furnish such bond in accordance with this section, the Secretary or his delegate shall as soon as practicable make public sale of the property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(Aug. 16, 1954, ch. 736, 68A Stat. 786.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6335, 6863 of this title.

§ 6337. Redemption of property.

(a) Before sale.

Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary or his delegate at any time prior to the sale thereof, and upon such payment the Secretary or his delegate shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) Redemption of real estate after sale.

(1) Period.

The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 120 days after the sale thereof.

(2) Price.

Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

(c) Record.

When any lands sold are redeemed as provided in this section, the Secretary or his delegate shall cause entry of the fact to be made upon the record mentioned in section 6340, and such entry shall be evidence of such redemption. (Aug. 16, 1954, ch. 736, 68A Stat. 787; Nov. 2, 1966, Pub. L. 89–719, title I, § 104(e), 80 Stat. 1137.)

AMENDMENTS

1966—Subsec. (b)(1). Pub. L. 89–719 substituted "120 days" for "1 year."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6338 of this title.

§ 6338. Certificate of sale; deed of real property.

(a) Certificate of sale.

In the case of property sold as provided in section 6335, the Secretary or his delegate shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) Deed to real property.

In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary or his delegate shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) Real property purchased by United States.

If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor; and without delay cause such deed to be duly recorded in the proper registry of deeds. (Aug. 16, 1954, ch. 736, 68A Stat. 787; Sept. 2, 1958, Pub. L. 85–866, title I, § 78, 72 Stat. 1662; Nov. 2, 1966, Pub. L. 89–719, title I, § 104(f), 80 Stat. 1137.)

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–719 struck out provisions requiring the endorsement of approval as to the form of

the deed by the United States Attorney for the district in which the property is situated.

1958—Subsec. (c). Pub. L. 85-866 deleted "district" preceding "attorney".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (c) of this section by Pub. L. 85-866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6339 of this title.

§ 6339. Legal effect of certificate of sale of personal property and deed of real property.

(a) Certificate of sale of property other than real property.

In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) As evidence.

Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As conveyances.

Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) As authority for transfer of corporate stock.

If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) As receipts.

If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) As authority for transfer of title to motor vehicle.

If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) Deed of real property.

In the case of the sale of real property pursuant to section 6335—

(1) Deed as evidence.

The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) Deed as conveyance of title.

If the proceedings of the Secretary or his delegate as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) Effect of junior encumbrances.

A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

(d) Cross references.

(1) For distribution of surplus proceeds, see section 6342(b).
(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 788; Sept. 2, 1958, Pub. L. 85-866, title I, § 79, 72 Stat. 1662; Nov. 2, 1966, Pub. L. 89-719, title I, § 104(g), 80 Stat. 1137.)

AMENDMENTS

1966—Subsecs. (c), (d). Pub. 89-719 added subsecs. (c) and (d).

1958—Subsec. (b)(2). Pub. L. 85-866, substituted "as" for "of" following "Deed" in catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114 (a)—(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) (2) of this section by Pub. L. 85-866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

§ 6340. Records of sale.

(a) Requirement.

The Secretary or his delegate shall, for each internal revenue district, keep a record of all sales of real property under section 6335 and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed.

(b) Copy as evidence.

A copy of such record, or any part thereof, certified by the Secretary or his delegate shall be evidence in any court of the truth of the facts therein stated. (Aug. 16, 1954, ch. 736, 68A Stat. 789.)

SECTION REFFERED TO IN OTHER SECTIONS

This section is referred to in section 6337 of this title.

§ 6341. Expense of levy and sale.

The Secretary or his delegate shall determine the expenses to be allowed in all cases of levy and sale. (Aug. 16, 1954, ch. 736, 68A Stat. 789.)

§ 6342. Application of proceeds of levy.

(a) Collection of liability.

Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:

(1) Expense of levy and sale.

First, against the expenses of the proceedings;

(2) Specific tax liability on seized property.

If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying paragraph (1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) Liability of delinquent taxpayer.

The amount, if any, remaining after applying paragraphs (1) and (2) shall then be applied against the liability in respect of which the levy was made or the sale was conducted.

(b) Surplus proceeds.

Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Secretary or his delegate to the person or persons legally entitled thereto. (Aug. 16, 1954, ch. 736, 68A Stat. 789, Nov. 2, 1966, Pub. L. 89–719, title I, § 104(h), 80 Stat. 1137.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–719 inserted in the material preceding par. (1), references to an exception in the case of surrender under section 6332(c)(2) and to sale of property redeemed by the United States if the interest of the United States in such property was a lien arising under the provisions of this title, struck out "under this subchapter" following "proceedings" in par. (1), and added "or the sale was conducted" after "levy was made" in par. (3).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114 (a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Deposit fund account containing surplus proceeds in sales under levy, see section 7809 (b) (3) of this title.

§ 6343. Authority to release levy and return property.

(a) Release of levy.

It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

(b) Return of property.

If the Secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the Secretary or his delegate to return—

(1) the specific property levied upon,

(2) an amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property. (Aug. 16, 1954, ch. 736, 68A Stat. 789; Nov. 2, 1966, Pub. L. 89–719, title I, § 104(i), 80 Stat. 1138.)

AMENDMENTS

1966—Pub. L. 89–719 inserted "and return property" in the section catchline, and designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Period of limitation for collection where release of levy under this section occurs, see section 6502 (a) (2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6502, 6503, 6532 of this title.

§ 6344. Cross references.

(a) Length of period.

For period within which levy may be begun in case of—
(1) Income, estate, and gift taxes, and taxes imposed by chapter 42, see sections 6503 (a (1).
(2) Employment and miscellaneous excise taxes, see section 6502 (a).

(b) Delinquent collection officers.

For distraint proceedings against delinquent internal revenue officers, see section 7803 (d).

(c) Other references.

For provisions relating to—
(1) Stamps, marks and brands, see section 6807.
(2) Administration of real estate acquired by the United States, see section 7506.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(45), 83 Stat. 531.)

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Chapter 65.—ABATEMENTS, CREDITS, AND REFUNDS

Subchapter
A. Procedure in general.
B. Rules of special application.

Subchapter A.—Procedure in General

Sec.
6401. Amounts treated as overpayments.
6402. Authority to make credits or refunds.
6403. Overpayment of installment.
6404. Abatements.
6405. Reports of refunds and credits.
6406. Prohibition of administrative review of decisions.
6407. Date of allowance of refund or credit.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 section 624.

§ 6401. Amounts treated as overpayments.

(a) Assessment and collection after limitation period.

The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b) Excessive credits.

If the amount allowable as credits under sections 31 (relating to tax withheld on wages), 39 (relating to certain uses of gasoline, special fuels, and lubricating oil) and 667(b) (relating to taxes paid by certain trusts) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31 and 39), the amount of such excess shall be considered an overpayment.

(c) Rule where no tax liability.

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid. (Aug. 16, 1954, ch. 736, 68A Stat. 791; June 21, 1965, Pub. L. 89–44, title VIII, § 809(d)(6), 79 Stat. 168; Dec. 30, 1969, Pub. L. 91–172, title III, § 331(c), 83 Stat. 598; May 21, 1970, Pub. L. 91–258, title II, § 207(d)(1), 84 Stat. 248.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–258 inserted reference to credits under section 39 relating to certain uses of special fuels.

1969—Subsec. (b). Pub. L. 91–172 struck out "under sections 31 and 39" following "Excessive credits" in subsec. (b) heading and inserted in the text reference to section 667(b) (relating to taxes paid by certain trusts).

1965—Subsec. (b). Pub. L. 89–44 substituted "Excessive credits under sections 31 and 39" for "Excessive withholding" as the subsec. heading and expanded the subsec. to include credits under section 39.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b) by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

CROSS REFERENCES

Civil actions for refund, see section 7422 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6514 of this title.

§ 6402. Authority to make credits or refunds.

(a) General rule.

In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

(b) Credits against estimated tax.

The Secretary or his delegate is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary (or his delegate) to be an overpayment of the income tax for a preceding taxable year. (Aug. 6, 1954, ch. 736, 68A Stat. 791.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6403, 6513, 6802 of this title.

§ 6403. Overpayment of installment.

In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402. (Aug. 16, 1954, ch. 736, 68A Stat. 791.)

§ 6404. Abatements.

(a) General rule.

The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) is erroneously or illegally assessed.

(b) No claim for abatement of income, estate, and gift taxes.

No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B.

(c) Small tax balances.

The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary or his delegate determines under uniform rules prescribed by the Secretary or his delegate that the administration and collection costs involved would not warrant collection of the amount due. (Aug. 16, 1954, ch. 736, 68A Stat. 792.)

§ 6405. Reports of refunds and credits.

(a) By Treasury to Joint Committee.

No refund or credit of any income, war profits, excess profits, estate, or gift tax in excess of $100,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary or his delegate, is submitted to the Joint Committee on Internal Revenue Taxation.

(b) By Joint Committee to Congress.

A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each.

(c) Tentative adjustments.

Any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of $100,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary or his delegate shall determine the correct amount of the tax. (Aug. 16, 1954, ch. 736, 68A Stat. 792.)

CROSS REFERENCES

Applicability of revenue laws, see section 7851 (a) (6) (B) of this title.

§ 6406. Prohibition of administrative review of decisions.

In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or nonallowance by the Secretary or his delegate of interest on any credit or refund under the internal revenue laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 792.)

§ 6407. Date of allowance of refund or credit.

The date on which the Secretary or his delegate first authorizes the scheduling of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax. (Aug. 16, 1954, ch. 736, 68A Stat. 793.)

Subchapter B.—Rules of Special Application

Sec.
6411. Tentative carryback adjustments.
6412. Floor stocks refunds.
6413. Special rules applicable to certain employment taxes.
6414. Income tax withheld.
6415. Credits or refunds to persons who collected certain taxes.
6416. Certain taxes on sales and services.
6417. Coconut and palm oil.
6418. Sugar.
6419. Excise tax on wagering.
6420. Gasoline used on farms.
6421. Gasoline used for certain nonhighway purposes or by local transit systems.
6422. Cross references.
6423. Conditions to allowance in the case of alcohol and tobacco taxes.
6424. Lubricating oil not used in highway motor vehicles.[1]
6425. Adjustment of overpayment of estimated income tax by corporation.
6426. Refund of aircraft use tax where plane transports for hire in foreign air commerce.
6427. Fuels not used for taxable purposes.

AMENDMENTS

1970—Pub. L. 91-258, title II, §§ 206(d) (4), 207(d) (12), May 21, 1970, 84 Stat. 246, 249, added items 6426 and 6427.

1968—Pub. L. 90-364, title I, § 103(e) (9), June 28, 1968, 82 Stat. 264, inserted item 6425.

1958—Pub. L. 85-323, § 2, Feb. 11, 1958, 72 Stat. 10, inserted item 6423.

1956—Act Apr. 2, 1956, ch. 160, § 4(c), 70 Stat. 91, inserted item "6420", and renumbered former item "6420. Cross references" as item "6421".

Act June 29, 1956, ch. 462, title II, § 208(c) (4), 70 Stat. 397, inserted item "6421" and renumbered former item "6421. Cross references" as item "6422".

§ 6411. Tentative carryback adjustments.

(a) Application for adjustment.

A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by an investment credit carryback provided in section 46(b), or by a capital loss carryback provided in section 1212(a) (1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, or unused investment credit from which the carryback results and within a period of 12 months from the

[1] Section catchline was editorially inserted.

end of such taxable year (or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of net operating loss, net capital loss, or unused investment credit;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314 (a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year from which the carryback is made, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

An application under this subsection shall not constitute a claim for credit or refund.

(b) Allowance of adjustments.

Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, or unused investment credit from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, net capital loss, or unused investment credit the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) Consolidated returns.

If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, or unused investment credit, arises, loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe. (Aug. 16, 1954, ch. 736, 68A Stat. 794; Nov. 2, 1966, Pub. L. 89-721, § 2(a)-(e), 80 Stat. 1150; Dec. 27, 1967, Pub. L. 90-225, § 2(b), 81 Stat. 731; Dec. 30, 1969, Pub. L. 91-172, title V, § 512(d), 83 Stat. 639.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 512(d)(1), (2), provided quick refund procedure, presently available in the case of net operating loss carrybacks, to be made available in the case of the 3-year capital loss carryback, and substituted "net operating loss, net capital loss, or unused investment credit" for "net operating loss or unused investment credit" in par. (1).

Subsec. (b). Pub. L. 91-172, § 512(d)(2), substituted "net operating loss, net capital loss, or unused investment credit" for "net operating loss or unused investment credit" wherever such term appears.

Subsec. (c). Pub. L. 91-172, § 512(d)(2), substituted "net operating loss, net capital loss, or unused investment credit" for "net operating loss or unused investment credit."

1967—Subsec. (a). Pub. L. 90-225 added "(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year)" following "within a period of 12 months from the end of such taxable year".

1966—Subsec. (a). Pub. L. 89-721, § 2(a), (b), (c), provided in the introductory material for a tentative carryback adjustment based on an investment credit carryback as provided for in section 46(b) of this title and and inserted "or unused investment credit" following "the taxable year of the net operating loss", inserted in par. (1) "or unused investment" following "net operating loss", and struck out in par. (5) "of such loss" and inserted in lieu thereof "from which the carryback is made".

Subsec. (b). Pub. L. 89-721, § 2(d), inserted "or unused investment credit" following "net operating loss" in two instances.

Subsec. (c). Pub. L. 89-721, § 2(d), (e), inserted "or unused investment credit" following "net operating loss" and "or credit" following "such loss".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 90-225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90-225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2(g) of Pub. L. 89-721 provided that: "The amendments made by this section [to subsec. (a), (b) and (c) of this section and section 6501(j) of this title] shall apply with respect to taxable years ending after December 31, 1961, but only in the case of applications filed after the date of the enactment of this Act [Nov. 2,

1966]. The period of 12 months referred to in the second sentence of section 6411(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section] (as amended by this section) for filing an application for a tentative carryback adjustment of tax attributable to the carryback of any unused investment credit shall not expire before the close of December 31, 1966."

CROSS REFERENCES

Extension of time for payment of taxes by corporations expecting net operating loss carrybacks, see section 6164 of this title.

Limitations on credit or refund, see section 6511 of this title.

Restrictions applicable to deficiencies; petition to Tax **Court, see section 6213 of this title.**

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6164, 6213, 6405, 6501, 6511 of this title.

§ 6412. Floor stocks refunds.

(a) In general.

(1) Passenger automobiles, etc.

Where before the day after the date of the enactment of the Excise Tax Reduction Act of 1965, or before January 1, 1966, January 1 of 1973, 1974, 1978, 1979, 1980, 1981, or 1982, any article subject to the tax imposed by section 4061(a)(2) has been sold by the manufacturer, producer, or importer and on such day or such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by the manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to the article on such day or such date, if—

(A) claim for such credit or refund is filed with the Secretary or his delegate on or before the 10th day of the 8th calendar month beginning after such day or such date based upon a request submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after such day or such date by the dealer who held the article in respect of which the credit or refund is claimed; and

(B) on or before such 10th day reimbursement has been made to the dealer by the manufacturer, producer, or importer for the tax reduction on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

(2) Trucks and buses, tires, tubes, tread rubber, and gasoline.

Where before October 1, 1977, any article subject to the tax imposed by section 4061(a)(1), 4071 (a) (1), (3), or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use), there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after October 1, 1977, if claim for such credit or refund is filed with the Secretary or his delegate on or before March 31, 1978, based upon a request submitted to the manufacturer, producer, or importer before January 1, 1978, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before March 31, 1978, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline. No credit or refund shall be allowable under this paragraph with respect to inner tubes for bicycle tires (as defined in section 4221 (e)(4)(B)).

(3) Repealed. Pub. L. 87-61, title II, § 206(d), June 29, 1961, 75 Stat. 127.

(4) Definitions.

For purposes of this section—

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer, or, in the case of tread rubber subject to tax under section 4071(a)(4), includes any person (other than the manufacturer, producer, or importer thereof) who holds such tread rubber for sale or use.

(B) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(b) Limitation on eligibility for credit or refund.

No manufacturer, producer, or importer shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this section.

(c) Other laws applicable.

All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4061, 4071, and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if such credits or refunds constituted overpayments of such taxes. (Aug. 16, 1954, ch. 736, 68A Stat. 795; Mar. 30, 1955, ch. 18, § 3(b)(4), 69 Stat. 15; Mar. 29, 1956, ch. 115, § 3(b)(4), 70 Stat. 67; May 29, 1956, ch. 342, § 19, 70 Stat. 221; June 29, 1956, ch. 462, title II, § 208(a), 70 Stat. 392; Mar. 29, 1957, Pub. L. 85-12, § 3(b)(4), 71 Stat. 10; June 30, 1958, Pub. L. 85-475, § 3(b)(4), 72 Stat. 260; Sept. 2, 1958, Pub. L. 85-859, title I, § 162(a), 72 Stat. 1306; June 30, 1959, Pub. L. 86-75, § 3(b)(3), 73 Stat. 158; Sept. 21, 1959, Pub. L. 86-342, title II, § 201(c)(4), 73 Stat. 614; June 30, 1960, Pub. L. 86-564, title II, § 202(b)(3), 74 Stat. 291; July 6, 1960, Pub. L. 86-592, § 2, 74 Stat. 330; Mar. 31, 1961, Pub. L. 87-15, § 2(b), 75 Stat. 40; June 29, 1961, Pub.

L. 87–61, title II, § 206 (c), (d), 75 Stat. 127; June 30, 1961, Pub. L. 87–72, § 3(b)(3), 75 Stat. 193; May 24, 1962, Pub. L. 87–456, title III, § 302(d), 76 Stat. 77; June 28, 1962, Pub. L. 87–508, § 3(b)(3), 76 Stat. 114; July 13, 1962, Pub. L. 87–535, § 18(b), 76 Stat. 166; June 29, 1963, Pub. L. 88–52, § 3(b)(1)(C), 77 Stat. 72; June 30, 1964, Pub. L. 88–348, § 2(b)(1)(C), 78 Stat. 237; June 21, 1965, Pub. L. 89–44, title II, § 209 (a), (d), 79 Stat. 141, 144; Mar. 15, 1966, Pub. L. 89–368, title II, § 201(b), 80 Stat. 66; Apr. 12, 1968, Pub. L. 90–285, § 1(a)(2), 82 Stat. 92; June 28, 1968, Pub. L. 90–364, title I, § 105(a)(2), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91–172, title VII, § 702(a)(2), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91–605, title III, § 303(b), 84 Stat. 1744; Dec. 31, 1970, Pub. L. 91–614, title II, § 201(a)(2), 84 Stat. 1843.)

REFERENCES IN TEXT

The date of enactment of the Excise Tax Reduction Act of 1965, referred to in subsec. (a)(1), is June 21, 1965.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–614 substituted "January 1 of 1973, 1974, 1978, 1979, 1980, 1981, or 1982" for "January 1, 1971, January 1, 1972, January 1, 1973, or January 1, 1974".

Subsec. (a)(2). Pub. L. 91–605 substituted in two places "1977" for "1972" and "March 31, 1978" for "February 10, 1973", and substituted "January 1, 1978" for "January 1, 1973".

1969—Subsec. (a)(1). Pub. L. 91–172 struck out reference to Jan. 1, 1970 and added reference to Jan. 1, 1974.

1968—Subsec. (a)(1). Pub. L. 90–364 substituted "January 1, 1970, January 1, 1971, January 1, 1972, or January 1, 1973," for "May 1, 1968, or January 1, 1969,".

Subsec. (a)(1). Pub. L. 90–285 substituted "May 1, 1968" for "April 1, 1968".

1966—Subsec. (a)(1). Pub. L. 89–368 substituted "January 1, 1966, April 1, 1968, or January 1, 1969," for "January 1, 1966, 1967, 1968, or 1969,".

1965—Subsec. (a)(1). Pub. L. 89–44, § 209(a), made floor stock refunds available with respect to passenger cars in dealers' inventories on the various reduction dates for the passenger car tax and required claims for credit or refund to be filed on or before the 10th day of the 8th calendar month beginning after the date of the tax reduction.

Subsec. (e). Pub. L. 89–44, § 209(d), repealed subsec. (e), which related to cross reference.

1964—Subsec. (a)(1). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in two places, "October 1, 1965" for "October 1, 1964", and "November 10, 1965" for "November 10, 1964" in two places.

1963—Subsec. (a)(1). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in two places, "October 1, 1964" for "October 1, 1963", and "November 10, 1964" for "November 10, 1963" in two places.

1962—Subsec. (a)(1). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in two places, "October 1, 1963" for "October 1, 1962", and "November 10, 1963" for "November 10, 1962" in two places.

Subsec. (d). Pub. L. 87–456 repealed former subsec. (d) which related to floor stock refunds with respect to any sugar or articles composed in chief value of sugar. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

Pub. L. 87–535 substituted "June 30, 1967" for "December 31, 1962" following "paid and which, on", and "September 30, 1967" for "March 31, 1963" following "delegate on or before."

1961—Subsec. (a)(1). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in two places, "October 1, 1962" for "October 1, 1961", and "November 10, 1962" for "November 10, 1961" in two places.

Subsec. (a)(2). Pub. L. 87–61, § 206(c), included tubes in the heading of the subsection, authorized credit or refund for articles subject to the tax imposed by section 4071(a)(3), prohibited credit or refund with respect to inner tubes for bicycle tires, and substituted "October 1, 1972" for "July 1, 1972" in two instances, "February 10, 1973" for "November 10, 1972" in two instances, and "January 1, 1973" for "October 1, 1972."

Subsec. (a)(3). Pub. L. 87–61, § 206(d), repealed former subsec. (a)(3) which related to 1961 floor stocks refund on gasoline.

Subsec. (d). Pub. L. 87–15 substituted "December 31, 1962" for "September 30, 1961" following "paid and which, on", and "March 31, 1963" for "September 30, 1961" following "delegate on or before."

1960—Subsec. (a)(1). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in two places, "October 1, 1961" for "October 1, 1960", and "November 10, 1961" for "November 10, 1960" in two places.

Subsec. (d). Pub. L. 86–592 substituted "September 30, 1961" for "June 30, 1961" following "and which, on".

1959—Subsec. (a)(1). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" in two places, "October 1, 1960" for "October 1, 1959" and "November 10, 1960" for "November 10, 1959" in two places.

Subsec. (a)(3). Pub. L. 86–342 added subsec. (a)(3) and redesignated former subsec. (a)(3) as (a)(4).

Subsec. (a)(4). Pub. L. 86–342 redesignated former subsec. (a)(3) as (a)(4).

1958—Subsec. (a)(1). Pub. L. 85–475 substituted "July 1, 1959" for "July 1, 1958" in two places, "October 1, 1959" for "October 1, 1958", and "November 10, 1959" for "November 10, 1958" in two places.

Subsec. (d). Pub. L. 85–859 required the filing of claims for refund on or before Sept. 30, 1961.

1957—Subsec. (a)(1). Pub. L. 85–12, substituted "July 1, 1958" for "April 1, 1957" in two places, "October 1, 1958" for "July 1, 1957", and "November 10, 1958" for "August 10, 1957" in two places.

1956—Subsec. (a). Act June 29, 1956, in par. (1), substituted "April 1, 1957" for "April 1, 1956" in two instances, "section 4061(a)(2)" for "section 4061 (a) or (b)", and inserted provisions requiring claims for refund to be made on or before August 10, 1957, added provisions relating to trucks and buses, tires, tread rubber, and gasoline as par. (2), defined "dealer" in the case of tread rubber subject to tax under section 4071(a)(4) of this title in par. (3), and eliminated pars. (4) and (5). Former par. (4) which related to reimbursement of dealers is now covered generally by pars. (1) and (2). Former par. (5) is now covered by subsec. (b).

Subsec. (a). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" in two places, and "July 1, 1957" for "July 1, 1956".

Subsec. (b). Act June 29, 1956, redesignated former par. (5) of subsec. (a) as subsec. (b) and substituted "manufacturer, producer, or importer" for "person", and eliminated provisions that required claims for credit or refund to be filed before July 1, 1956. Former subsec. (b) is now covered by par. (2) of subsec. (a).

Subsec. (b). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" in three places, and "July 1, 1957" for "July 1, 1956".

Subsec. (c). Act June 29, 1956, included taxes imposed by section 4071 of this title.

Subsec. (d). Act May 29, 1956, substituted "1961" for "1957".

1955—Subsec. (a). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" in two places, and "July 1, 1956" for "July 1, 1955".

Subsec. (b). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" in three places, and "July 1, 1956" for "July 1, 1955".

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–364 effective Apr. 30, 1968, see section 105(c) of Pub. L. 90–364, set out as a note under section 4061 of this title.

Amendment by Pub. L. 90–285 effective Mar. 31, 1968, see section 1(b) of Pub. L. 90–285, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 to take effect on June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of section by Pub. L. 87-535 effective Jan. 1, 1962, see section 19(a) of Pub. L. 87-535, set out as a note under section 1111 of Title 7, Agriculture.

Repeal of subsec. (d) of this section effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, set out as a note preceding section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of subsecs. (a) (2), (3) by Pub. L. 87-61 effective on June 29, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859.

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

Amendment of this section by act May 29, 1956, effective as of Jan. 1, 1956, see section 22 of act May 29, 1956, set out as a note under section 1101 of Title 7, Agriculture.

FLOOR STOCK REFUNDS

Section 209(b) of Pub. L. 89-44 provided that:

"(1) **In general.**—Where before the day after the date of the enactment of this Act [June 21, 1965] any article subject to the tax imposed by section 4111, 4121, 4141, 4151, 4161, 4171, 4191, or 4451 of the Internal Revenue Code of 1954 (hereinafter in this Act referred to as the "Code"), or where before January 1, 1966, any article subject to the tax imposed by section 4061(b), 4091(1), or 4131 of the Code, has been sold by the manufacturer, producer, or importer, and on such day or such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by the manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to the article on such day or such date, if—

"(A) claim for such credit or refund is filed with the Secretary of the Treasury or his delegate on or before February 10, 1966 (or August 10, 1966, in the case of an article subject to the tax imposed by section 4061(b), 4091(1), or 4131 of the Code), based upon a request submitted to the manufacturer, producer, or importer before January 1, 1966 (or July 1, 1966, in the case of an article subject to the tax imposed by section 4061(b), 4091(1), or 4131 of the Code), by the dealer who held the article in respect of which the credit or refund is claimed; and

"(B) on or before such February 10 (or such August 10 in the case of an article subject to the tax imposed by section 4061(b), 4091(1), or 4131 of the Code) reimbursement has been made to the dealer by the manufacturer, producer, or importer for the tax reduction on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

"(2) **Definitions.**—For purposes of this subsection—

"(A) The term 'dealer' includes a wholesaler, jobber, distributor, or retailer.

"(B) An article shall be considered as 'held by a dealer' if title thereto has passed to the dealer (whether or not delivery to him has been made), and if for purposes of consumption title to the article or possession thereof has not at any time been transferred to any person other than a dealer. For purposes of paragraph (1) and notwithstanding the preceding sentence, an article shall be considered as 'held by a dealer' and not to have been used, although possession of such article has been transfered to another person, if such article is returned to the dealer in a transaction under which any amount paid or deposited by the transferee for such article is refunded to him (other than amounts retained by the dealer to cover damage to the article). Moreover, such an article shall be considered as held by a dealer on the day after the date of the enactment of this Act [June 21, 1965] even though it is in the possession of the transferee on such day, if it is returned to the dealer (in a transaction described in the preceding sentence) before August 1, 1965.

"(C) In the case of an article subject to the tax imposed by section 4451 (relating to playing cards)—

"(i) an article shall be treated as having been sold by the manufacturer before the day after the date of the enactment of this Act [June 21, 1965] if it has been removed for consumption or sale before such day, and

"(ii) if an article has been removed for consumption or sale, but has not been sold, by the manufacturer before such day, the manufacturer shall be treated as the dealer.

"(3) **Limitation on eligibility for credit or refund.**—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

"(4) **Other laws applicable.**—All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4061(b), 4091(1), 4111, 4121, 4131, 4141, 4151, 4161, 4171, 4191, and 4451 of the Code shall, insofar as applicable and not inconsistent with paragraphs (1), (2), and (3) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the taxes."

EXTENSION OF TIME FOR FILING CLAIMS FOR FLOOR STOCKS REFUNDS

Pub. L. 91-642, § 1, Dec. 31, 1970, 84 Stat. 1880, provided: That, in applying section 209(b)(1)(A) of the Excise Tax Reduction Act of 1965 [set out as a note under this section] (relating to floor stocks refunds with respect to certain manufacturers excise taxes), a claim for credit or refund filed by the manufacturer, producer, or importer with the Secretary of the Treasury or his delegate on or before the ninetieth day after the date of the enactment of this Act [Dec. 31, 1970] shall be treated as satisfying the requirement of such section 209(b)(1)(A) of filing on or before February 10, 1966, or on or before August 10, 1966, as the case may be."

REFUNDS RESPECTING CONSUMER PURCHASES

Section 209(c) of Pub. L. 89-44 provided that:

"(1) **In general.**—Where after May 14, 1965, and before the day after the date of the enactment of this Act [June 21, 1965], a new automotive item subject to the tax imposed by section 4061(a)(2) of the Code, or a new self-contained air-conditioning unit subject to the tax imposed by section 4111 of the Code, has been sold to an ultimate purchaser, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer of such article an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article, and the tax made applicable to the article on such day, if—

"(A) claim for such credit or refund is filed with the Secretary of the Treasury or his delegate on or before February 10, 1966, based upon information submitted to the manufacturer, producer, or importer before January 1, 1966, by the person who sold the article (in respect to which the credit or refund is claimed) to the ultimate purchaser; and

"(B) on or before February 10, 1966, reimbursement has been made to the ultimate purchaser for the tax reduction on the article.

"(2) **Limitation on eligibility for credit or refund.**—No manufacturer, producer, or importer shall be entitled to a credit or refund under paragraph (1) with respect to an article unless he has in his possession such evidence of the sale of the aticle to an ultimate purchaser, and of the reimbursement of the tax to such purchaser, as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

"(3) **Other laws applicable.**—All provisions of law, including penalties, applicable in respect to the taxes imposed by sections 4061(a)(2) and 4111 of the Code shall, insofar

as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4228 of this title; title 16 section 460*l*–11.

§ 6413. Special rules applicable to certain employment taxes.

(a) Adjustment of tax.

(1) General rule.

If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) United States as employer.

For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

(3) Guam or American Samoa as employer.

For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of Columbia as employer.

For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Overpayments of certain employment taxes.

If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

(c) Special refunds.

(1) In general.

If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31 (b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958 and prior to the calendar year 1966, the wages received by him during such year exceed $4,800, or (C) during any calendar year after the calendar year 1965 and prior to the calendar year 1968, the wages received by him during such year exceed $6,600, or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed $7,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958 and before 1966, or which exceeds the tax with respect to the first $6,600 of such wages received in such calendar year after 1965 and before 1968, or which exceeds the tax with respect to the first $7,800 of such wages received in such calendar year after 1967.

(2) Applicability in case of federal and state employees, employees of certain foreign corporations, and governmental employees in Guam, American Samoa, and the District of Columbia.

(A) Federal employees.

In the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, $4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, $6,600 for the calendar year 1966 or 1967, or $7,800 for any calendar year after 1967, determined by each such head or agent as constituting wages paid to an employee.

(B) State employees.

For purposes of this subsection, in the case of remuneration received during any calendar

year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) Employees of certain foreign corporations.

For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121 (*l*) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121 (*l*); the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121 (*l*), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121 (*l*) has been paid to the Secretary or his delegate.

(D) Governmental employees in Guam.

In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.

(E) Governmental employees in American Samoa.

In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(F) Governmental employees in the District of Columbia.

In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125(c) shall, for purposes of this subsection, be deemed a separate employer.

(3) Applicability with respect to compensation of employees subject to the Railroad Retirement Tax Act.

In the case of any individual who, during any calendar year after 1967, receives wages from one or more employers and also receives compensation which is subject to the tax imposed by section 3201 or 3211, such compensation shall, solely for purposes of applying paragraph (1) with respect to the tax imposed by section 3101(b), be treated as wages received from an employer with respect to which the tax imposed by section 3101(b) was deducted.

(d) Refund or credit of federal unemployment tax.

Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment. (Aug. 16, 1954, ch. 736, 68A Stat. 797; Sept. 1, 1954, ch. 1206, title II, § 202 (a)(1), (b)(1)—(3), 68 Stat. 1089; Aug. 28, 1958, Pub. L. 85-840, title IV, § 402(d); 72 Stat. 1043; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(r) (2—4), 74 Stat. 940; July 30, 1965, Pub. L. 89-97, title III, §§ 317(e), (f), 320(b)(5), (6), 79 Stat. 389, 390, 393, 394; Jan. 2, 1968, Pub. L. 90-248, title I, § 108(b)(5), (6), title V, § 502(a), 81 Stat. 835, 934.)

REFERENCES IN TEXT

Section 1400 of the Internal Revenue Code of 1939, referred to in subsec. (c) (1), was repealed by section 7851 (a) (3) of the Internal Revenue Code of 1954, with respect to remuneration paid after Dec. 31, 1954.

For provisions covering remuneration after that date, see section 3101 of this title (Internal Revenue Code of 1954).

Section 218 of the Social Security Act, referred to in subsec. (c) (2) (B), is classified to section 418 of Title 42, The Public Health and Welfare.

AMENDMENTS

1968—Subsec. (c)(1). Pub. L. 90-248, § 108(b)(5), inserted "and prior to the calendar year 1968" after "the calendar year 1965", "or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed $7,800," after "exceed $6,600,", and "and before 1968, or which exceeds the tax with respect to the first $7,800 of such wages received in such calendar year after 1967".

Subsec. (c)(2)(A). Pub. L. 90-248, § 108(b)(6), substituted "$6,600 for the calendar year 1966 or 1967, or $7,800 for any calendar year after 1967" for "or $6,600 for any calendar year after 1965".

Subsec. (c)(3). Pub. L. 90-248, § 502(a), added par. (3).

1965—Subsec. (a)(4). Pub. L. 89-97, § 317(e), added subsec. (a)(4).

Subsec. (c)(1). Pub. L. 89-97, § 320(b)(5), inserted "and prior to the calendar year 1966" after "the calendar year 1958", "or (C) during any calendar year after the calendar year 1965, the wages received by him during such year exceed $6,600" after "exceed $4,800,", and "and before 1966, or which exceeds the tax with respect to the first $6,600 of such wages received in such calendar year after 1965" before the period at the end of the par.

Subsec. (c)(2)(A). Pub. L. 89-97, § 320(b)(6), substituted "$4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, or $6,600 for any calendar year after 1965" for "or $4,800 for any calendar year after 1958".

Subsec. (c)(2)(F). Pub. L. 89–97, § 317(f)(1), added subpar. (F) and inserted reference to the District of Columbia in the par. catchline.

1960—Subsec. (a)(3). Pub. L. 86–778, § 103(r)(2), added subsec. (a)(3).

Subsec. (c)(2). Pub. L. 86–778, § 103(r)(3), (4), included governmental employees in Guam and American Samoa in the catchline, and added subpars. (D) and (E).

1958—Subsec. (c)(1). Pub. L. 85–840, § 402(d)(1), conformed the special-refund provisions to the increase made by Pub. L. 85–840, in the limitation on wages from $4,200 to $4,800 for calendar years after 1958.

Subsec. (c)(2)(A). Pub. L. 85–840, § 402(d)(2), substituted "$4,200 for the calendar year 1955, 1956, 1957, or 1958, or $4,800 for any calendar year after 1958" for "$4,200 for any calendar year after 1954".

1954—Subsec. (c)(1). Act Sept. 1, 1954, § 202(a)(1), conformed the special-refund provisions to the increase made by said act Sept. 1, 1954, in the limitation on wages from $3,600 to $4,200 for calendar years after 1954.

Subsec. (c)(2). Act Sept. 1, 1954, § 202(b)(1), added the words "and employees of certain foreign corporations" at the end of the heading.

Subsec. (c)(2)(A). Act Sept. 1, 1954, § 202(b)(2), substituted for "$3,600", the words "$3,600 for the calendar year 1951, 1952, 1953, or 1954, or $4,200 for any calendar year after 1954".

Subsec. (c)(2)(C). Act Sept. 1, 1954, § 202(b)(3) added subsec. (c)(2)(C).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment of subsec. (c)(1), (2)(A) of this section by section 108(b) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 317 of Pub. L. 89–97 applicable with respect to services performed after the quarter ending September 30, 1965, and after the quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under the provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Amendment of section by section 320 of Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Subsecs. (a)(3) and (e)(2) (D), (E) of this section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 202 (d) of act Sept. 1, 1954, provided in part that the amendments to subsec. (c) by said act shall be applicable only with respect to remuneration paid after 1954.

CROSS REFERENCES

Credit for special refunds of Social Security tax on tax withheld on wages, see section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 31, 3121, 6653 of this title; title 42 sections 401 and 1395i.

§ 6414. Income tax withheld.

In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent. (Aug. 16, 1954, ch. 736, 68A Stat. 798.)

§ 6415. Credits or refunds to persons who collected certain taxes.

(a) Allowance of credits or refunds.

Credit or refund of any overpayment of tax imposed by section 4251, 4261, or 4271 may be allowed to the person who collected the tax and paid it to the Secretary or his delegate if such person establishes, under such regulations as the Secretary or his delegate may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund.

(b) Credit on returns.

Any person entitled to a refund of tax imposed by section 4251, 4261, or 4271 paid, or collected and paid, to the Secretary or his delegate by him may, instead of filing a claim for refund, take credit therefor against taxes imposed by such section due upon any subsequent return.

(c) Refund of overcollections.

In case any person required under section 4251, 4261, or 4271 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

(d) Refund of taxable payment.

Any person making a refund of any payment on which tax imposed by section 4251, 4261, or 4271 has been collected may repay therewith the amount of tax collected on such payment. (Aug. 16, 1954, ch. 736, 68A Stat. 798; June 30, 1958, Pub. L. 85–475, § 4(b)(4), 72 Stat. 260; Sept. 2, 1958, Pub. L. 85–859, title I, § 163(d)(1), 72 Stat. 1311; June 21, 1965, Pub. L. 89–44, title VI, § 601(b), 79 Stat. 153; May 21, 1970, Pub. L. 91–258, title II, § 205(b)(2), 84 Stat. 241.)

AMENDMENTS

1970—Pub. L. 91–258 inserted reference to section 4271 in four instances.

1965—Subsec. (a). Pub. L. 89–44, § 601(b) (1), (2), substituted "section 4251 or 4261" for "sections 4231(1), 4231(2), 4231(3), 4241, 4245, 4261, or 4286" and eliminated final sentence which referred to payment outside the United States of taxes imposed under pars. (1), (2) and (3) of sec. 4231.

Subsecs. (b)—(d). Pub. L. 89–44, § 601(b)(1), struck out "section 4231(1), 4231(2), 4231(3), 4241, 4245, 4261, or 4286" wherever appearing and inserted in lieu thereof "section 4251 or 4261".

1958—Subsec. (a). Pub. L. 85–859 provided that in the case of any payment outside the United States in respect of which tax is imposed under par. (1), (2), or (3) of section 4231 of this title, the person who paid for the admission or for the use of the box or seat shall be considered the person from whom the tax was collected.

Subsecs. (a)—(d). Pub. L. 85–475 struck out references to section 4271.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

For effective date of amendment by Pub. L. 85–475, see section 4 (c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

§ 6416. Certain taxes on sales and services.

(a) Condition to allowance.

(1) General rule.

No credit or refund of any overpayment of tax imposed by chapter 31 (retailers taxes), or chapter 32 (manufacturers taxes), shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary or his delegate, that he—

(A) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;

(B) has repaid the amount of the tax to the ultimate purchaser of the article;

(C) in the case of an overpayment under subsection (b) (2), (b) (3) (C), or (b) (4) of this section—

(i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or

(ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) has filed with the Secretary or his delegate the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

(2) Exceptions.

This subsection shall not apply to—

(A) the tax imposed by section 4041 (relating to tax on special fuels) on the use of any liquid, and

(B) an overpayment of tax under paragraph (1), (3) (A) or (B), or (5) of subsection (b) of this section.

(3) Special rules.

For purposes of this subsection—

(A), (B). Repealed. Pub. L. 89–44, title VI, § 601(c)(6), June 21, 1965, 79 Stat. 153.

(C) in any case in which the Secretary or his delegate determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1) (B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this subparagraph is filed on or before the day for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date of such determination; and

(D) in applying paragraph (1) (C) to any overpayment under paragraph (2) (F), (3) (C), or (4) of subsection (b), the term "ultimate vendor" means the ultimate vendor of the other article.

(b) Special cases in which tax payments considered overpayments.

Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) Price readjustments.

If the price of any article in respect of which a tax, based on such price, is imposed by chapter 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216 (f) (2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) Specified uses and resales.

The tax paid under chapter 32 (or under section 4041 (a) (1) or (b) (1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported (except in any case to which subsection (g) applies);

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) Repealed. Pub. L. 91–614, title III, § 302 (b), Dec. 31, 1970, 84 Stat. 1845.

(F) in the case of a tire or inner tube, resold for use as provided in subparagraph (C) of paragraph (3) and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

(G) in the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or

airplane, if before July 1, 1970 (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420 (c)) used on a farm for farming purposes;

(H) in the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter beginning before July 1, 1970, in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 percent passenger fare revenue test set forth in section 6421 (b)(2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's commuter fare revenue (as defined in section 6421 (d)(2)) derived from such scheduled service during such quarter was of his total passenger fare revenue derived from such scheduled service during such quarter;

(I) in the case of a liquid in respect of which tax was paid under section 4041(a)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use before July 1, 1970, as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) in the case of a liquid in respect of which tax was paid under section 4041(b)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use before July 1, 1970, otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(K) in the case of any article taxable under section 4061 (b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061 (a));

(L) in the case of tread rubber in respect of which tax was paid under section 4071 (a) (4), used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072 (c)), unless credit or refund of such tax is allowable under subsection (b) (3);

(M) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041;

(N)—(Q) Repealed. Pub. L. 89–44, title VI, § 601(c)(9), June 21, 1965, 79 Stat. 153.

(R) in the case of a bus chassis or body taxable under section 4061(a), sold to any person for use as described in section 4221(e)(5).

(3) Tax-paid articles used for further manufacture, etc.

If the tax imposed by chapter 32 has been paid with respect to the sale of any article by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

(A) in the case of any article other than an article to which subparagraph (B), (C), or (E) applies, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 manufactured or produced by him;

(B) in the case of a part or accessory taxable under section 4061(b), such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

(C) in the case of a tire or inner tube taxable under section 4071, such article is sold by the subsequent manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(D) Repealed. Pub. L. 89–44, title VI, § 601 (c)(10), June 21, 1965, 79 Stat. 153.

(E) in the case of—

(i) a bicycle tire (as defined in section 4221(e)(4)(B)), or

(ii) an inner tube for such a tire,

such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle); or

(F) in the case of gasoline taxable under section 4081, such gasoline is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

(4) Tires and inner tubes.

If—

(A) a tire or inner tube taxable under section 4071 is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him; and

(B) such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft,

any tax imposed by chapter 32 in respect of such tire or inner tube which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

(5) Return of certain installment accounts.

If—

(A) tax was paid under section 4216 (e) (1) in respect of any installment account,

(B) such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) the consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4216 (e) (1) allocable to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) Credit for tax paid on tires or inner tubes.

If tires or inner tubes on which tax has been paid under chapter 32 are sold on or in connection with, or with the sale of, another article taxable under chapter 32, there shall (under regulations prescribed by the Secretary or his delegate) be credited (without interest) against the tax imposed on the sale of such other article, an amount determined by multiplying the applicable percentage rate of tax for such other article by—

(1) the purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base), if such tires or inner tubes were taxable under section 4071 (relating to tax on tires and inner tubes); or

(2) if such tires or inner tubes were taxable under section 4218 (relating to use by manufacturer, producer, or importer), the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires or inner tubes are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary or his delegate.

(d) Repealed. Pub. L. 89–44, title VI, § 601(c)(14), June 21, 1965, 79 Stat. 154.

(e) Refund to exporter or shipper.

Under regulations prescribed by the Secretary or his delegate the amount of any tax imposed by subchapter E of chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(f) Credit on returns.

Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary or his delegate may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return.

(g) Automobiles, etc.

Under regulations prescribed by the Secretary or his delegate, subsection (b) (2) (A) shall apply, in the case of any article subject to the tax imposed by section 4061(a), only if the article with respect to which the tax was paid was sold by the manufacturer, producer, or importer for export after receipt by him of notice of intent to export or to resell for export.

(h) Accounting procedures for like articles.

Under regulations prescribed by the Secretary or his delegate, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) on a first-in-first-out basis,

(2) on a last-in-first-out basis, or

(3) in accordance with any other consistent method approved by the Secretary or his delegate.

(i) Meaning of terms.

For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be. (Aug. 16, 1954, ch. 736, 68A Stat. 798; Aug. 11, 1955, ch. 793, § 2, 69 Stat. 676; Aug. 11, 1955, ch. 805, §§ 1 (h), (i), 2(b), 69 Stat. 690; Apr. 2, 1956, ch. 160, § 2(b) (1), 70 Stat. 90; June 29, 1956, ch. 462, title II, § 208 (b), 70 Stat. 393; June 30, 1958, Pub. L. 85–475, § 4(b) (5), (6), 72 Stat. 260; Sept. 2, 1958, Pub. L. 85–859, title I, § 163 (a), (c), 72 Stat. 1306, 1311; Sept. 21, 1959, Pub. L. 86–342, title II, § 201(d)(1), 73 Stat. 614; Apr. 8, 1960, Pub. L. 86–418, § 3, 74 Stat. 38; Sept. 14, 1960, Pub. L. 86–781, § 2, 74 Stat. 1018; June 29, 1961, Pub. L. 87–61, title II, § 205 (c), (d), 75 Stat. 126; June 28, 1962, Pub. L. 87–508, § 5(c)(3), 76 Stat. 119; June 21, 1965, Pub. L. 89–44, title II, § 207(c), title VI, § 601(c), title VIII, § 801(d)(2), 79 Stat. 140, 153, 158; May 21, 1970, Pub. L. 91–258, title II, §§ 205(b)(3), (4), 207(d)(4)–(7), 84 Stat. 242, 248, 249; Dec. 31, 1970, Pub. L. 91–614, title III, § 302(a), (b), 84 Stat. 1845.)

AMENDMENTS

1970—Subsec. (a)(2)(A). Pub. L. 91-258, § 205(b)(3), substituted "section 4041 (relating to tax on special fuels)" for "section 4041(a)(2) or (b)(2) (use of diesel and special motor fuels)".

Subsec. (b)(2)(E). Pub. L. 91-614, § 302(b), struck out subpar. (E) providing that the tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article is deemed an overpayment if such article was resold by any person to a manufacturer or producer for use by him as provided in subsec. (b)(3)(A), (B), (E) or (F).

Subsec. (b)(2)(G). Pub. L. 91-258, § 207(d)(4), inserted "before July 1, 1970" after "if".

Subsec. (b)(2)(H). Pub. L. 91-258, § 207(d)(5), inserted "beginning before July 1, 1970," after "during any calendar quarter".

Subsec. (b)(2)(I). Pub. L. 91-258, § 207(d)(6), inserted "before July 1, 1970," after "used or resold for use".

Subsec. (b)(2)(J). Pub. L. 91-258, § 207(d)(7), inserted "before July 1, 1970," after "used or resold for use".

Subsec. (b)(2)(M). Pub. L. 91-258, § 205(b)(4), substituted "use in the production of special fuels referred to in section 4041" for "use in production of special motor fuels referred to in section 4041(b)."

Subsec. (b)(3). Pub. L. 91-614, § 302(a)(1)(A), substituted "and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an ovrepayment by such subsequent manufacturer or producer if" for "to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if".

Subsec. (b)(3)(A). Pub. L. 91-614, § 302(a)(1)(B), substituted "the subsequent manufacturer" for "the second manufacturer".

Subsec. (b)(3)(B). Pub. L. 91-614, § 302(a)(1)(B), substituted "the subsequent manufacturer" for "the second manufacturer".

Subsec. (b)(3)(C). Pub. L. 91-614, § 302(a)(1)(B), substituted "the subsequent manufacturer" for "the second manufacturer".

Subsec. (b)(3)(E). Pub. L. 91-614, § 302(a)(1)(B), substituted "the subsequent manufacturer" for "the second manufacturer".

Subsec. (b)(3(F). Pub. L. 91-614, § 302(a)(1)(B), substituted "the subsequent manufacturer" for "the second manufacturer".

Subsec. (c). Pub. L. 91-614, § 302(a)(2), struck out provision providing that the credit for tax paid on tires or inner tubes is allowable only in respect of the first sale on or in connection with, or with the sale of, another article on the sale of which tax is imposed under chapter 32 of this title.

1965—Subsec. (a)(1). Pub. L. 89-44, § 601(c)(1), struck out "section 4231 (4), (5), or (6) (cabarets, etc.)," from the material preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 89-44, § 601(c)(2), struck out, "admission, or service" following "article" each place it appears.

Subsec. (a)(1)(B). Pub. L. 89-44, § 601(c)(3), removed (i), (ii), and (iii) which dealt specifically with taxes imposed by sections 4041 (a)(1) or (b)(1), 4231 (4), (5), or (6) (cabarets, etc.), and chapters 31 and 32, and amended the subpar. to simply require that the person has repaid the amount of the tax to the ultimate purchaser of the article.

Subsec. (a)(1)(C). Pub. L. 89-44, § 601(c)(4), struck out "or (D)" following "(b)(3)(C)".

Subsec. (a)(1)(D). Pub. L. 89-44, § 601(c)(5), struck out "(1), (ii), or (iii), as the case may be," following "subparagraph (B)".

Subsec. (a)(3) (A), (B). Pub. L. 89-44, § 601(c)(6), struck out subpars. (A) and (B).

Subsec. (a)(3)(C). Pub. L. 89-44, § 601(c)(6), struck out "(ii)" following "paragraph (1)(B)".

Subsec. (a)(3)(D). Pub. L. 89-44, § 601(c)(6), struck out "or (D)" following paragraph (2)(F), (3)(C)".

Subsec. (b)(1). Pub. L. 89-44, § 601(c)(7), struck out "31 or" following "imposed by chapter" and "(in the case of a tax imposed by chapter 32)" following "or allowance, including".

Subsec. (b)(2)(F). Pub. L. 89-44, § 601(c)(8), struck out reference to receiving sets resold for use and removed reference to subparagraph (D) of paragraph (3).

Subsec. (b)(2) (N)—(Q). Pub. L. 89-44, § 601(c)(9), struck out subpars. (N), (O), (P), and (Q).

Subsec. (b)(2)(R). Pub. L. 89-44, § 801(d)(2), added subpar. (R).

Subsec. (b)(3)(A). Pub. L. 89-44, § 601(c)(10), struck out "(D)," following "subparagraph (B), (C),".

Subsec. (b)(3)(B). Pub. L. 89-44, § 601(c)(10), removed references to radio and television components taxable under section 4141 and camera lenses taxable under section 4171.

Subsec. (b)(3)(C). Pub. L. 89-44, § 601(c)(10), removed reference to automobile radios or television receiving sets taxable under section 4141.

Subsec. (b)(3)(D). Pub. L. 89-44, § 601(c)(10), struck out subpar. (D) of subsec. (b)(3) relating to radio receiving sets or automobile receiving sets.

Subsec. (b)(4). Pub. L. 89-44, § 601(c)(11), removed all references to automobile radio or television receiving sets taxable under section 4141.

Subsec. (b)(5). Pub. L. 89-44, §§ 207(c), 601(c)(12), struck out "proportionate" and inserted in lieu thereof "allocable", and struck out "4053(b)(1) or" preceeding "4216(e)(1)" wherever appearing.

Subsec. (c). Pub. L. 89-44, § 601(c)(13), removed all references to automobile radio or television receiving sets.

Subsec. (d). Pub. L. 89-44, § 601(c)(14), struck out subsec. (d) which related to mechanical pencils taxable as jewelry.

Subsec. (g). Pub. L. 89-44, § 601(c)(15), struck out "sections 4061(a), 4111, 4121, 4141," and inserted in lieu thereof "section 4061(a).".

1962—Subsec. (b)(2)(H). Pub. L. 87-508 substituted "commuter fare revenue" for "tax-exempt passenger fare revenue" and deleted "(not including the tax imposed by section 4261, relating to the tax on transportation of persons)" following "total passenger fare revenue."

1961—Subsec. (b)(2). Pub. L. 87-61, § 205(d), inserted a reference to subparagraph (F) of paragraph (3) in subpar. (E).

Subsec. (b)(3). Pub. L. 87-61, § 205(c), added subpar. (F).

1960—Subsec. (b)(1). Pub. L. 86-781 inserted after "or allowance," the words "including (in the case of a tax imposed by chapter 32) a readjustment for local advertising (but only to the extent provided in section 4216(f) (2) and (3),)".

Subsec. (b)(2)(E). Pub. L. 86-418, § 3(a), substituted "subparagraph (A), (B), or (E)" for "subparagraph (A) or (B)."

Subsec. (b)(3)(A). Pub. L. 86-418, § 3(b)(1), substituted "subparagraph (B), (C), (D), or (E)" for "subparagraph (B), (C), or (D)."

Subsec. (b)(3)(E). Pub. L. 86-418, § 3(b)(2), added subpar. (E).

1959—Subsec. (b)(2)(H). Pub. L. 86-342, § 201(d)(1) (A), (B), substituted "at the rate of 3 cents or 4 cents a gallon" for "at the rate of 3 cents a gallon", and "1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon" for "1 cent for each gallon."

Subsec. (b)(2)(I). Pub. L. 86-342, § 201(d)(1) (A), (C), substituted "at the rate of 3 cents or 4 cents a gallon" for "at the rate of 3 cents a gallon", and "at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate" for "at the rate of 1 cent a gallon."

Subsec. (b)(2)(J). Pub. L. 86-342, § 201(d)(1) (A), (C), substituted "at the rate of 3 cents or 4 cents a gallon" for "at the rate of 3 cents a gallon", and "at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate" for "at the rate of 1 cent a gallon."

1958—Subsec. (a) amended generally by Pub. L. 85-859, § 163 (a), to make section applicable to taxes imposed by pars. (4) and (5) of section 4231, to permit credit or refund of the cabaret tax where the person has repaid the amount of the tax or has filed a written consent to the allowance of the credit or the making of the refund, and to establish special rules for taxes

collected under section 4231 (6) from a concessionaire, taxes under chapter 31 paid by a supplier, and defining "ultimate purchaser" and "ultimate vendor".

Subsec. (a). Pub. L. 85–475, § 4(b)(5), struck out a reference to section 4281.

Subsec. (b)(1). Pub. L. 85–859, § 163(a), made price readjustment provisions inapplicable in the case of an article in respect of which tax was computed under section 4223(b)(2), but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

Subsec. (b) (2) amended generally by Pub. L. 85–859, § 163 (a), to consider as overpayments taxes paid in respect of any articles which were, by any person, exported, resold to a manufacturer or producer for use by him as provided in subpar. (A) or (B) of par. (3), resold for use, in the case of a tire, inner tube, or receiving set, as provided in subpar. (C) or (D) of par. (3) and the other article referred to in such paragraph is by any person exported or sold as provided in such paragraph, and to eliminate provisions which excluded leaf springs, coils, timers, and tire chains in the case of articles taxable under section 4061 (b).

Subsec. (b) (3) amended generally by Pub. L. 85–859, § 163 (a), to consider as overpayments taxes paid in the case of tires or inner tubes taxable under section 4071 and automobile radio or television receiving sets taxable under section 4141 where the articles are resold in certain particular cases, and taxes paid in the case of radio receiving sets or automobile radio receiving sets which are used by the manufacturer or producer as component parts of any other article manufactured or produced by him, and are exported or sold in certain particular cases, and to provide that for purposes of subpars. (A) and (B) an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

Subsecs. (b)(4) and (b)(5). Pub. L. 85–859, § 163(a) added subsecs. (b)(4) and (b)(5).

Subsec. (c). Pub. L. 85–859, § 163(a), authorized a credit with respect to tires, inner tubes, or automobile radio or television receiving sets which are sold on or in connection with, or with the sale of, another article taxable under chapter 32, and permitted the credit only in respect of the first sale on or in connection with, or with the sale of, another article on the sale of which tax is imposed under chapter 32.

Subsec. (f). Pub. L. 85–475, § 4(b)(6), struck out a reference to section 4281.

Subsecs. (g)—(i). Pub. L. 85–859, § 163(c), added subsecs. (g)—(i).

1956—Subsec. (b)(2)(C). Act Apr. 2, 1956, included liquid used on a farm for farming purposes.

Subsec. (b)(2) (J—M). Act June 29, 1956, added subsec. (b)(2) (J—M).

1955—Subsec. (b)(2)(G). Act Aug. 11, 1955, ch. 805, § 2(b), repealed subsec. (b)(2)(G) relating to credit for communication, detection, and navigation receivers when sold to the United States Government.

Subsec. (b)(2)(I). Act Aug. 11, 1955, ch. 793, added subsec. (b)(2)(I).

Subsec. (b)(3)(A). Act Aug. 11, 1955, ch. 805, § 1(h), inserted after "section 4141" the words "and other than an automobile part or accessory taxable under section 4061(b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171".

Subsec. (b)(3)(B). Act Aug. 11, 1955, ch. 805, § 1(i), substituted provisions allowing a credit for automobile parts or accessories, refrigerator, radio, or television components, or camera lenses taxable under sections 4061(b), 4111, 4141, or 4171, respectively, of this title, for provisions allowing a credit for radio and television components purchased and used by a producer in the manufacture of communication, detection, or navigation receivers in commercial, military, or marine installations if such receivers were sold to the United States.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 302(c) of Pub. L. 91–614 provided that: "The amendments made by subsections (a) and (b) of this section [amending this section] shall apply only with respect to claims for credit or refund filed after the date of the enactment of this Act [Dec. 31, 1970], but only if the filing of the claim is not barred on the day after the date of the enactment of this Act by any law or rule of law."

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (b)(5) by section 207(c) of Pub. L. 89–44 to take effect on June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4061 of this title.

Subsec. (b)(2)(R) applicable with respect to articles sold on or after June 22, 1965, see section 801(e) of Pub. L. 89–44, set out as a note under section 4063 of this title.

Amendment of administrative provisions of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provisions to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(d) of Pub. L. 87–508 provided in part that: "The amendments made by subsection (c)(3) [to subsec. (b)(2)(H) of this section] shall apply only in respect to the use or sale of special fuels made on or after November 16, 1962."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–61 applicable only in the case of gasoline sold on or after Oct. 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment of section by Pub. L. 86–781 applicable with respect to articles sold on or after the first day of the first calendar quarter beginning more than twenty days after Sept. 14, 1960, see section 3 of Pub. L. 86–781, set out as a note under section 4216 of this title.

Amendment of this section by Pub. L. 86–418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 163 (b) of Pub. L. 85–859 provided that: "Section 6416 (b) of the Internal Revenue Code of 1954, as amended by this Act, [subsec. (b) of this section], shall apply only with respect to articles exported, sold, or resold, as the case may be, on or after the effective date specified in section 1 (c) of this Act [set out as a note under section 4001 of this title]."

For effective date of amendment by Pub. L. 85–475, see section 4 (c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

EFFECTIVE DATE OF 1956 AMENDMENTS

Act Apr. 2, 1956, § 2 (b) (2), provided that: "The amendment made by paragraph (1) [to subsec. (b) (2) (C)] shall apply with respect to liquid sold after December 31, 1955."

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1955 AMENDMENTS

Section 3 of act Aug. 11, 1955, ch. 805, provided that:

"The amendments made by the first section and section 2 of this Act [Aug. 11, 1955] shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act [Aug. 11, 1955]. Notwithstanding the preceding sentence—

"(1) the repeal of section 6416 (b) (2) (G) of the Internal Revenue Code of 1954 shall apply only with respect to articles sold by the manufacturer, producer, or importer on or after the first day of the first month

which begins more than 10 days after the date of the enactment of this Act [Aug. 11, 1955], and

"(2) section 6416 (b) (3) (B) of the Internal Revenue Code of 1954, as amended by subsection (i) of the first section of this Act [Aug. 11, 1955], shall apply with respect to articles used on or after such first day by the manufacturer or producer as material in the manufacture of, production of, or as a component part of, another article."

Amendment of this section by act Aug. 11, 1955, ch. 793, effective on the first day of the first calendar quarter which begins more than ten days after Aug. 11, 1955, see section 3 of act Aug. 11, 1955, ch. 793, set out as a note under section 4091 of this title.

OVERPAYMENT OF TAX ON CERTAIN RADIO RECEIVING SETS AND RADIO AND TELEVISION COMPONENTS

Section 163 (e) of Pub. L. 85-859 provided that:

"If—

"(1) a radio receiving set, an automobile radio receiving set, or a radio or television component was (before any other use) used as a component part of any other article, and

"(2) such other article was (before any other use) by any person exported, or sold to a State or local government for the exclusive use of a State or local government, then any tax imposed by chapter 32 of the Internal Revenue Code of 1954 (or the corresponding provisions of prior revenue law) in respect of such set or component which has been paid shall be deemed to have been an overpayment, by the manufacturer, producer, or importer of such other article, at the time paid. No credit or refund shall be allowed or made under this subsection unless the manufacturer, producer, or importer of such other article establishes to the safisfaction of the Secretary of the Treasury or his delegate that he did not include the amount of the tax in the price of such other article (and has not collected the amount of the tax from the purchaser of such other article), that the amount of the tax has been repaid to the ultimate purchaser of such other article, or that he has obtained the written consent of such ultimate purchaser to the allowance of the credit or the making of the refund. No interest shall be allowed or paid in respect of any such overpayment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4216, 4226, 6420, of this title.

§ 6417. Coconut and palm oil.

(a) Sales to States or political subdivisions.

Subject to such rules or regulations as the Secretary or his delegate may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under section 4511, shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(b) Exportation.

Upon the exportation to any foreign country or to a possession of the United States of any article, wholly or in chief value of an article, with respect to the processing of which a tax has been paid under subchapter B of chapter 37, the exporter thereof shall be entitled to a refund of the amount of such tax. (Aug. 16, 1954, ch. 736, 68A Stat. 801.)

REFERENCES IN TEXT

Section 4511 of this title, referred to in subsec. (a), was repealed by Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Subchapter B of chapter 37, referred to in subsec. (b), consisted of sections 4511-4514 of this title, which sections were repealed by Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

§ 6418. Sugar.

(a) Use as livestock feed or for distillation or production of alcohol.

Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, or for the production of alcohol (other than alcohol produced for human food consumption), there shall be paid by the Secretary or his delegate to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 4501 with respect thereto.

(b) Exportation.

Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 4501(a) has been paid, the amount of such tax shall be paid by the Secretary or his delegate to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer. (Aug. 16, 1954, ch. 736, 68A Stat. 801; May 29, 1956, ch. 342, § 21(b), 70 Stat. 221; May 24, 1962, Pub. L. 87-456, title III, § 302(c), 76 Stat. 77; Nov. 8, 1965, Pub. L. 89-331, § 9(b), 79 Stat. 1278.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-331 inserted "or production" following "distillation" in the subsection heading and "or for the production of alcohol (other than alcohol produced for human food consumption)," following "the distillation of alcohol," in the text.

1962—Subsec. (b). Pub. L. 87-456 eliminated provisions which prohibited the Secretary or his delegate from making payment of the tax with respect to any manufactured sugar, or article, upon which, through substitution or otherwise, a drawback of any tax paid under section 4501(b) has been or is to be claimed under any provisions of law made applicable by section 4504. See Revised Tariff Schedules set forth in section 1202 of Title 19, Customs Duties.

1956—Subsec. (a). Act May 29, 1956, substituted "4501" for "4501(a)".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-331 effective Nov. 8, 1965, see section 14 of Pub. L. 89-331, set out as a note under section 1111 of Title 7, Agriculture.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (b) of this section effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, set out as a note preceding section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act May 29, 1956, effective as of Jan. 1, 1956, see section 222 of act May 29, 1956, set out as a note under section 1101 of Title 7, Agriculture.

CROSS REFERENCES

Limitations on credit or refund, see section 6511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6511 of this title.

§ 6419. Excise tax on wagering.

(a) Credit or refund generally.

No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary or his delegate, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary or his delegate written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary or his delegate, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) Credit or refund on wagers laid-off by taxpayer.

Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary or his delegate; and no interest shall be allowed with respect to any amount so credited or refunded. (Aug. 16, 1954, ch. 736, 68A Stat. 801.)

§ 6420. Gasoline used on farms.

(a) Gasoline.

Except as provided in subsection (h), if gasoline is used on a farm for farming purposes, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(1) the number of gallons so used, by

(2) the rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline.

(b) Time for filing claim; period covered.

(1) Gasoline used before July 1, 1965.

Except as provided in paragraph (2), not more than one claim may be filed under this section by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

(2) Gasoline used after June 30, 1965.

In the case of gasoline used after June 30, 1965—

(A) not more than one claim may be filed under this section by any person with respect to gasoline used during his taxable year; and

(B) no claim shall be allowed under this section with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.

(c) Meaning of terms.

For purposes of this section—

(1) Use on a farm for farming purposes.

Gasoline shall be treated as used on a farm for farming purposes only if used (A) in carrying on a trade or business, (B) on a farm situated in the United States, and (C) for farming purposes.

(2) Farm.

The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultual commodities, and orchards.

(3) Farming purposes.

Gasoline shall be treated as used for farming purposes only if used—

(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator; except that if such use is by any person other than the owner, tenant, or operator of such farm, then (i) for purposes of this subparagraph, in applying subsection (a) to this subparagraph, and for purposes of section 6416 (b) (2) (G) (ii) (but not for purposes of section 4041), the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used shall be treated as the user and ultimate purchaser of such gasoline or liquid, and (ii) for purposes of applying section 6416 (b) (2) (G) (ii), any tax paid under section 4041 in respect of a liquid used on a farm for farming purposes (within the meaning of this subparagraph) shall be treated as having been paid by the owner, tenant, or operator of the farm on which such liquid is used;

(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only

if such owner, tenant or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

(C) by the owner, tenant, or operator of a farm, in connection with—

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market,

incidental to farming operations; or

(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(4) Gasoline.

The term "gasoline" has the meaning given to such term by section 4082 (b).

(d) Exempt sales; other payments or refunds available.

No amount shall be payable under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(e) Applicable laws.

(1) In general.

All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in in[1] respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses.

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(3) Fractional parts of a dollar.

Section 7504 (granting the Secretary discretion with respect to fractional parts of a dollar) shall not apply.

(f) Regulations.

The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may by made under this section.

(g) Effective date.

This section shall apply only with respect to gasoline purchased after December 31, 1955.

[1] So in original.

(h) Income tax credit in lieu of payment.

(1) Persons not subject to income tax.

Payment shall be made under subsection (a) with respect to gasoline used after June 30, 1965, only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Allowance of credit against income tax.

For allowance of credit against the tax imposed by subtitle A for gasoline used after June 30, 1965, see section 39.

(i) Cross references.

(1) For exemption from tax in case of special fuels used on a farm for farming purposes, see section 4041 (f).

(2) For civil penalty for excessive claim under this section see section 6675.

(3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(Added Apr. 2, 1956, ch. 160, § 1, 70 Stat. 87, and amended Sept. 2, 1958, Pub. L. 85–859, title I, § 163 (d) (2), 72 Stat. 1311; June 21, 1965, Pub. L. 89–44, title VIII, § 809(a), 79 Stat. 165; May 21, 1970, Pub. L. 91–258, title II, §§ 205(c)(7), 207(b), 84 Stat. 242, 248.)

AMENDMENTS

1970—Subsec. (b)(2)(B). Pub. L. 91–258, § 207(b), substituted "a claim for credit or refund of overpayment of income tax" for "an income tax return" following "time prescribed by law for filing".

Subsec. (i)(1). Pub. L. 91–258, § 205(c)(7)(A), (B), substituted "special fuels" for "diesel fuel and special motor fuels" and "section 4041(f)" for "section 4041(d)", respectively.

1965—Subsec. (a). Pub. L. 89–44, § 809(a)(1)(A), struck out "If" and inserted in lieu thereof "Except as provided in subsection (h), if".

Subsec. (b). Pub. L. 89–44, § 809(a)(2), designated existing provisions as par. (1) and made it applicable to gasoline used before July 1, 1965, and added par. (2).

Subsec. (d). Pub. L. 89–44, § 809(a)(3), struck out "paid" in the first sentence and inserted "payable" in lieu thereof.

Subsec. (h). Pub. L. 89–44, § 809(a)(1)(B), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 89–44, § 809(a)(1)(B), redesignated former subsec. (h) as subsec. (i).

1958—Subsec. (c)(3). Pub. L. 85–859 substituted "section 6416 (b)(2)(G)(ii)" for "section 6416 (b)(2)(C)(ii)" in two instances in cl. (A).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of subsecs. (i)(1) and (b)(2)(B) of this section by Pub. L. 91–258 effective on July 1, 1970, and applicable with respect to taxable years ending after June 30, 1970, respectively, see section 211 (a), (b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 809(f) of Pub. L. 89–44 provided that: "The amendments made by subsections (a) and (b) [to this section and section 6421(a), (b), (c)(1), (2), (3), (e)(1), (i) and (j) of this title] shall apply with respect to gasoline used on or after July 1, 1965. The amendments made by subsections (c) and (d) [renumbering section 39 as 40, adding new section 39 and amending sections 72(n)(3), 874(a), 1314(a)(1)(A), 1481(b)(2)(A)(i), 6201(a)(4), 6211(b)(4), 6213(e)(3) and 6401(b) of this title] shall apply to taxable years beginning on or after July 1, 1965."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

CROSS REFERENCES

Time and place for examination pursuant to subsection (e) (2) of this section, see section 7605 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 6206, 6416, 6421, 6427, 6675, 7210, 7603, 7604, 7605 of this title.

§ 6421. Gasoline used for certain nonhighway purposes or by local transit systems.

(a) Nonhighway uses.

Except as provided in subsection (i), if gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a highway vehicle owned by the United States, is used on the highway, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon. Except as provided in paragraph (3) of subsection (e) of this section, in the case of gasoline used after June 30, 1970, as a fuel in an aircraft, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

(b) Local transit systems.

(1) Allowance.

Except as provided in subsection (i), if gasoline is used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, the Secretary or his delegate shall, subject to the provisions of paragraph (2), pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(A) 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon, by

(B) the percentage which the ultimate purchaser's commuter fare revenue derived from such scheduled service during such quarter was of his total passenger fare revenue derived from such scheduled service during such quarter.

(2) Limitation.

Paragraph (1) shall apply in respect of gasoline used during any calendar quarter only if at least 60 percent of the total passenger fare revenue derived during such quarter from scheduled service described in paragraph (1) by the person filing the claim was attributable to commuter fare revenue derived during such quarter by such person from such scheduled service.

(c) Time for filing claims; period covered.

(1) Gasoline used before July 1, 1965.

Except as provided in paragraphs (2) and (3), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

(2) Exception.

Except as provided in paragraph (3), if $1,000 or more is payable under this section to any person with respect to gasoline used during a calendar quarter, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

(3) Gasoline used after June 30, 1965.

(A) In general.

In the case of gasoline used after June 30, 1965—

(i) except as provided in subparagraph (B), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during his taxable year; and

(ii) no claim shall be allowed under this subparagraph with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.

(B) Exception.

If $1,000 or more is payable under this section to any person with respect to gasoline used during any of the first three quarters of his taxable year, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this subparagraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

(d) Definitions.

For purposes of this section—

(1) Gasoline.

The term "gasoline" has the meaning given to such term by section 4082(b).

(2) Commuter fare revenue.

The term "commuter fare revenue" means revenue attributable to fares derived from the transportation of persons and attributable to—

(A) amounts paid for transportation which do not exceed 60 cents,

(B) amounts paid for commutation or season tickets for single trips of less than 30 miles, or

(C) amounts paid for commutation tickets for one month or less.

(e) Exempt sales; other payments or refunds available.

(1) Exempt sales.

No amount shall be payable under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(2) Gasoline used on farms.

This section shall not apply in respect of gasoline which was (within the meaning of paragraphs (1), (2), and (3) of section 6420 (c)) used on a farm for farming purposes.

(3) Gasoline used in noncommercial aviation.

This section shall not apply in respect of gasoline which is used after June 30, 1970, as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)(4)).

(f) Applicable laws.

(1) In general.

All provisions of law, including penalties, applicable in respect to the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses.

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(g) Regulations.

The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(h) Effective date.

This section shall apply only with respect to gasoline purchased after June 30, 1956, and before October, 1, 1977.

(i) Income tax credit in lieu of payment.

(1) Persons not subject to income tax.

Payment shall be made under subsections (a) and (b) with respect to gasoline used after June 30, 1965, only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception.

Paragraph (1) shall not apply to a payment of a claim filed under subsection (c)(3)(B).

(3) Allowance of credit against income tax.

For allowance of credit against the tax imposed by subtitle A for gasoline used after June 30, 1965, see section 39.

(j) Cross references.

(1) For rate of tax in case of special fuels used in noncommercial aviation or for nonhighway purposes, see section 4041.

(2) For civil penalty for excessive claims under this section, see section 6675.

(3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(Added June 29, 1956, ch. 462, title II, § 208 (c), 70 Stat. 394, and amended July 25, 1956, ch. 725, § 2, 70 Stat. 644; Sept. 2, 1958, Pub. L. 85–859, title I, §§ 163(d)(3), 164(a), 72 Stat. 1312; Sept. 21, 1959, Pub. L. 86–342, title II, § 201(d)(2), 73 Stat. 615; June 29, 1961, Pub. L. 87–61, title II, § 201(e), 75 Stat. 124; June 28, 1962, Pub. L. 87–508, § 5(c)(2), 76 Stat. 118; June 21, 1965, Pub. L. 89–44, title VIII, § 809(b), 79 Stat. 166; May 21, 1970, Pub. L. 91–258, title II, §§ 205(b)(1), (c)(8), 207(b), 84 Stat. 241, 242, 248; Dec. 31, 1970, Pub. L. 91–605, title III, § 303(a)(11), 84 Stat. 1744.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–258, § 205(b)(1)(A), added requirement that, except as provided in par. (3) of subsec. (e) of this section, where gasoline is used after June 30, 1970, as a fuel in an aircraft, the Secretary or his delegate pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

Subsec. (c)(3)(A)(ii). Pub. L. 91–258, § 207(b), substituted "a claim for credit or refund of overpayment of income tax" for "an income tax return" following "time prescribed by law for filing".

Subsec. (e)(3). Pub. L. 91–258, § 205(b)(1)(B), added par. (3).

Subsec. (h). Pub. L. 91–605 substituted "1977" for "1972".

Subsec. (j)(1). Pub. L. 91–258, § 205(c)(8), substituted "For rate of tax in case of special fuels used in noncommercial aviation or for nonhighway purposes, see section 4041" for "For reduced rate of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see subsections (a) and (b) of section 4041".

Subsec. (j)(2). Pub. L. 91–258, § 205(c)(8), redesignated former par. (4) as (2). Former par. (2) provided "For partial refund of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see section 6416(b)(2)(I) and (J)".

Subsec. (j)(3). Pub. L. 91–258, § 205(c)(8), redesginated former par. (5) as (3). Former par. (3) provided "For partial refund of tax in case of diesel fuel and special motor fuels used by local transit systems, see section 6416(b)(2)(H)".

Subsecs. (j)(4), (5). Pub. L. 91–258, § 205(c)(8), redesignated former pars. (4) and (5) as (2) and (3), respectively.

1965—Subsec. (a). Pub. L. 89–44, § 809(b)(1)(A), struck out "If" at the beginning of the subsec. and inserted in lieu thereof "Except as provided in subsection (i), if".

Subsec. (b). Pub. L. 89–44, § 809(b)(1)(A), struck out "If" at the beginning of the subsec. and inserted in lieu thereof "Except as provided in subsection (i), if".

Subsec. (c)(1). Pub. L. 89–44, § 809(b)(2)(A), struck out "General rule" from the par. heading and inserted in lieu thereof "Gasoline used before July 1, 1965", and substituted "paragraphs (2) and (3)" for "paragraph (2)" following "Except as provided in".

Subsec. (c)(2). Pub. L. 89–44, § 809(b)(2)(B), struck out "If" and inserted in lieu thereof "Except as provided in paragraph (3), if".

Subsec. (c)(3). Pub. L. 89–44, § 809(b)(2)(C), added par. (3).

Subsec. (e)(1). Pub. L. 89–44, § 809(b)(3), struck out "paid" in the first sentence and inserted "payable" in lieu thereof.

Subsec. (i). Pub. L. 89–44, § 809(b)(1)(B), added subsec. (i). Former subsec. (i) redesignated as (j).

Subsec. (j). Pub. L. 89–44, § 809(b)(1)(B), redesignated former subsec. (i) as subsec. (j).

1962—Subsec. (b)(1)(B), (2). Pub. L. 87–508, § 5(c)(2)(A), substituted "commuter fare revenue" for "tax-exempt passenger fare revenue" in two instances and deleted "(not including the tax imposed by section 4261, relating to the tax on transportation of persons)" following "total passenger fare revenue" in two instances.

Subsec. (d)(2). Pub. L. 87–508, § 5(c)(2)(B), substituted definition of "commuter fare revenue" for definition of "tax-exempt passenger fare revenue."

1961—Subsec. (h). Pub. L. 87–61 substituted "October 1, 1972" for "July 1, 1972."

1959—Subsec. (a). Pub. L. 86–342 substituted "1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon" for "1 cent for each gallon of gasoline so used."

for each gallon of gasoline so used on which tax was paid

Subsec. (b)(1)(A). Pub. L. 86–342 substituted "1 cent at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon" for "1 cent for each gallon of gasoline so used."

1958—Subsec. (c). Pub. L. 85–859, § 164(a), permitted, in cases where $1,000 or more is payable to any person with respect to gasoline used during a calendar quarter, the filing of a claim on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

Subsec. (i). Pub. L. 85–859, § 163(d)(3), substituted "section 6416(b)(2) (I) and (J)" for "section 6416(b)(2) (J) and (K)" in cl. (2), and "section 6416(b)(2)(H)" for "section 6416(b)(2)(L)" in cl. (3).

1956—Subsec. (d)(2). Act July 25, 1956, substituted "4263(a)" for "4262(b)".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of subsecs. (a), (e)(3), and (j) by section 205(b)(1)(A), (B), (c)(8) of Pub. L. 91–258 and of subsec. (c)(3)(A)(ii) by section 207(b) of Pub. L. 91–258 effective on July 1, 1970, and applicable with respect to taxable years ending after June 30, 1970, respectively, see section 211(a), (b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–44 applicable with respect to gasoline used on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(d) of Pub L. 87–508 provided in part that: "The amendments made by subsection (c)(2) [to subsecs. (b)(1)(B), (2) and (d)(2) of this section] shall apply only in respect of claims filed with respect to gasoline used on or after November 16, 1962."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–61 effective on July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 164 (b) of Pub. L. 85–859 provided that: "The amendment made by subsection (a) [to subsec. (c) of this section] shall apply only with respect to claims the last day for the filing of which occurs after the effective date specified in section 1 (c) of this Act".

Amendment of subsec. (i) by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act July 25, 1956, applicable to amounts paid on or after the first day of the first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

CROSS REFERENCES

Time and place for examination pursuant to subsection (f) (2) of this section, see section 7605 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 4483, 6206, 6416, 6427, 6675, 7210, 7603, 7604, 7605 of this title; title 16 section 460*l*–11.

§ 6422. Cross references.

(1) For limitations on credits and refunds, see subchapter B of chapter 66.

(2) For overpayment arising out of adjustments incident to involuntary liquidation of inventory, see section 1321.

(3) For overpayment in case of adjustments to accrued foreign taxes, see section 905(c).

(4) For credit or refund in case of deficiency dividends paid by a personal holding company, see section 547.

(5) For refund, credit, or abatement of amounts disallowed by courts upon review of Tax Court decision, see section 7486.

(6) For abatement or refund of tax on transfers to avoid income tax, see section 1494(b).

(7) For overpayment in certain renegotiations of war contracts, see section 1481.

(8) For refund or redemption of stamps, see chapter 69.

(9) For abatement, credit, or refund in case of jeopardy assessments, see chapter 70.

(10) For treatment of certain overpayments as having been refunded, in connection with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U.S.C. App. 1742).

(11) For restrictions on transfers and assignments of claims against the United States, see R.S. 3477 (31 U.S.C. 203).

(12) For set-off of claims against amounts due the United States, see the act of March 3, 1875, as amended by section 13 of the act of March 3, 1933 (47 Stat. 1516; 31 U.S.C. 227).

(13) For special provisions relating to alcohol and tobacco taxes, see subtitle E.

(Aug. 16, 1954, ch. 736, 68A Stat. 802, § 6422, formerly § 6420 renumbered § 6421, Apr. 2, 1956, ch. 160, § 1, 70 Stat. 87; renumbered § 6422, June 29, 1956, ch. 462, title II, § 208(c), 70 Stat. 394, and amended Sept. 2, 1958, Pub. L. 85–859, title II, § 204(4), 72 Stat. 1429; June 4, 1963, Pub. L. 88–36, title II, § 201(c), 77 Stat. 54.)

AMENDMENTS

1963—Par. (7). Pub. L. 88–36 redesignated former par. (8) as (7) and eliminated former par. (7) which was cross reference provision for abatement or refund in case of tax on silver bullion to section 4894.

Pars. (8)—(13). Pub. L. 88–36 redesignated former pars. (9)—(14) as (8)—(13). Former par. (8) redesignated as (7).

1958—Pub. L. 85–859 substituted "subtitle E" for "sections 5011, 5044, 5057, 5063, 5705, and 5707" in par. (14).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section as applicable only with respect to transfers after June 4, 1963, see section 202 of Pub. L. 88–36, set out as a note under former sections 4891—4897 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§ 6423. Conditions to allowance in the case of alcohol and tobacco taxes.

(a) Conditions.

No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any

amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary or his delegate)—

(1) that he bore the ultimate burden of the amount claimed; or

(2) that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or

(3) that (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary or his delegate the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

(b) Filing of claims.

No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and, except as hereinafter provided in this subsection, unless such claim is filed after April 30, 1958, and within the time prescribed by law, and in accordance with regulations prescribed by the Secretary or his delegate. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim. Any claimant who has on or before April 30, 1958, filed a claim for any amount to which subsection (a) applies may, if such claim was not barred from allowance on April 30, 1958, file a superseding claim after April 30, 1958, and on or before April 30, 1959, conforming to the requirements of this section and covering the amount (or any part thereof) claimed in such prior claim. No claim filed before May 1, 1958, for the credit or refund of any amount to which subsection (a) applies shall be held to constitute a claim for refund or credit within the meaning of, or for purposes of, section 7422 (a); except that any claimant who instituted a suit before June 15, 1957, for recovery of any amount to which subsection (a) applies shall not be barred by this subsection from the maintenance of such suit as to any amount claimed in such suit on such date if in such suit he establishes the conditions to allowance required under subsection (a) with respect to such amount.

(c) Period not extended.

Any suit or proceeding, with respect to any amount to which subsection (a) applies, which is barred on April 30, 1958, shall remain barred. No claim for credit or refund of any such amount which is barred from allowance on April 30, 1958, shall be allowed after such date in any amount.

(d) Application of section.

This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

(1) any claim for drawback,

(2) any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed, and

(3) any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957.

(e) Meaning of terms.

For purposes of this section—

(1) Alcohol or tobacco tax.

The term "alcohol or tobacco tax" means—

(A) any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) in the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) Tax.

The term "tax" includes a tax and an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) Ultimate burden.

The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a) (1), and the owner referred to in subsection (a) (3) shall be treated as having borne such burden for purposes of such subsection, only if—

(A) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) no understanding or agreement exists for any such relief or shifting, and

(C) if he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary or his delegate may require to insure faithful compliance with his agreement.

(Added Pub. L. 85–323, § 1, Feb. 11, 1958, 72 Stat. 9.)

EFFECTIVE DATE

Section 3 of Pub. L. 85–323 provided that this section shall not apply to any credit or refund allowed or made before May 1, 1958.

§ 6424. Lubricating oil not used in highway motor vehicles.

(a) Payments.

Except as provided in subsection (g), if lubricating oil (other than cutting oils, as defined in section 4092(b), and other than oil which has previously been used) is used otherwise than in a highway motor vehicle, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such lubricating oil an amount equal to 6 cents for each gallon of lubricating oil so used.

(b) Time for filing claims; period covered.

(1) General rule.

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a) by any person with respect to lubricating oil used during his taxable year. No claim shall be allowed under this paragraph with respect to lubricating oil used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of

overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

(2) Exception.

If $1,000 or more is payable under this section to any person with respect to lubricating oil used during any of the first three quarters of his taxable year, a claim may be filed under this section by such person with respect to lubricating oil used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

(c) Exempt sales.

No amount shall be payable under this section with respect to any lubricating oil which the Secretary or his delegate determines was exempt from the tax imposed by section 4091. The amount which (but for this sentence) would be payable under this section with respect to any lubricating oil shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such lubricating oil.

(d) Applicable laws.

(1) In general.

All provisions of law, including penalties, applicable in respect of the tax imposed by section 4091 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses.

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(e) Regulations.

The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(f) Effective date.

This section shall apply only with respect to lubricating oil placed in use after December 31, 1965.

(g) Income tax credit in lieu of payment.

(1) Persons not subject to income tax.

Payment shall be made under subsection (a) only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception.

Paragraph (1) shall not apply to a payment of a claim filed under subsection (b)(2).

(3) Allowance of credit against income tax.

For allowance of credit against the tax imposed by subtitle A for lubricating oil used, see section 39.

(h) Cross references.

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(Added Pub. L. 89–44, title II, § 202(b), June 21, 1965, 79 Stat. 137, and amended Pub. L. 91–258, title II, § 207(b), May 21, 1970, 84 Stat. 248.)

AMENDMENTS

1970—Subsec. (b)(1). Pub. L. 91–258 substituted "a claim for credit or refund of overpayment of income tax" for "an income tax return" following "time prescribed by law for filing".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE

Section effective January 1, 1966, see section 701(a)(1), (2), of Pub. L. 89–44, set out as a note under section 4061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 6206, 6675, 7210, 7603, 7604, 7605 of this title.

§ 6425. Adjustment of overpayment of estimated income tax by corporation.

(a) Application for adjustment.

(1) Time for filing.

A corporation may, after the close of the taxable year and on or before the 15th day of the third month thereafter, and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this subsection shall not constitute a claim for credit or refund.

(2) Form of application, etc.

An application under this subsection shall be verified in the manner prescribed by section 6065 in the case of a return of the taxpayer, and shall be filed in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth—

(A) the estimated income tax paid by the corporation during the taxable year,

(B) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year,

(C) the amount of the adjustment, and

(D) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

(b) Allowance of adjustment.

(1) Limited examination of application.

Within a period of 45 days from the date on which an application for an adjustment is filed

under subsection (a), the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application to discover omissions and errors therein, and shall determine the amount of the adjustment upon the basis of the application and the examination; except that the Secretary or his delegate may disallow, without further action, any application which he finds contains material omissions or errors which he deems cannot be corrected within such 45 days.

(2) Adjustment credited or refunded.

The Secretary or his delegate, within the 45-day period referred to in paragraph (1), may credit the amount of the adjustment against any liability in respect of an internal revenue tax on the part of the corporation and shall refund the remainder to the corporation.

(3) Limitation.

No application under this section shall be allowed unless the amount of the adjustment equals or exceeds (A) 10 percent of the amount estimated by the corporation on its application as its income tax liability for the taxable year, and (B) $500.

(4) Effect of adjustment.

For purposes of this title (other than section 6655), any adjustment under this section shall be treated as a reduction, in the estimated income tax paid, made on the day the credit is allowed or the refund is paid.

(c) Definitions.

For purposes of this section and section 6655(g) (relating to excessive adjustment)—

(1) The term "income tax liability" means the excess of—

(A) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(B) the credits against tax provided by part IV of subchapter A of chapter 1.

(2) The amount of an adjustment under this section is equal to the excess of—

(A) the estimated income tax paid by the corporation during the taxable year, over

(B) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year.

(d) Consolidated returns.

If the corporation seeking an adjustment under this section paid its estimated income tax on a consolidated basis or expects to make a consolidated return for the taxable year, this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe. (Added Pub. L. 90–364, title I, § 103(d)(1), June 28, 1968, 82 Stat. 262.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 6154 and 51 of this title, see section 103(f) of Pub. L. 90–364, set out as a note under section 6154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6655 of this title.

§ 6426. Refund of aircraft use tax where plane transports for hire in foreign air commerce.

(a) General rule.

In the case of any aircraft used in the business of transporting persons or property for compensation or hire by air, if any of such transportation during any period is transportation in foreign air commerce, the Secretary or his delegate shall pay (without interest) to the person who paid the tax under section 4491 for such period the amount determined by multiplying that portion of the amount so paid for such period which is determined under section 4491(a)(2) with respect to such aircraft by a fraction—

(1) the numerator of which is the number of airport-to-airport miles such aircraft traveled in foreign air commerce during such period while engaged in such business, and

(2) the denominator of which is the total number of airport-to-airport miles such aircraft traveled during such period.

(b) Definitions.

For purposes of this section—

(1) Foreign air commerce.

The term "foreign air commerce" means any movement by air of the aircraft which does not begin and end in the United States; except that any segment of such movement in which the aircraft traveled between two ports or stations in the United States shall be treated as travel which is not foreign air commerce.

(2) Airport-to-airport miles.

The term "airport-to-airport miles" means the official mileage distance between airports as determined under regulations prescribed by the Secretary or his delegate.

(c) Payments to persons paying tentative tax.

In the case of any person who paid a tentative tax determined under section 4493(b) with respect to any aircraft for any period, the amount payable under subsection (a) with respect to such aircraft for such period—

(1) shall be computed with reference to that portion of the tax imposed under section 4491 for such period which is determined under section 4491(a)(2), and

(2) as so computed, shall be reduced by an amount equal to—

(A) the amount by which that portion of the tax imposed under section 4491 for such period which is determined under section 4491(a)(2), exceeds

(B) the amount of the tentative tax determined under section 4493(b) paid for such period.

(d) Time for filing claim.

Not more than one claim may be filed under this section by any person with respect to any year. No claim shall be allowed under this subsection with respect to any year unless filed on or before the first September 30 after the end of such year.

(e) Regulations.

The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the

provisions of this section, under which payments may be made under this section or the amount to which any person is entitled under this section with respect to any period may be treated by such person as an overpayment which may be credited against the tax imposed by section 4491 with respect to such period. (Added Pub. L. 91–258, title II, § 206(c), May 21, 1970, 84 Stat. 245.)

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub L. 91–258, set out as a note under section 4041 of this title.

§ 6427. Fuels not used for taxable purposes.

(a) Nontaxable uses.

Except as provided in subsection (f), if tax has been imposed under section 4041 (a), (b), or (c) on the sale of any fuel and, after June 30, 1970, the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary or his delegate shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

(b) Local transit systems.

(1) Allowance.

Except as provided in subsection (f) if any fuel on the sale of which tax was imposed under section 4041 (a) or (b) is, after June 30, 1970, used by the purchaser during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, the Secretary or his delegate shall, subject to the provisions of paragraph (2), pay (without interest) to the purchaser the amount determined by multiplying—

(A) 2 cents for each gallon of fuel so used on which tax was imposed at the rate of 4 cents a gallon, by

(B) the percentage which the purchaser's commuter fare revenue (as defined in section 6421 (d)(2)) derived from such scheduled service during the quarter was of his total passenger fare revenue derived from such scheduled service during the quarter.

(2) Limitation.

Paragraph (1) shall apply in respect of fuel used during any calendar quarter only if at least 60 percent of the total passenger fare revenue derived during the quarter from scheduled service described in paragraph (1) by the purchaser was attributable to commuter fare revenue derived during the quarter by the purchaser from such scheduled service.

(c) Use for farming purposes.

Except as provided in subsection (f), if any fuel on the sale of which tax was imposed under section 4041 (a), (b), or (c) is, after June 30, 1970, used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary or his delegate shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, such owner, tenant, or operator shall be treated as the user and purchaser of such fuel.

(d) Time for filing claims; period covered.

(1) General rule.

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), (b), or (c), by any person with respect to fuel used during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exception.

If $1,000 or more is payable under subsections (a) and (b) to any person with respect to fuel used during any of the first three quarters of his taxable year, a claim may be filed under this section by the purchaser with respect to fuel used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

(e) Applicable laws.

(1) In general.

All provisions of law, including penalties, applicable in respect of the taxes imposed by section 4041 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses.

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(f) Income tax credit in lieu of payment.

(1) Persons not subject to income tax.

Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception.

Paragraph (1) shall not apply to a payment of a claim filed under subsection (d)(2).

(3) Allowance of credit against income tax.

For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 39.

(g) Regulations.

The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(h) Cross references.

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(Added Pub. L. 91-258, title II, § 207(a), May 21, 1970, 84 Stat. 246.)

EFFECTIVE DATE

Section applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 6206, 6675, 7210, 7605 of this title.

Chapter 66.—LIMITATIONS

Subchapter
A. Limitations on assessment and collection.
B. Limitations on credit or refund.
C. Mitigation of effect of period of limitations.
D. Periods of limitation in judicial proceedings.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6037 of this title.

Subchapter A.—Limitations on Assessment and Collection

Sec.
6501. Limitations on assessment and collection.
6502. Collection after assessment.
6503. Suspension of running of period of limitation.
6504. Cross references.

§ 6501. Limitations on assessment and collection.

(a) General rule.

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) Time return deemed filed.

(1) Early return.

For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment taxes and tax imposed by chapter 3.

For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary.

Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary or his delegate pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) Return of excise taxes.

For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions.

(1) False return.

In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax.

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return.

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension by agreement.

Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary or his delegate and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(5) Tax resulting from changes in certain income tax or estate tax credits.

For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905 (c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Tax resulting from certain distributions or from termination as life insurance company.

In the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applies, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applies, such tax may be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceases to be an insurance company,

the second taxable year for which the taxpayer is not a life insurance company, or the taxable year in which the distribution is actually made, as the case may be.

(7) Termination of private foundation status.

In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) Request for prompt assessment.

Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary or his delegate) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1) (A) such written request notifies the Secretary or his delegate that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2) (A) such written request notifies the Secretary or his delegate that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items.

Except as otherwise provided in subsection (c)—

(1) Income taxes.

In the case of any tax imposed by subtitle A—

(A) General rule.

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

(B) Constructive dividends.

If the taxpayer omits from gross income an amount properly includible therein under section 551 (b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(2) Estate and gift taxes.

In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

(3) Excise taxes.

In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 42 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the existence and nature of such item.

(f) Personal holding company tax.

If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

(1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2) the names and addresses of the individuals who owned, within the meaning of section 544

(relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) Certain income tax returns of corporations.

(1) Trusts or partnerships.

If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) Exempt organizations.

If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(h) Net operating loss or capital loss carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to the taxable year of the net operating loss) issued under section 317 of the Trade Expansion Act of 1962, if later than the date prescribed by the preceding sentence.

(i) Foreign tax carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(d) (relating to carryback and carryover of excess foreign taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(d) which result in such carryback.

(j) Investment credit carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of an investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(k) Reductions of policyholders surplus account of life insurance companies.

In the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(d)(2) may be assessed.

(*l*) Joint income return after separate return.

For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013 (b) (3) and (4).

(m) Tentative carryback adjustment assessment period.

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback adjustments) by reason of a net operating loss carryback, a capital loss carryback, or an investment credit carryback to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(n) Special rule for chapter 42 taxes.

(1) In general.

For purposes of any tax imposed by chapter 42 (other than section 4940), the return referred to in this section shall be the return filed by the private foundation for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations.

In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(Aug. 16, 1954, ch. 736, 68A Stat. 803; Sept. 2, 1958, Pub. L. 85–859, title I, § 165(a), 72 Stat. 1313; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 80, 81, 72 Stat. 1662; June 25, 1959, Pub. 86–69, § 3(g), 73 Stat. 140; Sept.

14, 1960, Pub. L. 86–780, § 3(c), 74 Stat. 1013; Oct. 11, 1962, Pub. L. 87–794, title III, § 317(c), 76 Stat. 890; Oct. 16, 1962, Pub. L. 87–834, § 2(e)(1), 76 Stat. 971; Oct. 23, 1962, Pub. L. 87–858, § 3(b)(4), 76 Stat. 1137; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(k)(6), 78 Stat. 94; Sept. 2, 1964, Pub. L. 88–571, § 3(b), 78 Stat. 857; June 21, 1965, Pub. L. 89–44, title VIII, § 810 (a), (b), 79 Stat. 169; Nov. 2, 1966, Pub. L. 89–721, §§ 2(f), 3(a), 80 Stat. 1150, 1151; Nov. 13, 1966, Pub. L. 89–809, title I, § 105(f)(3), 80 Stat. 1568; Dec. 27, 1967, Pub. L. 90–225, § 2(c), 81 Stat. 731; Dec. 30, 1969, Pub. L. 91–172, title I, § 101 (g)(1)–(3), title V, § 512(e)(1), 83 Stat. 525, 639; Dec. 31, 1970, Pub. L. 91–614, title I, § 102(d)(8), 84 Stat. 1842.)

REFERENCES IN TEXT

Section 317 of the Trade Expansion Act of 1962, referred to in subsec. (h), probably means section 317(a) of Pub. L. 87–794, which is classified to section 1917 of Title 19, Customs Duties.

AMENDMENTS

1970—Subsec. (e)(2). Pub. L. 91–614 substituted "during the period for which the return was filed" for "during the year".

1969—Subsec. (c)(7). Pub. L. 91–172, § 101(g)(2), added subsec. (c)(7).

Subsec. (e)(3). Pub. L. 91–172, § 101(g)(3), inserted provision excluding, in specified cases, chapter 42 taxes from these considered in determining the amount of taxes omitted from a return.

Subsec. (h). Pub. L. 91–172, § 512(e)(1)(A)–(D) substituted "loss or capital loss carrybacks" for "loss carrybacks" in subsec. catchline, "loss carryback or a capital loss carryback" for "loss carryback," "operating loss or net capital loss which" for "operating loss which," "assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed" for "assessed, or" and "if later than the date prescribed by the preceding sentence" for "whichever is later."

Subsec. (j). Pub. L. 91–172, § 512(e)(1)(E), substituted "loss carryback or a capital loss carryback" for "loss carryback."

Subsec. (m). Pub. L. 91–172, § 512(e)(1)(F), substituted "net operating loss carryback, a capital loss carryback, or an investment credit carryback" for "net operating loss carryback or an investment credit carryback."

Subsec. (n). Pub. L. 91—172, § 101(g)(1), added subsec. (n).

1967—Subsec. (j). Pub. L. 90–225 added", or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed." following "the unused investment credit which results in such carryback may be assessed".

1966—Subsec. (b). Pub. L. 89–809 inserted reference to chapter 3 in pars. (1) and (2) and "and tax imposed by chapter 3" in the heading of par. (2).

Subsec. (j). Pub. L. 89–721, § 2(f), substituted "investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)" for "investment credit carryback".

Subsec. (m). Pub. L. 89–721, § 3(a), added subsec. (m).

1965—Subsec. (b)(4). Pub. L. 89–44, § 810(a), added par. (4).

Subsec. (e). Pub. L. 89–44, § 810(b)(2), substituted "Substantial omission of items" for "Omission from gross income" in the catchline.

Subsec. (e)(3). Pub. L. 89–44, § 810(b)(1), added par. (3).

1964—Subsec. (f). Pub. L. 88–272 substituted "gross income and adjusted ordinary gross income, described in section 543" for "gross income, described in section 543(a)."

Subsec. (k). Pub. L. 88–571 added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 88–571 redesignated former subsec. (k) as (*l*).

1962—Subsec. (c)(6). Pub. L. 87–858 substituted "802 (a)" for "802(a)(1)."

Subsec. (h). Pub. L. 87–794 authorized assessment of a deficiency within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

Subsec. (j). Pub. L. 87–834 added subsec. (j) and redesignated former subsec. (j) as (k).

Subsec. (k). Pub. L. 87–834 redesignated former subsec. (j)as (k).

1960—Subsec. (i). Pub. L. 86–780 added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 86–780 redesignated former subsec. (i) as (j).

1959—Subsec. (c)(6). Pub. L. 86–69 added subsec. (c)(6).

1958—Subsec. (a). Pub. L. 85–859 substituted "at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid" for "within 3 years after such tax became due".

Subsec. (d). Pub. L. 85–866, § 80 (a), (b), substituted in first sentence "subsection (c), (e), or (f)" for "subsection (c)", designated existing clauses (1)—(3) of second sentence as clause (1) and added clauses (2) and (3).

Subsec. (g)(2). Pub. L. 85–866, § 81(a), substituted "organization" for "corporation" wherever appearing.

Subsec. (h). Pub. L. 85–866, § 81(b) added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i). Pub. L. 85–866, § 81(b) redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(g)(1)–(3) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment of section by section 512(e)(1) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (j) of this section by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 105(f)(4) of Pub. L. 89–809 provided that: "The amendments made by this subsection [amending this section and section 6513 of this title] shall take effect on the date of the enactment of this Act [Nov. 13, 1966]."

Amendment of subsec. (j) of this section by Pub. L. 89–721 applicable with respect to taxable years ending after Dec. 31, 1961, but only in the case of applications filed after Nov. 2, 1966, see section 2(g) of Pub. L. 89–721, set out as a note under section 6411 of this title.

Section 3(b) of Pub. L. 89–721 provided that: "The amendment made by subsection (a) [adding subsec. (m)] shall apply in any case where the application under section 6411 of the Internal Revenue Code of 1954 is filed after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 810(c) of Pub. L. 89–44 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (b)(4) and (e)(3) of this section] shall apply with respect to returns filed on or after July 1, 1965."

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment of section by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 815 of this title.

Amendment of section by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of this section by Pub. L. 87–858 applicable with respect to taxable years beginning after Dec. 31, 1961, see section 3(f) of Pub. L. 87–858, set out as a note under section 801 of this title.

Subsec. (j) of this section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment of subsec. (a) by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859.

Amendment of subsecs. (d) and (g) (2) of this section by Pub. L. 85–866, and subsecs. (h) and (i), effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Liquidations before Jan. 1, 1966, see section 225(h) of Pub. L. 88–272, set out as a note under section 333 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 250, 302, 303, 547, 1033, 1039, 1081, 1102, 2016, 2053, 2204, 5703, 6013, 6503, 6511 of this title.

§ 6502. Collection after assessment.

(a) Length of period.

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 6 years after the assessment of the tax, or

(2) prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period (or, if there is a release of levy under section 6343 after such 6-year period, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.

(b) Date when levy is considered made.

The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335 (a) is given. (Aug. 16, 1954, ch. 736, 68A Stat. 806; Nov. 2, 1966, Pub. L. 89–719, title I, § 113(b), 80 Stat. 1146.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–719 inserted sentence providing that the period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Period of limitation on action for recovery of erroneous refund, see section 6532 (b) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 250, 302, 303, 818, 1081, 6013, 6503 of this title.

§ 6503. Suspension of running of period of limitation.

(a) Issuance of statutory notice of deficiency.

(1) General rule.

The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and chapter 42 taxes), shall (after the mailing of a notice under section 6212 (a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) Corporation joining in consolidated income tax return.

If a notice under section 6212 (a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

(b) Assets of taxpayer in control or custody of court.

The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia, and for 6 months thereafter.

(c) Taxpayer outside United States.

The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months.

(d) Extensions of time for payment of estate tax.

The running of the period of limitation for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161 (a) (2) or (b) (2) or under the provisions of section 6166.

(e) Certain powers of appointment.

The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055 (b) (2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

(f) Extensions of time for payment of tax attributable to recoveries of foreign expropriation losses.

The running of the period of limitations for collection of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167(f)) shall be suspended for the period of any extension of time for payment under subsection (a) or (b) of section 6167.

(g) Wrongful seizure of property of third party.

The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343 (b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

(h) Suspension pending correction.

The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments or the collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507 shall be suspended for any period described in section 507(g)(2) or during which the Secretary or his delegate has extended the time for making correction under section 4941(e)(4), 4942 (j)(2), 4943(d)(3), 4944(e)(3), or 4945(h)(2).

(i) Cross references.

For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547 (f).

(2) Bankruptcy and receiverships, see subchapter B of chapter 70.

(3) Claims against transferees and fiduciaries, see chapter 71.

(Aug. 16, 1954, ch. 736, 68A Stat. 806; Aug. 6, 1956, ch. 1020, § 2, 70 Stat. 1075; Sept. 2, 1958, Pub. L. 85–866, title II, § 206(d), 72 Stat. 1685; Apr. 8, 1966, Pub. L. 89–384, § 1(e), 80 Stat. 104; Nov. 2, 1966, Pub. L. 89–719, title I, § 106, 80 Stat. 1139; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(g)(4), (j)(46), 83 Stat. 525, 531.)

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91–172, § 101(j)(46), inserted reference to chapter 42 taxes.

Subsec. (h). Pub. L. 91–172, § 101(g)(4), added subsec. (h). Former subsec. (h) was redesignated subsec. (i).

Subsec. (i). Pub. L. 91–172, § 101(g)(4), redesignated former subsec. (h) as subsec. (i).

1966—Subsec. (b). Pub. L. 89–719, § 106(a), eliminated "(other than the estate of a decedent or of an incompetent)" which followed "assets of the taxpayer" and "or Territory" which followed "of any State."

Subsec. (c). Pub. L. 89–719, § 106(b), substituted "Taxpayer outside United States" for "Location of property outside the United States or removal of property from the United States" in the heading of the subsection, and "The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months" for "In case collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States, the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period collection is so hindered or delayed. The total suspension of time under this subsection shall not in the aggregate exceed 6 years."

Subsec. (f). Pub. L. 89–384 added subsec. (f). Former subsec. (f) redesignated as subsec. (g).

Subsec. (g). Pub. L. 89–719, § 106(c), added subsec. (g) and redesignated former subsec. (g) as (h).

Pub. L. 89–384 redesignated subsec. (f) as subsec. (g).

Subsec. (h). Pub. L. 89–719, § 106(c), redesignated former subsec. (g) as (h).

1958—Subsec. (d). Pub. L. 85–866 eliminated "assessment or" following "period of limitations for" and inserted "or under the provisions of section 6166".

1956—Subsec. (e). Act Aug. 6, 1956, added subsec. (e) and redesignated former subsec. (e) as subsec. (f).

Subsec. (f). Act Aug. 6, 1956, redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(g)(4) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to trans-

actions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

Subsec. (f) applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 91-172, set out as a note under section 183 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Effective date of amendment of subsec. (d) of this section by Pub. L. 85-866, see section 206 (f) of Pub. L. 85-866, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of subsecs. (e) and (f) by act Aug. 6, 1956, applicable in the case of decedents dying after Aug. 16, 1954, see note set out under section 2055 of this title.

§ 6504. Cross references.

For limitation period in case of—

(1) Adjustments incident to involuntary liquidation of inventory, see section 1321.

(2) Adjustments to accrued foreign taxes, see section 905 (c).

(3) Change of election with respect to the standard deduction where taxpayer and his spouse make separate returns, see section 144 (b).

(4) Involuntary conversion of property, see section 1033 (a) (3) (C) and (D).

(5) Gain upon sale or exchange of residence, see section 1034 (j).

(6) War loss recoveries where prior benefit rule is elected, see section 1335.

(7) Recovery of unconstitutional Federal taxes, see section 1346.

(8) Repealed. Pub. L. 91-172, title II, § 213(c)(3), Dec. 30, 1969, 83 Stat. 572.

(9) Application by fiduciary for discharge from personal liability for estate tax, see section 2204.

(10) Insolvent banks and trust companies, see section 7507.

(11) Service in a combat zone, etc., see section 7508.

(12) Claims against transferees and fiduciaries, see chapter 71.

(13) Assessments to recover excessive amounts paid under section 6420 (relating to gasoline used on farms) and assessments of civil penalties under section 6675 for excessive claims under section 6420, see section 6206.

(14) Assessments to recover excessive amounts paid under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) and assessments of civil penalties under section 6675 for excessive claims under section 6421, see section 6206.

(15) Assessment and collection of interest, see section 6601 (h).

(Aug. 16, 1954, ch. 736, 68A Stat. 807; Apr. 2, 1956, ch. 160, § 4(d), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208(e)(5), 70 Stat. 397; Sept. 2, 1958, Pub. L. 85-866, title I, § 84(b), 72 Stat. 1664; Feb. 26, 1964, Pub. L. 88-272, title I, § 112(d)(2), 78 Stat. 24; Dec. 30, 1969, Pub. L. 91-172, title II, § 213(c)(3), 83 Stat. 572; Dec. 31, 1970, Pub. L. 91-614, title I, § 101(d)(2), 84 Stat. 1837.)

AMENDMENTS

1970—Subd. (9). Pub. L. 91-614 substituted "fiduciary" for "executor".

1969—Subd. (8). Pub. L. 91-172 struck out subd. (8).

1964—Subd. (3). Pub. L. 88-272 substituted "with respect to the" for "to take."

1958—Subd. (15). Pub. L. 85-866 added subd. (15).

1956—Subd. (13). Act. Apr. 2, 1956 added subd. (13). Subd. (14). Act June 29, 1956 added subd. (14).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 213(d) of Pub. L. 91-172, set out as a note under section 183 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Par. (15) of this section effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

Subchapter B.—Limitations on Credit or Refund

Sec.
6511. Limitations on credit or refund.
6512. Limitations in case of petition to Tax Court.
6513. Time return deemed filed and tax considered paid.
6514. Credits or refunds after period of limitation.
6515. Cross references.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 905 of this title.

§ 6511. Limitations on credit or refund.

(a) Period of limitation on filing claim.

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) Limitation on allowance of credits and refunds.

(1) Filing of claim within prescribed period.

No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) Limit on amount of credit or refund.

(A) Limit where claim filed within 3-year period.

If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceeding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-year period.

If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) Limit if no claim filed.

If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) Special rules applicable in case of extension of time by agreement.

If an agreement under the provisions of section 6501 (c) (4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) Time for filing claim.

The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b) (1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501 (c) (4).

(2) Limit on amount.

If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b) (2) if a claim had been filed on the date the agreement was executed.

(3) Claims not subject to special rule.

This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) prior to the execution of the agreement or

(B) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) Special rules applicable to income taxes.

(1) Seven-year period of limitation with respect to bad debts and worthless securities.

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832 (c), of a debt as a debt which became worthless, or, under section 165 (g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) Special period of limitation with respect to net operating loss or capital loss carrybacks.

(A) Period of limitation.

If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

(i) with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules.

(i) If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a).

In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, or with respect to the determination of a short-term capital loss, and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.

(ii) A claim for credit or refund for a computation year (as defined in section 1302(c)(1)) shall be determined to relate to an overpayment attributable to a net operating loss carryback or a capital loss carryback, as the case may be, when such carryback relates to any base period year (as defined in section 1302(c)(3)).

(3) Special rules relating to foreign tax credit.

(A) Special period of limitation with respect to foreign taxes paid or accrued.

If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(B) Exception in the case of foreign taxes paid or accrued.

In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) Special period of limitation with respect to investment credit carrybacks.

(A) Period of limitation.

If the claim for credit or refund relates to an overpayment attributable to an investment credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such carryback (or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year), or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules.

If the allowance of a credit or refund of an overpayment of tax attributable to an investment credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the investment credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

(5) Special period of limitation with respect to self-employment tax in certain cases.

If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the later of the following dates: (A) the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health, Education, and Welfare, or (B) December 31, 1965.

(6) Special period of limitation with respect to reduction of policyholders surplus account of life insurance companies.

(A) Period of limitation.

If the claim for credit or refund relates to an overpayment arising by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 39th month following the end of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2), or the period prescribed in subsection (c), in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period

provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of overpayment arising by operation of section 815(d)(5).

(B) Applicable rules.

If the allowance of a credit or refund of an overpayment arising by operation of section 815(d)(5) is otherwise prevented by operation of any law or rule of law, other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the effect of the operation of section 815(d)(5), to the extent such effect of the operation of section 815(d)(5) was not in issue in such proceeding.

(e) Special rules in case of manufactured sugar.

(1) Use as livestock feed or for distillation or production of alcohol.

No payment shall be allowed under section 6418 (a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(2) Exportation.

No payment shall be allowed under section 6418 (b) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(f) Special rule for chapter 42 taxes.

For purposes of any tax imposed by chapter 42, the return referred to in subsection (a) shall be the return specified in section 6501(n)(1).

(g) Cross references.

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011 (c), 2014 (b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013 (b) (3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420 (b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 808; Apr. 2, 1956, ch. 160, § 4(e), 70 Stat 91; June 29, 1956, ch. 462, title II, § 208(e)(6), 70 Stat. 397; Sept. 2, 1958, Pub. L. 85–866, title I, § 82, 72 Stat. 1663; Sept. 16, 1959, Pub. L. 86–280, § 1(a), 73 Stat. 563; Oct. 11, 1962, Pub. L. 87–794, title III, § 317(d), 76 Stat. 891; Oct. 16, 1962, Pub. L. 87–834, § 2(e)(2), 76 Stat. 971; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 232(d), 239, 78 Stat. 111, 128; Sept. 2, 1964, Pub. L. 88–571, § 3(c), 78 Stat. 858; Nov. 8, 1965, Pub. L. 89–331, § 9(c), 79 Stat. 1278; Dec. 27, 1967, Pub. L. 90–225, § 2(d), 81 Stat. 731; Dec. 30, 1969, Pub. L. 91–172, title I, § 101 (h), title III, § 311(d)(3), title V, § 512(e)(2), 83 Stat. 525, 588, 640.)

REFERENCES IN TEXT

Section 317 of the Trade Expansion Act of 1962, referred to in subsec. (d)(2)(A), probably means section 317(a) of Pub. L. 87–794, which is classified to section 1917 of Title 19, Customs Duties.

Section 218 of the Social Security Act, referred to in subsec. (d)(5), is classified to section 418 of Title 42, The Public Health and Welfare.

AMENDMENTS

1969—Subsec. (d)(2). Pub. L. 91–172, § 512(e)(2)(A), substituted "loss or capital loss carrybacks" for "loss carrybacks" in the par. catchline.

Subsec. (d)(2)(A). Pub. L. 91–172, § 512(e)(2)(B), (C), substituted "loss carryback or a capital loss carryback" for "loss carryback" and "operating loss or net capital loss which" for "operating loss which."

Subsec. (d)(2)(B)(i). Pub. L. 91–172, § 512(e)(2)(D), (E), substituted "loss carryback or a capital loss carryback" for "loss carryback" and added reference to short-term capital loss.

Subsec. (d)(2)(B)(ii). Pub. L. 91–172, §§ 311(d)(3), 512(e)(2)(F), substituted references to section "1302 (c)(1)" and "1302(c)(3)" for section "1302(e)(1)" and "1302(e)(3)", respectively, and substituted "loss carryback or a capital loss carryback, as the case may be," for "loss carryback."

Subsec. (d)(4)(A). Pub. L. 91–172, § 512(e)(2)(G), substituted "loss carryback or a capital loss carryback" for "loss carryback."

Subsec (f). Pub. L. 91–172, § 101(h), added subsec. (f). Former subsec. (f) was redesignated subsec. (g).

Subsec. (g). Pub. L. 91–172, § 101(h), redesignated former subsec. (f) as subsec (g).

1967—Subsec. (d)(4)(A). Pub. L. 90–225 added "(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year)" following "the unused investment credit which results in such carryback".

1965—Subsec. (e)(1). Pub. L. 89–331 inserted "or production" following "distillation" in the heading.

1964—Subsec. (d). Pub. L. 88–571 added par. (6).

Pub. L. 88–272 designated existing provisions as clause (i) and added clause (ii) in par. (2)(B), and added par. (5).

1962—Subsec. (d)(2)(A). Pub. L. 87–794 inserted provisions stating that, with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification under section 317 of the Trade Expansion Act of 1962, the period of limitations shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer.

Subsec. (d)(4). Pub. L. 87–834 added subsec. (d)(4).

1959—Subsec. (d)(2)(A). Pub. L. 86–280 inserted in first sentence exception with respect to overpayment as a result of elimination of excess profits by renegotiation.

1958—Subsec. (a). Pub. L. 85–866, § 82(a), deleted from first sentence "required to be" following "3 years from the time the return was", and "(determined without regard to any extension of time)" preceding "or 2 years".

Subsec. (b)(2)(A). Pub. L. 85–866, § 82(b), substituted the catchline "Limit where claim not filed within 3-year period" for "Limit to amount paid within years" and "within the period," for "within the 3 years", inserted "equal to 3 years plus the period of any extension of time for filing the return" and deleted sentence "If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim."

Subsec. (b)(2)(B). Pub. L. 85–866, § 82(c) substituted catchline "Limit where claim not filed within 3-year period" for "Limit to amount paid within 2 years".

Subsec. (d)(2)(A). Pub. L. 85–866, § 82(d) substituted in first sentence "15th day of the 40th month (or 39th month, in the case of a corporation)" for "15th day of the 39th month".

1956—Subsec. (f)(5). Act Apr. 2, 1956, added subsec. (f)(5). Subsec. (f)(6). Act June 29, 1956, added subsec. (f)(6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(h) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1)

of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment of section by section 311(d)(3) of Pub. L. 91–172 applicable with respect to computation years (within the meaning of section 1302(c)(1) of this title) beginning after Dec. 31, 1969, and to base period years (within the meaning of section 1302(c)(3) of this title) applicable to such computation years, see section 311(e) of Pub. L. 91–172, set out as a note under section 1301 of this title.

Amendment of section by section 512(e)(2) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (d)(4)(A) of this section by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2 (g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–331 effective Nov. 8, 1965, see section 14 of Pub. L. 89–331, set out as a note under section 1111 of Title 7, Agriculture.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment of section by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 815 of this title.

Amendment of subsec. (d) by Pub. L. 88–272, applicable to taxable years beginning after Dec. 31, 1964, see section 232(g) of Pub. L. 88–272, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Subsec. (d)(4) of this section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 1(c) of Pub. L. 86–280 provided in part that: "The amendment made by subsection (a) [to subsec. (d)(2)(A) of this section] shall apply with respect to claims for credit or refund resulting from the elimination of excessive profits by renegotiation to which section 6511(d)(2) of the Internal Revenue Code of 1954 applies."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a), (b) (2) and (d) (2) (A) of this section by Pub. L. 85–866, effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956 effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

EXTENSION OF TIME FOR FILING CLAIMS FOR REFUNDS OF OVERPAYMENTS OF INCOME TAX BASED UPON EDUCATION EXPENSES PAID OR INCURRED IN 1954

Section 96 of Pub. L. 85–866 provided that: "If refund or credit of any overpayment of income tax—

"(1) for any taxable year beginning after December 31, 1953, and ending after August 16, 1954, and

"(2) resulting from the application of section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) insofar as such section relates to expenses described in Income Tax Regulations § 1.162–5 (relating to expenses for education) as promulgated by Treasury Decision 6291 (23 Federal Register 2244),

is prevented on the date of the enactment of this Act [Sept. 2, 1958], or within 60 days after such date, by the operation of any law or rule of law (other than chapter 74 of the Internal Revenue Code of 1954, relating to closing agreements and compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor has been filed on or before such date or is filed within 60 days after such date."

CROSS REFERENCES

Credit for State death taxes against estate tax, see section 2011 of this title.

Limitations as to tax refunds on tobacco, cigars, cigarettes, etc., see section 5705 (c) of this title.

Period of limitation on action by taxpayer for refund, see section 6532 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2011, 2014, 6013, 6512, 6513, 6901 of this title.

§ 6512. Limitations in case of petition to Tax Court.

(a) Effect of petition to Tax Court.

If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, gift, and chapter 42 taxes) and if the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 42 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary or his delegate has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(3) As to any amount collected after the period of limitation upon the making of levy or beginning a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(b) Overpayment determined by Tax Court.

(1) Jurisdiction to determine.

Except as provided by paragraph (2) and by section 7463, if the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year, or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 42 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary or his delegate determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer.

(2) Limit on amount of credit or refund.

No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(A) after the mailing of the notice of deficiency,

(B) within the period which would be applicable under section 6511 (b)(2), (c), or (d), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment, or

(C) within the period which would be applicable under section 6511 (b)(2), (c), or (d), in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency—

(i) which had not been disallowed before that date,

(ii) which had been disallowed before that date and in respect of which a timely suit for refund could have been commenced as of that date, or

(iii) in respect of which a suit for refund had been commenced before that date and within the period specified in section 6532.

(Aug. 16, 1954, ch. 736, 68A Stat. 811; Oct. 23, 1962, Pub. L. 87–870, § 4, 76 Stat. 1161; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(47), (48), title IX, § 960(b), 83 Stat. 531, 734; Dec. 31, 1970, Pub. L. 91–614, title I, § 102(d)(9), 84 Stat. 1842.)

AMENDMENTS

1970—Pub. L. 91–614 substituted "the same calendar year or calendar quarter" for "the same calendar year" in two places.

1969—Subsec. (a). Pub. L. 91–172, § 101(j)(47), inserted references to chapter 42 taxes.

Subsec. (b)(1). Pub. L. 91–172, §§ 101(j)(48), 960(b), inserted reference to chapter 42 taxes and inserted reference to the exception to the Tax Court's jurisdiction provided for in par. (2) and in section 7463 of this title.

1962—Subsec. (b)(2)(C). Pub. L. 87–870 added subpar. (C).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by section 101(j)(47), (48) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment of section by section 960(b) of Pub. L. 91–172 to take effect one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as a note under section 7463 of this title.

CROSS REFERENCES

Credit for state death taxes against estate tax, see section 2011 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2011, 2014, 6213, 6513, 7463 of this title.

§ 6513. Time return deemed filed and tax considered paid.

(a) Early return or advance payment of tax.

For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b) (2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) Prepaid income tax.

For purposes of section 6511 or 6512—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462. For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

(c) Return and payment of social security taxes and income tax withholding.

Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 3, 21, or 24—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration or other amount paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) Overpayment of income tax credited to estimated tax.

If any overpayment of income tax is, in accordance with section 6402 (b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

(e) Payments of Federal unemployment tax.

Notwithstanding subsection (a), for purposes of section 6511 any payment of tax imposed by chapter 23 which, pursuant to section 6157, is made for a calendar quarter or other period within a calendar year shall, if made before the last day prescribed for filing the return for the calendar year (determined without regard to any extension of time for filing), be considered made on such last day. (Aug. 16, 1954, ch. 736, 68A Stat. 812; Nov. 13, 1966, Pub. L. 89–809, title I, § 105(f)(1), (2), 80 Stat. 1567, 1568; Aug. 7, 1969, Pub. L. 91–53, § 2(d), 83 Stat. 92.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91–53 added subsec. (e).

1966—Subsec. (b). Pub. L. 89–809, § 105(f)(1), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (c). Pub. L. 89–809, § 105(f)(2) inserted reference to chapter 3 in the material preceding par. (1) and "or other amount" following "remuneration" in par. (2).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as a note under section 6157 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–809 to take effect on the date of enactment of Pub. L. 89–809, which was approved Nov. 13, 1966, see section 105(f)(4) of Pub. L. 89–809, set out as a note under section 6501 of this title.

CROSS REFERENCES

Time and place for paying tax shown on return, see section 6151 of this title.

Timely mailing treated as timely filing, see section 7502 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6531, 6611 of this title.

§ 6514. Credits or refunds after period of limitation.

(a) Credits or refunds after period of limitation.

A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void—

(1) Expiration of period for filing claim.

If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(2) Disallowance of claim and expiration of period for filing suit.

In the case of a claim filed within the proper time and disallowed by the Secretary or his delegate, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer.

(3) Recovery of erroneous refunds.

For procedure by the United States to recover erroneous refunds, see sections 6532 (b) and 7405.

(b) Credit after period of limitation.

Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 6401 (a). (Aug. 16, 1954, ch. 736, 68A Stat. 812.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7405 of this title.

§ 6515. Cross references.

For limitations in case of—

(1) Adjustments incident to involuntary liquidation of inventory, see section 1321.

(2) War loss recoveries where prior benefit rule is elected, see section 1335.

(3) Deficiency dividends of a personal holding company, see section 547.

(4) Overpayment in certain renegotiations of war contracts, see section 1481.

(5) Tentative carry-back adjustments, see section 6411.

(6) Service in a combat zone, etc., see section 7508.

(7) Suits for refund by taxpayers, see section 6532 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 813.)

Subchapter C.—Mitigation of Effect of Period of Limitations

Sec.
6521. Mitigation of effect of limitation in case of related taxes under different chapters.

§ 6521. Mitigation of effect of limitation in case of related taxes under different chapters.

(a) Self-employment tax and tax on wages.

In the case of the tax imposed by chapter 2 (relating to tax on self-employment income) and the tax imposed by section 3101 (relating to tax on employees under the Federal Insurance Contributions Act)—

(1) If an amount is erroneously treated as self-employment income, or if an amount is erroneously treated as wages, and

(2) If the correction of the error would require an assessment of one such tax and the refund or credit of the other tax, and

(3) If at any time the correction of the error is authorized as to one such tax but is prevented as to the other tax by any law or rule of law (other than section 7122, relating to compromises),

then, if the correction authorized is made, the amount of the assessment, or the amount of the credit or refund, as the case may be, authorized as to the one tax shall be reduced by the amount of the credit or refund, or the amount of the assessment, as the case may be, which would be required with respect to such other tax for the correction of the error if such credit or refund, or such assessment, of such other tax were not prevented by any law or rule of law (other than section 7122, relating to compromises).

(b) Definitions.

For purposes of subsection (a), the terms "self-employment income" and "wages" shall have the same meaning as when used in section 1402 (b). (Aug. 16, 1954, ch. 736, 68A Stat. 814.)

Subchapter D.—Periods of Limitation in Judicial Proceedings

Sec.
6531. Periods of limitation on criminal prosecutions.
6532. Periods of limitation on suits.
6533. Cross references.

§ 6531. Periods of limitation on criminal prosecutions.

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

(4) for the offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III of subchapter A of chapter 61) at the time or times required by law or regulations;

(5) for offenses described in sections 7206 (1) and 7207 (relating to false statements and fraudulent documents);

(6) for the offense described in section 7212 (a) (relating to intimidation of officers and employees of the United States);

(7) for offenses described in section 7214 (a) committed by officers and employees of the United States; and

(8) for offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

The time during which the person committing any of the various offenses arising under the internal revenue laws is outside the United States or is a fugitive from justice within the meaning of section 3290 of Title 18 of the United States Code, shall not be taken as any part of the time limited by law for the commencement of such proceedings. (The preceding sentence shall also be deemed an amendment to section 3748 (a) of the Internal Revenue Code of 1939, and shall apply in lieu of the sentence in section 3748 (a) which relates to the time during which a person committing an offense is absent from the district wherein the same is committed, except that such amendment shall apply only if the period of limitations under section 3748 would, without the application of such amendment, expire more than 3 years after the date of enactment of this title, and except that such period shall not, with the application of this amendment, expire prior to the date which is 3 years after the date of enactment of this title.) Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the date which is 9 months after the date of the making of the complaint before the commissioner of the United States. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable. (Aug. 16, 1954, ch. 736, 68A Stat. 815.)

CROSS REFERENCES

Period of limitation on criminal prosecution for noncapital offenses, see section 3282 of Title 18, Crimes and Criminal Procedure.

§ 6532. Periods of limitation on suits.

(a) Suits by taxpayers for refund.

(1) General rule.

No suit or proceeding under section 7422 (a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) Extension of time.

The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary or his delegate.

(3) Waiver of notice of disallowance.

If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) Reconsideration after mailing of notice.

Any consideration, reconsideration, or action by the Secretary or his delegate with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(b) Suits by United States for recovery of erroneous refunds.

Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(c) Suits by persons other than taxpayers.

(1) General rule.

Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) Period when claim is filed.

If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

(Aug. 16, 1954, ch. 736, 68A Stat. 816; Sept. 2, 1958, Pub. L. 85–866, title I, § 89(b), 72 Stat. 1665; Nov. 2, 1966, Pub. L. 89–719, title I, § 110(b), 80 Stat. 1144.)

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-719 added subsec. (c).

1958—Subsecs. (a) (1), (4). Pub. L. 85-866, inserted "certified mail or" preceding "registered mail", wherever appearing.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a) (1), (4) by Pub. L. 85-866 applicable only if mailing occurred after Sept. 2, 1958, see section 89 (d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

CROSS REFERENCES

Period of limitation on action for collection of tax after assessment, see section 6502 (a) of this title.

§ 6533. Cross references.

(1) For period of limitation in respect of civil actions for fines, penalties, and forfeitures, see section 2462 of Title 28 of the United States Code.

(2) For extensions of time by reason of armed service in a combat zone, see section 7508.

(3) For suspension of running of statute until 3 years after termination of hostilities, see section 3287 of Title 18.

(Aug. 16, 1954, ch. 736, 68A Stat. 816.)

Chapter 67.—INTEREST

Subchapter

A. Interest on underpayments.

B. Interest on overpayments.

Subchapter A.—Interest on Underpayments

Sec.

6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax.

6602. Interest on erroneous refund recoverable by suit.

§ 6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax.

(a) General rule.

If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to the date paid.

(b) Extensions of time for payment of estate tax.

If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6161 (a) (2) or 6166, or if the time for payment of an amount of such tax is postponed or extended as provided by section 6163, interest shall be paid at the rate of 4 percent, in lieu of 6 percent as provided in subsection (a).

(c) Last date prescribed for payment.

For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) Extensions of time disregarded.

The last date prescribed for payment shall be determined without regard to any extension of time for payment.

(2) Installment payments.

In the case of an election under section 6152(a) or 6156(a) to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b) or 6156(b), and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

(3) Jeopardy.

The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) Last date for payment not otherwise prescribed.

In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary or his delegate).

(d) Suspension of interest in certain income, estate, gift, and chapter 42 tax cases.

In the case of a deficiency as defined in section 6211 (relating to income, estate, gift, and chapter 42 taxes), if a waiver of restrictions under section 6213 (d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary or his delegate for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(e) Income tax reduced by carryback or adjustment for certain unused deductions.

(1) Net operating loss or capital loss carryback.

If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss or net capital loss arises.

(2) Investment credit carryback.

If the credit allowed by section 38 for any taxable year is increased by reason of an investment credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises, or with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(3) Adjustment for certain unused deductions of life insurance companies.

If the amount of any tax imposed by subtitle A is reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

(f) Applicable rules.

Except as otherwise provided in this title—

(1) Interest treated as tax.

Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) No interest on interest.

No interest under this section shall be imposed on the interest provided by this section.

(3) Interest on penalties, additional amounts, or additions to the tax.

Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(4) Payments made within 10 days after notice and demand.

If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(g) Satisfaction by credits.

If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(h) Limitation on assessment and collection.

Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(i) Exception as to estimated tax.

This section shall not apply to any failure to pay estimated tax required by section 6153 (or section 59 of the Internal Revenue Code of 1939) or section 6154.

(j) Extensions of time for payment of tax attributable to recoveries of foreign expropriation losses.

If the time for payment of an amount of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167(f)) is extended as provided in subsection (a) or (b) of section 6167, interest shall be paid at the rate of 4 percent, in lieu of 6 percent as provided in subsection (a).

(k) Exception as to Federal unemployment tax.

This section shall not apply to any failure to make a payment of tax imposed by section 3301 for a calendar quarter or other period within a taxable year required under authority of section 6157.

(*l*) No interest on certain adjustments.

For provisions prohibiting interest on certain adjustments in tax, see section 6205 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 817; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 66(c), 83(a)(1), 84(a), title II, § 206(e), 72 Stat. 1658, 1663, 1664, 1685; June 29, 1961, Pub. L. 87-61, title II, § 203(c)(2), 75 Stat. 126; Oct. 16, 1962, Pub. L. 87-834, § 2(e)(3), 76 Stat. 972; Sept. 2, 1964, Pub. L. 88-571, § 3(d), 78 Stat. 858; Apr. 8, 1966, Pub. L. 89-384, § 1(f), 80 Stat. 104; Dec. 27, 1967, Pub. L. 90-225, § 2(e), 81 Stat. 731; Aug. 7, 1969, Pub. L. 91-53, § 2(e), 83 Stat. 92; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(49), title V, § 512(e)(3), 83 Stat. 531, 641.)

AMENDMENTS

1969—Subsec. (d). Pub. L. 91-172, § 101(j)(49), inserted reference to chapter 42 both in subsec. catchline and in text.

Subsec. (e)(1). Pub. L. 91-172, § 512(e)(3)(A), (B), substituted "loss or capital loss carryback" for "loss carryback" in par. catchline and "net operating loss or net capital loss" for "net operating loss" wherever it appears in par. (1).

Subsec. (e)(2). Pub. L. 91-172, § 512(e)(3)(C), substitued "loss carryback or a capital loss carryback" for "loss carryback."

Subsec. (k). Pub. L. 91-53 added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 91-53 redesignated former subsec. (k) as (*l*).

1967—Subsec. (e)(2). Pub. L. 90-225 added ", or with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year," following "the investment credit carryback arises".

1966—Subsec. (j). Pub. L. 89-384 added subsec. (j). Former subsec. (j) redesignated as subsec. (k).

1964—Subsec. (e). Pub. L. 88-571 added par. (3) and inserted "or adjustment for certain unused deductions" in the subsection catchline.

1962—Subsec. (e). Pub. L. 87-834 designated existing provisions as par. (1) and added par. (2).

1961—Subsec. (c)(2). Pub. L. 87-61 provided for determinations in the case of elections under section 6156(a).

1958—Subsec. (b). Pub. L. 85-866, §§ 66(c), 206(e), inserted a reference to section 6166, and substituted "if the time for payment of an amount of such tax is postponed or extended as provided by section 6163" for "if postponement of the payment of an amount of such tax is permitted by section 6163(a)".

Subsec. (g). Pub. L. 85-866, § 83(a)(1), added subsec. (g) and redesignated former subsec. (g) as (i).

Subsec. (h). Pub. L. 85-866, § 84(a) added subsec. (h). Former subsec. (h) redesignated (j) by Pub. L. 85-866, § 83(a).

Subsec. (i). Pub. L. 85-866, § 83(a) redesignated former subsec. (g) as (i).

EFFECTIVE DATE OF 1969 AMENDMENTS

Amendment of subsec. (d) by section 101(j)(49) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Amendment of subsec. (e)(1), (2) by section 512(e)(3) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as a note under section 6157 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (e)(2) of this section by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Subsec. (j) applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as a note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 815 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (e) of this section by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–61 effective on July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (b) of this section by Pub. L. 85–866, and subsec. (h) of this section, effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Effective date of amendment of subsec. (b) of this section by section 206 (e) of Pub. L. 85–866, see section 206 (f) of Pub. L. 85–866, set out as a note under section 6161 of this title.

Section 83 (d) of Pub. L. 85–866 provided that: "The amendments made by subsections (a) [to subsecs. (g), (i) and (j) of this section and section 3794 of I. R. C. 1939], (b) [to section 6611 (b) (1) of this title and section 3771 (b) (1) of I. R. C. 1939], and (c) [repealing section 6611 (c) of this title] shall apply only in respect of overpayments credited after December 31, 1957".

INTEREST ON UNDERPAYMENT

Pub. L. 91–172, title IX, § 946(a), Dec. 30, 1969, 83 Stat. 729, provided that: "Notwithstanding section 6601 of the Internal Revenue Code of 1954 [this section] in the case of any taxable year ending before the date of the enactment of this Act [Dec. 30, 1969], no interest on any underpayment of tax, to the extent such underpayment is attributable to the amendments made by this Act [see Short Title note set out under section 1 of this title], shall be assessed or collected for any period before the 90th day after such date."

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN 1954

Section 83 (e) of Pub. L. 85–866 provided that: "If by reason of enactment of section 172 (b) (1) (A) of the Internal Revenue Code of 1954—

"(1) a deficiency resulted for the first taxable year preceding a taxable year ending after December 31, 1953, and before August 17, 1954, and

"(2) an overpayment resulted for the second preceding taxable year,

no interest shall be payable with respect to any portion of such deficiency for any period during which there existed a corresponding amount of such overpayment with respect to which interest is not payable."

CROSS REFERENCES

Interest on money judgment in civil case in district court, see section 1961 of Title 28, Judiciary and Judicial Procedure.

Lien for interest on taxes, see section 6321 of this title.

Provisions respecting authority to bring civil action for estate taxes as subject to this section, see section 7404 of this title.

War, time disregarded in determining interest liability, see section 7508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165, 6166, 6167, 7404 of this title.

§ 6602. Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by suit pursuant to section 7405, shall bear interest at the rate of 6 percent per annum from the date of the payment of the refund. (Aug. 16, 1954, ch. 736, 68A Stat. 818.)

Subchapter B.—Interest on Overpayments

Sec.
6611. Interest on overpayments.
6612. Cross references.

§ 6611. Interest on overpayments.

(a) Rate.

Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 percent per annum.

(b) Period.

Such interest shall be allowed and paid as follows:

(1) Credits.

In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(2) Refunds.

In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary or his delegate) preceding the date of the refund check by not more than 30 days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) Repealed. Pub. L. 85–866, title I, § 83 (c), Sept. 2, 1958, 72 Stat. 1664.

(d) Advance payment of tax, payment of estimated tax, and credit for income tax withholding.

The provisions of section 6513 (except the provisions of subsection (c) thereof, applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refund, shall be applicable in determining the date of payment for purposes of subsection (a).

(e) Income tax refund within 45 days after return is filed.

If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

(f) Refund of income tax caused by carryback or adjustment for certain unused deductions.

(1) Net operating loss or capital loss carryback.

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises.

(2) Investment credit carryback.

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from an investment credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year.

(3) Adjustment for certain unused deductions of life insurance companies.

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A arises by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such overpayment shall be deemed not to have been made prior to the close of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

(g) Refund of income tax caused by carryback of foreign taxes.

For purposes of subsection (a), if any overpayment of tax results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been paid or accrued prior to the close of the taxable year under this subtitle in which such taxes were in fact paid or accrued.

(h) Prohibition of administrative review.

For prohibition of administrative review, see section 6406.

(Aug. 16, 1954, ch. 736, 68A Stat. 819; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 42(b), 83(b), (c), 72 Stat. 1640, 1664; Oct. 16, 1962, Pub. L. 87-834, § 2(e)(4), 76 Stat. 972; Sept. 2, 1964, Pub. L. 88-571, § 3(e), 78 Stat. 858; Nov. 2, 1966, Pub. L. 89-721, § 1(a), 80 Stat. 1150; Dec. 27, 1967, Pub. L. 90-225, § 2(f), 81 Stat. 732; Dec. 30, 1969, Pub. L. 91-172, title V, § 512(e)(4), 83 Stat. 641.)

AMENDMENTS

1969—Subsec. (f)(1). Pub. L. 91-172, § 512(e)(4)(A), (B), substituted "loss or capital loss carryback" for "loss carryback" in the par. catchline and "net operating loss or net capital loss" for "net operating loss" wherever it appears in par. (1).

Subsec. (f)(2). Pub. L. 91-172, § 512(e)(4)(C), substituted "loss carryback or a capital loss carryback" for "loss carryback."

1967—Subsec. (f)(2). Pub. L. 90-225 added ", or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year." following "such investment credit carryback arises".

1966—Subsec. (e). Pub. L. 89-721 inserted "or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed" following "(determined without regard to any extension of time for filing the return)" and changed subsection catchline to reflect amendment.

1964—Subsec. (f). Pub. L. 88-571 added par. (3) and inserted "or adjustment for certain unused deductions" in the subsection catchline.

1962—Subsec. (f). Pub. L. 87-834 designated existing provisions as par. (1) and added par. (2).

1958—Subsec. (b)(1). Pub. L. 85-866, § 83(b), deleted ", but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount" following "taken".

Subsec. (c). Pub. L. 85-866, § 83(c), repealed subsec. (c), which defined "additional assessment".

Subsec. (g). Pub. L. 85-866, § 42(b), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h). Pub. L. 85-866, § 42(b) redesignated former subsec. (g) as (h).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment of subsec. (f)(2) of this section by Pub. L. 90-225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90-225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 1 (b) of Pub. L. 89-721 provided that: "The amendment made by subsection (a) [to subsec. (e) of this section] shall apply with respect to refunds made more than 45 days after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88-571, set out as a note under section 815 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of subsec. (f) of this section by Pub. L. 87-834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable only in respect of overpayments credited after Dec. 31, 1957, see section 83 (d) of Pub. L. 85-866, set out as a note under section 6601 of this title.

Subsec. (g), (h) by Pub. L. 85-866 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 42(c) of Pub. L. 85-866, set out as a note under section 904 of this title.

CROSS REFERENCES

Interest on money judgment in civil case in district court, see section 1961 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1402 of this title.

§ 6612. Cross references.

(a) Interest on judgments for overpayments.

For interest on judgments for overpayments, see 28 U. S. C. 2411 (a).

(b) Adjustments.

For provisions prohibiting interest on certain adjustments in tax, see section 6413 (a).

(c) Other restrictions on interest.

For other restrictions on interest, see section 2011 (c) (relating to refunds due to credit for State taxes), 2014 (e) (relating to refunds attributable to foreign tax credits), 6412 (relating to floor stock refunds), 6413 (d) (relating to taxes under the Federal Unemployment Tax Act), 6416 (relating to certain taxes on sales and services), 6419 (relating to the excise tax on wagering), and 6420 (relating to payments in the case of gasoline used on the farm for farming purposes), and 6421 (relating to payments in the case of gasoline used for certain nonhighway purposes or by local transit systems).

(Aug. 16, 1954, ch. 736, 68A Stat. 820; Apr. 2, 1956, ch. 160, § 4(f), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208(e) (7), 70 Stat. 397.)

AMENDMENTS

1956—Subsec. (c). Act Apr. 2, 1956, inserted reference to section 6420 of this title.

Act June 29, 1956, inserted reference to section 6421 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

Chapter 68.—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Subchapter
A. Additions to the tax and additional amounts.
B. Assessable penalties.

Subchapter A.—Additions to the Tax and Additional Amounts

Sec.
6651. Failure to file tax return or pay tax.
6652. Failure to file certain information returns.
6653. Failure to pay tax.
6654. Failure by individual to pay estimated income tax.
6655. Failure by corporation to pay estimated income tax.
6656. Failure to make deposit of taxes.
6657. Bad checks.
6658. Addition to tax in case of jeopardy.
6659. Applicable rules.

AMENDMENTS

1969—Pub. L. 91-172, title IX, § 943(c)(5), 83 Stat. 729, inserted "or pay tax" in item 6651.

§ 6651. Failure to file tax return or to pay tax.

(a) Addition to the tax.

In case of failure—

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown on tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 10 days of the date of the notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) Penalty imposed on net amount due.

For purposes of—

(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) Limitations and special rule.

(1) Additions under more than one paragraph.

(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs (1) and (2).

(B) With respect to any return, the maximum amount of the addition permitted under

paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand.

(2) Amounts of tax shown more than amount required to be shown.

If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

(d) Exception for declarations of estimated tax.

This section shall not apply to any failure to file a declaration of estimated tax required by section 6015 or to pay any estimated tax required to be paid by section 6153 or 6154. (Aug. 16, 1954, ch. 736, 68A Stat. 821; June 28, 1968, Pub. L. 90–364, title I, § 103 (e)(4), 82 Stat. 264; Dec. 30, 1969, Pub. L. 91–172, title IX, § 943(a), 83 Stat. 727.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 designated existing provisions as par. (1), and added pars. (2) and (3).

Subsec. (b). Pub. L. 91–172 designated existing provisions as par. (1), and added pars. (2) and (3).

Subsec. (c). Pub. L. 91–172 added subsec. (c). Former subsec. (c) was redesignated (d) and amended.

Subsec. (d). Pub. L. 91–172 redesignated former subsec. (c) as (d), and in subsec. (d) so designated, eliminated reference to section 6016 of this title and provided that this section would not be applicable for failure to pay any estimated tax required under section 6153 or 6154 of this title.

1968—Subsec. (c). Pub. L. 90–364 struck out reference to section 6016.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 943 (d) of Pub. L. 91–172 provided that: "The amendments made by subsections (a) [amending this section] and (c) [amending sections 3121(k), 5684(d), and 6653(d) of this title] shall apply with respect to returns the date prescribed by law (without regard to any extension of time) for filing of which is after December 31, 1969, and with respect to notices and demands for payment of tax made after December 31, 1969. The amendment made by subsection (b) [amending section 6656 of this title] shall apply with respect to deposits the time for making of which is after December 31, 1969."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90–364, set out as a note under section 6154 of this title.

CROSS REFERENCES

Additions to tax as part of tax, see section 6659 of this title.

Civil proceedings—

Limitations on assessment and collection, see section 6501 of this title.

No delinquency penalty if fraud assessed, see section 6653 of this title.

Classes of returns within section—

Distilled spirits, wines and beer, see sections 5061, 5143 of this title.

Estate tax, see section 6018 of this title.

Gift tax, see section 6019 of this title.

Income tax, tax not computed by taxpayer, see section 6014 of this title.

Joint returns of income tax by husband and wife, see section 6013 of this title.

Machine guns and certain other firearms, see section 5842 of this title.

Persons required to make returns of income, see section 6012 of this title.

Self-employment tax, see section 6017 of this title.

Tobacco, cigars, cigarettes, etc., see section 5703 of this title.

Criminal proceedings—

Period of limitations on criminal prosecutions, see section 6531 of this title.

Willful failure to file return, see section 7203 of this title.

General requirement of return, see section 6011 of this title.

Other penalties precluded by imposition of penalty under this section—

Penalties relating to payment and collection of liquor taxes, see section 5684 of this title.

Penalties under chapter 52, relating to tobacco, cigars, cigarettes, etc., see section 5761 of this title.

Place for filing returns, see section 6091 of this title.

Preparation of returns—

Examination of books and witnesses, see section 7602 of this title.

Returns prepared for or executed by Secretary, see section 6020 of this title.

Requirement of return and notice or regulations requiring special returns, see section 6001 of this title.

Signing and verifying of returns, see section 6061 et seq. of this title.

Time for filing returns—

Generally, see section 6071 of this title.

Estate and gift tax, see section 6075 of this title.

Extension, see section 6081 of this title.

Income tax, see section 6072 of this title.

When joint return of husband and wife deemed filed for purposes of this section, see section 6013 (b) (3) (A) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3121, 5761, 6013, 6653, 6659 of this title.

§ 6652. Failure to file certain information returns.

(a) Returns relating to payments of dividends, etc., and certain transfers of stock.

In the case of each failure—

(1) to file a statement of the aggregate amount of payments to another person required by section 6042(a)(1) (relating to payments of dividends aggregating $10 or more), section 6044(a)(1) (relating to payments of patronage dividends aggregating $10 or more), or section 6049(a)(1) (relating to payments of interest aggregating $10 or more),

(2) to make a return required by section 6039 (a) (relating to reporting information in connection with certain options) with respect to a transfer of stock or a transfer of legal title to stock, or

(3) to make a return required by section 6052 (a) (relating to reporting payment of wages in the form of group-term life insurance) with respect to group-term life insurance on the life of an employee,

on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to file a statement referred to in paragraph (1) or failing to make a return referred to in paragraph (2) or (3), $10 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000.

(b) Other returns.

In the case of each failure to file a statement of a payment to another person required under authority of section 6041 (relating to certain information at source), section 6042(a)(2) (relating to payments of dividends aggregating less than $10), section 6044(a)(2) (relating to payments of patronage dividends aggregating less than $10), section 6049(a)(2) (relating to payments of interest aggregating less than $10), section 6049(a)(3) (relating to other payments of interest by corporations), or section 6051(d) (relating to information returns with respect to income tax withheld), and in the case of each failure to furnish a statement required by section 6053(b) (relating to statements furnished by employers with respect to tips), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing to so file the statement, $1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed $1,000.

(c) Failure to report tips.

In the case of failure by an employee to report to his employer on the date and in the manner prescribed therefor any amount of tips required to be so reported by section 6053(a) which are wages (as defined in section 3121(a)) or which are compensation (as defined in section 3231(e)), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be paid by the employee, in addition to the tax imposed by section 3101 or section 3201 (as the case may be) with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax.

(d) Returns by exempt organizations and by certain trusts.

(1) Penalty on organization or trust.

In the case of a failure to file a return required under section 6033 (relating to returns by exempt organizations), section 6034 (relating to returns by certain trusts), or section 6043(b) (relating to exempt organizations), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the exempt organization or trust failing so to file, $10 for each day during which such failure continues, but the total amount imposed hereunder on any organization for failure to file any return shall not exceed $5,000.

(2) Managers.

The Secretary or his delegate may make written demand upon an organization failing to file under paragraph (1) specifying therein a reasonable future date by which such filing shall be made, and if such filing is not made on or before such date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed hereunder on all persons for such failure to file shall not exceed $5,000. If more than one person is liable under this paragraph for a failure to file, all such persons shall be jointly and severally liable with respect to such failure. The term "person" as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(3) Annual reports.

In the case of a failure to file a report required under section 6056 (relating to annual reports by private foundations) or to comply with the requirements of section 6104(d) (relating to public inspection of private foundations' annual reports), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file or meet the publicity requirement, $10 for each day during which such failure continues, but the total amount imposed hereunder on all such persons for such failure to file or comply with the requirements of section 6104(d) with regard to any one annual report shall not exceed $5,000. If more than one person is liable under this paragraph for a failure to file or comply with the requirements of section 6104(d), all such persons shall be jointly and severally liable with respect to such failure. The term "person" as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(e) Alcohol and tobacco taxes.

For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

(Aug. 16, 1954, ch. 736, 68A Stat. 821; Sept. 2, 1958, Pub. L. 85–866, title I, § 85, 72 Stat. 1664; Oct. 16, 1962, Pub. L. 87–834, § 19(d), 76 Stat. 1057; Feb. 26, 1964, Pub. L. 88–272, title II, § 221(b)(2), 78 Stat. 74; July 30, 1965, Pub. L. 89–97, title III, § 313(e)(2)(B), (3), 79 Stat. 385; Sept. 29, 1965, Pub. L. 89–212, § 2(e), 79 Stat. 859; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(d)(4), 83 Stat. 522.)

AMENDMENTS

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (d) as (e).

1965—Subsec. (b). Pub. L. 89–97, § 313(e)(2)(B), inserted "and in the case of each failure to furnish a statement required by section 6053(b) (relating to statements furnished by employers with respect to tips)," after "income tax withheld).".

Subsec. (c). Pub. L. 89–212 inserted "or which are compensation (as defined in section 3231(e))" and "or section 3201 (as the case may be)."

Pub. L. 89–97, § 313(e)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 89–97, § 313(e)(3), redesignated former subsec. (c) as (d).

1964—Subsec. (a). Pub. L. 88–272 provided a penalty for failure to make a return required by section 6039(a) with respect to a transfer of stock or a transfer of legal title to stock, and by section 6052(a) with respect to group-term life insurance on the life of an employee.

1962—Subsec. (a). Pub. L. 87–834 added subsec. (a) and redesignated former subsec. (a) as (b).

Subsec. (b). Pub. L. 87–834 redesignated former subsec. (a) as (b), and substituted therein "section 6042(a)(2) (relating to payments of dividends aggregating less than $10), section 6044(a)(2) (relating to payments of patronage dividends aggregating less than $10), section 6049(a)(2) (relating to payments of interest aggregating less than $10), section 6049(a)(3) (relating to other payments of interest by corporations), or section 6051(d) (relating to information returns with respect to income tax withheld)" for "section 6042(1) (relating to payments of corporate dividends), section 6044 (relating to patronage dividends), or section 6051(d) (relating to information returns with respect to income tax withheld)."

Subsec. (c). Pub. L. 87–834 redesignated former subsec. (b) as (c).

1958—Subsec. (a). Pub. L. 85–866 substituted "section 6042 (1)" for "section 6042" and "(upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so file the statement, $1 for each such statement not so filed" for "by the person failing to file the statement, upon notice and demand by the Secretary or his delegate and in the same manner as tax, $1 for each such statement not filed", deleted "section 6045 (relating to returns of brokers)" following "* * * patronage dividends)" and inserted following "* * * income tax withheld)," "on the date prescribed therefor (determined with regard to any extension of time for filing)".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment of section by Pub. L. 89–212 effective only with respect to tips received after 1965, see note under section 3201 of this title.

Amendment of subsecs. (b) and (c) of this section by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as a note under section 79 of this title.

Amendment of section by Pub. L. 88–272, applicable to taxable years ending after Dec. 31, 1963, except for par. (2) of subsec. (a) which shall apply to stock transferred pursuant to options exercised on or after Jan. 1, 1964, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as a note under section 6042 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) of this section by Pub. L. 85–866 effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Information concerning—

Persons subject to special provisions, see section 6031 et seq. of this title.

Transactions with other persons, see section 6041 et seq. of this title.

Wages paid employees, see section 6051 of this title.

Penalties under chapter 52, relating to tobacco, cigars, cigarettes, precluded by imposition of penalty under this section, see section 5761 of this title.

Tobacco, cigars, cigarettes, etc., criminal penalties for failing to furnish information or furnishing false information, see section 5762 of this title.

Willful failure to supply information, crime respecting, see section 7203 of this title.

§ 6653. Failure to pay tax.

(a) Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.

If any part of any underpayment (as defined in subsection (c)(1)) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) Fraud.

If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of any amount determined under subsection (a). In the case of a joint return section 6013, this subsection shall not apply with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

(c) Definition of underpayment.

For purposes of this section, the term "underpayment" means—

(1) Income, estate, gift, and chapter 42 taxes.

In the case of a tax to which section 6211 (relating to income, estate, gift, and chapter 42 taxes) is applicable, a deficiency as defined in that section (except that, for this purpose, the tax shown on a return referred to in section 6211 (a)(1)(A) shall be taken into account only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing), and

(2) Other taxes.

In the case of any other tax, the amount by which such tax imposed by this title exceeds the excess of—

(A) The sum of—

(i) The amount shown as the tax by the taxpayer upon his return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205 (a) and 6413 (a)), if a return was made by the taxpayer within the time prescribed for

filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(B) The amount of rebates made.

For purposes of subparagraph (B), the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in subparagraph (A) over the rebates previously made.

(d) No delinquency penalty if fraud assessed.

If any penalty is assessed under subsection (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 (relating to failure to file such return or pay tax) shall be assessed with respect to the same underpayment.

(e) Failure to pay stamp tax.

Any person (as defined in section 6671 (b)) who willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under authority of this title, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax. (Aug. 16, 1954, ch. 736, 68A Stat. 822; Sept. 2, 1958, Pub. L. 85-866, title I, § 86, 72 Stat. 1665; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(50), title IX, § 943(c)(6), 83 Stat. 531, 729; Jan. 12, 1971, Pub. L. 91-679, § 2, 84 Stat. 2063.)

AMENDMENTS

1971—Subsec. (b). Pub. L. 91-679 inserted sentence making subsection inapplicable, in the case of a joint return under section 6013 of this title, with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

1969—Subsec. (c)(1). Pub. L. 91-172, § 101(j)(50), inserted reference to chapter 42 taxes both in subsec. catchline and in text.

Subsec. (d). Pub. L. 91-172, § 943(c)(6), added "or pay tax" after "such return".

1958—Subsec. (c) (1). Pub. L. 85-866, inserted "on or" after "such return was filed".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-679 applicable to all taxable years to which this title applies, see section 3 of Pub. L. 91-679, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of subsec. (c)(1) by section 101(j)(50) of Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

Amendment of subsec. (d) by section 943(c)(6) of Pub. L. 91-172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91-172, set out as a note under section 6651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (c) (1) of this section by Pub. L. 85-866 effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Additions to tax as part of tax, see section 6659 of this title.

Burden of proof in Tax Court fraud cases, see section 7454 of this title.

Failure to collect and pay over tax, or attempt to evade or defeat tax, section as inapplicable, see section 6672 of this title.

Penalties precluded by imposition of penalties under this section—

Liquor taxes, see section 5684 (c) of this title.

Tobacco, cigars, and cigarettes under chapter 52, see section 5761 (a) of this title.

Willful failure to pay tax, crime respecting, see section 7203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5761, 6672 of this title.

§ 6654. Failure by individual to pay estimated income tax.

(a) Addition to the tax.

In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year and amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) Amount of underpayment.

For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax shown on the return for the taxable year or, if no return was filed, 80 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming or fishing) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) Period of underpayment.

The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b) (1) for such installment date.

(d) Exception.

Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals

or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid and by taking into account the adjusted self-employment income (if the net earnings from self-employment (as defined in section 1402(a)) for the taxable year equal or exceed $400). For purposes of this paragraph—

(A) The taxable income shall be placed on an annualized basis by—

(i) multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment).

(B) The term "adjusted self-employment income" means—

(i) the net earnings from self-employment (as defined in section 1402(a)) for the months in the taxable year ending before the month in which the installment is required to be paid, but not more than

(ii) the excess of $6,600 over the amount determined by placing the wages (within the meaning of section 1402(b)) for the months in the taxable year ending before the month in which the installment is required to be paid on an annualized basis in a manner consistent with clauses (i) and (ii) of subparagraph (A).

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income and the actual self-employment income for the months in the taxable year ending before the month in which the installment is required to be paid as if such months constituted the taxable year.

(4) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year.

(e) Application of section in case of tax withheld on wages.

For purposes of applying this section—

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 31 (relating to tax withheld at source on wages), and

(2) The amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under section 6153) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(f) Tax computed after application of credits against tax.

For purposes of subsections (b) and (d), the term "tax" means—

(1) the tax imposed by this chapter 1 (other than by section 56), plus

(2) the tax imposed by chapter 2, minus

(3) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) Short taxable year.

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(h) Applicability.

This section shall apply only with respect to taxable years beginning after December 31, 1954; and section 294 (d) of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955. (Aug. 16, 1954, ch. 736, 68A Stat. 823; Sept. 25, 1962, Pub. L. 87–682, § 1(a)(4), 76 Stat. 575; Mar. 15, 1966, Pub. L. 89–368, title I, §§ 102(b)(1)–(3), 103(a), 80 Stat. 62, 64; Dec. 30, 1969, Pub. L. 91–172, title III, § 301 (b)(13), 83 Stat. 586.)

AMENDMENTS

1969—Subsec. (f)(1). Pub. L. 91–172 inserted "(other than by section 56)" after "chapter 1".

1966—Subsec. (a). Pub. L. 89–368, § 102(b)(1), inserted "and the tax under chapter 2" following "chapter 1".

Subsec. (b). Pub. L. 89–368, § 103(a), substituted "80 percent" for "70 percent" whenever appearing.

Subsec. (d). Pub. L. 89–368, §§ 102(b)(2), 103(a), added a requirement that, for purposes of applying the annualization exception, the tax on adjusted self-employment income be included in determining if the net earnings from self-employment for the taxable year equal or exceed $400, inserted a definition of "adjusted self-employment income", added a requirement that, for purposes of determining the applicability of the 90 percent exception, the tax on actual self-employment income be included, and substituted "80 percent" for "70 percent" wherever appearing.

Subsec. (f). Pub. L. 89–368, § 102(b)(3), added the tax imposed by chapter 2 to the definition of "tax".

1962—Subsec. (b). Pub. L. 87–682 inserted "or fishing" after "from farming" in two places.

Subsec. (d)(1)(C). Pub. L. 87–682 inserted "or fishing" after "from farming."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 102(d) of Pub. L. 89–368 provided that: "The amendments made by subsections (a) [amending section 6015(c) of this title], (b) [amending subsecs. (a), (d), and (f) of this section and sections 1403(b), 6211 (b)(1), and 7701(a) of this title], and (c) [amending section 1402(e)(3) of this title] shall apply with respect to taxable years beginning after December 31, 1966."

Section 103(b) of Pub. L. 89–368 provided that: "The amendments made by subsection (a) [amending subsecs. (b) and (d) of this section] shall apply with respect to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–682 effective with respect to taxable years beginning after Dec. 31, 1962, see section 2 of Pub. L. 87–682, set out as a note under section 6015 of this title.

DECLARATION OF ESTIMATED TAX

With respect to taxable years beginning before Dec. 30, 1969, if a taxpayer is required to make a declaration, or to pay any amount of estimated tax by reason of amendments made by Pub. L. 91–172, such amount shall be paid ratably on each of the remaining installment dates for the taxable year beginning with the first installment date on or after Dec. 30, 1969; as to any declaration or payment of estimates tax before the first installment date, this section, and sections 6015, 6154, and 6655 of this title shall be applied without regard to amendments made by Pub. L. 91–172, see section 946(b) of Pub. L. 91–172, set out as a note under section 6153 of this title.

TAX SURCHARGE EXTENSION; DECLARATIONS OF ESTIMATED TAX

Requirement of making a declaration or amended declaration or amended declaration of estimated tax or of payment of any amount or additional amount of estimated tax by reason of amendment of sections 51(a)(1)(A), (B), (2)(A) and 963(b) of this title as calling for payment of such amount or additional amount ratably on or before each of remaining installment dates for taxable year beginning with first installment date on or after the 30th day after Aug. 7, 1969; application of this section without regard to such amendment with respect to any declaration or payment of estimated tax before such first installment date; and definition of "installment date", see section 5(c) of Pub. L. 91–53, set out as an Effective Date of 1969 Amendment note under section 51 of this title.

CROSS REFERENCES

Declaration of estimated income tax by individuals, see section 6015 of this title.

Time for filing declaration of estimated income tax, see section 6073 of this title.

Willful failure to pay estimated income tax, crime respecting, see section 7203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 6659 of this title.

§ 6655. Failure by corporation to pay estimated income tax.

(a) Addition to the tax.

In case of any underpayment of estimated tax by a corporation, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) Amount of underpayment.

For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent of the tax shown on the return for the taxable year or, if no return was filed, 80 percent of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) Period of underpayment.

The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the third month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid.

For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for such installment date.

(d) Exception.

Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser—

(1) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3)(A) An amount equal to 80 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the taxable year, in the case of the installment required to be paid in the 4th month,

(ii) for the first 3 months or for the first 5 months of the taxable year, in the case of the installment required to be paid in the 6th month,

(iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month, and

(iv) for the first 9 months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by—

(i) multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subparagraph (A).

(e) Definition of tax.

(1) In general.

For purposes of subsections (b) and (d), the term "tax" means the excess of—

(A) the tax imposed by section 11 or 1201 (a), or subchapter L of chapter 1, whichever is applicable, over

(B) the sum of—

(i) the credits against tax provided by part IV of subchapter A of chapter 1,

(ii) in the case of a taxable year beginning after December 31, 1967, and before January 1, 1977, the amount of the corporation's temporary estimated tax exemption for such year, and

(iii) in the case of a taxable year beginning after December 31, 1967, and before January 1, 1972, the amount of the corporation's transitional exemption for such year.

(2) Temporary estimated tax exemption.

For purposes of clause (ii) of paragraph (1) (B), the amount of a corporation's temporary estimated tax exemption for a taxable year equals the applicable percentage (determined under section 6154(c) (2) (B)) multiplied by the lesser of—

(A) an amount equal to 22 percent of the corporation's surtax exemption (as defined in section 11(d)) for such year, or

(B) the excess determined under paragraph (1) without regard to clauses (ii) and (iii) of paragraph (1) (B).

(3) Transitional exemption.

For purposes of clause (iii) of paragraph (1) (B), the amount of a corporation's transitional exemption for a taxable year equals the exclusion percentage (determined under section 6154(c) (3) (B)) multiplied by the lesser of—

(A) $100,000, reduced by the amount of the corporation's temporary estimated tax exemption for such year, or

(B) the excess determined under paragraph (1) without regard to clause (iii) of paragraph (1) (B).

(4) Special rule for subsection (d) (1) and (2).

In applying this subsection for purposes of subsection (d) (1) and (2), the applicable percentage and the exclusion percentage shall be the percentage for the taxable year for which the underpayment is being determined.

(f) Short taxable year.

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(g) Excessive adjustment under section 6425.

(1) Addition to tax.

If the amount of an adjustment under section 6425 made before the 15th day of the third month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

(2) Excessive amount.

For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

(Aug. 16, 1954, ch. 736, 68A Stat. 825; Feb. 26, 1964, Pub. L. 88–272, title I, § 122(c), 78 Stat. 28; June 28, 1968, Pub. L. 90–364, title I, § 103(c), (d) (2), (e) (1), 82 Stat. 262, 264.)

AMENDMENTS

1968—Subsec. (b) (1). Pub. L. 90–364, § 103(c) (1), substituted "80 percent" for "70 percent".

Subsec. (d) (1). Pub. L. 90–364, § 103(e) (1), struck out "reduced by $100,000" following "The tax shown on the return of the corporation for the preceding taxable year".

Subsec. (d) (3) (A). Pub. L. 90–364, § 103(c) (1), substituted "80 percent" for "70 percent".

Subsec. (e). Pub. L. 90–364, § 103(c) (2), designated existing provisions as par. (1) under a heading "In general", in such redesignated par. (1) substituted "For purposes of subsections (b) and (d)" for "For purposes of subsections (b), (d) (2), and (d) (3)" in the introductory material, redesignated as subpar. (A) former par. (1) and as subpar. (B) former par. (2), struck out reference to $100,000 as one factor in the sum required for redesignated subpar. (B) and added clauses (ii) and (iii), and added pars. (2), (3), and (4) under headings "Temporary estimated tax exemption", "Transitional exemption", and "Special rule for subsection (d) (1) and (2)" respectively.

Subsec. (g). Pub. L. 90–364, § 103(d) (2), added subsec. (g).

1964—Subsec. (c) (2). Pub. L. 88–272, § 122(c) (1), substituted "any installment date" and "such installment date" for "the 15th day of the 12th month."

Subsec. (d) (3). Pub. L. 88–272, § 122(c) (2), redesignated clauses (A) (i) and (ii) as (A) (iii) and (iv), respectively, and added (A) (i) and (ii), and substituted "(3, 5, 6, 8, 9,)" for "(6 or 8, or 9)" in subpar. (B) (ii).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90–364, set out as a note under section 6154 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

DECLARATION OF ESTIMATED TAX

With respect to taxable years beginning before Dec. 30, 1969, if a taxpayer is required to make a declaration, or to pay any amount of estimated tax by reason of amendments made by Pub. L. 91–172, such amount shall be paid ratably on each of the remaining installment dates for the taxable year beginning with the first installment date on or after Dec. 30, 1969; as to any declaration or payment of estimated tax before the first installment date, this section, and sections 6015, 6154, and 6654 of this title shall be applied without regard to amendments made by Pub. L. 91–172, see section 946(b) of Pub. L. 91–172, set out as a note under section 6153 of this title.

TAX SURCHARGE EXTENSION; DECLARATIONS OF ESTIMATED TAX

Requirement of making a declaration or amended declaration of estimated tax or of payment of any amount or additional amount of estimated tax by reason of amendment of sections 51(a)(1)(A), (B), (2)(A) and 963(b) of this title as calling for payment of such amount or additional amount ratably on or before each of remaining installment dates for taxable year beginning with first installment date on or after the 30th day after Aug. 7, 1969; application of this section without regard to such amendment with respect to any declaration or payment of estimated tax before such first installment date; and definition of "installment date", see section 5(c) of Pub. L. 91–53, set out as an Effective Date of 1969 Amendment note under section 51 of this title.

ESTIMATED TAX OF LIFE INSURANCE COMPANIES FOR 1958

Section 3(h) of Pub. L. 86–69, June 25, 1959, 73 Stat. 140, provided that: "In the case of any taxpayer subject to tax under section 811 of the Internal Revenue Code of 1954 (as such section was in effect before the enactment of this Act [June 25, 1959]), no addition to the tax shall be made under section 6655 of such Code (relating to failure by corporation to pay estimated tax) [this section] with respect to estimated tax for a taxable year beginning in 1958."

CROSS REFERENCES

Declaration of estimated income tax by corporations, see section 6016 of this title.

Time for filing declarations of estimated income tax, see section 6074 of this title.

Willful failure to pay estimated income tax, crime respecting, see section 7203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 243, 818, 6016, 6154, 6425, 6659 of this title.

§ 6656. Failure to make deposit of taxes.

(a) Penalty.

In case of failure by any person required by this title or by regulation of the Secretary or his delegate under this title to deposit on the date prescribed therefor any amount of tax imposed by this title in such government depositary as is authorized under section 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 5 percent of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(b) Penalty not imposed after due date for return.

For purposes of subsection (a), the failure shall be deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited or beyond the date the tax is paid, whichever is earlier. (Aug. 16, 1954, ch. 736, 68A Stat. 826; Dec. 30, 1969, Pub. L. 91–172, title IX, § 943(b), 83 Stat. 728.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted provisions imposing a penalty of five percent for the failure to deposit on the date prescribed any amount of tax imposed by this title, for provisions imposing a penalty of one percent of the amount of underpayment each month but not to exceed six percent in the aggregate.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable with respect to deposits the time for making of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5684, 5761 of this title.

§ 6657. Bad checks.

If any check or money order in payment of any amount receivable under this title is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand by the Secretary or his delegate, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person tendered such check in good faith and with reasonable cause to believe that it would be duly paid. (Aug. 16, 1954, ch. 736, 68A Stat. 826.)

§ 6658. Addition to tax in case of jeopardy.

If a taxpayer violates or attempts to violate section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax. (Aug. 16, 1954, ch. 736, 68A Stat. 826.)

§ 6659. Applicable rules.

(a) Additions treated as tax.

Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes;

(2) Any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

(b) Procedure for assessing certain additions to tax.

For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes), subsection (a) shall not apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply—

(1) in the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

(2) to an addition described in section 6654 or 6655, if no return is filed for the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 827; May 14, 1960, Pub. L. 86–470, § 1, 74 Stat. 132; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(51), 83 Stat. 531.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

1960—Subsec. (b). Pub. L. 86–470 eliminated provisions which required any addition under section 6651 or section 6653 to a tax imposed by another subtitle of this title to be considered a part of such tax for the purpose of applying the provisions of this title relating to the assessment and collection of such tax, and inserted provisions making subsec. (a) inapplicable to any addition to tax under section 6651, 6654, or 6655, except that subsec. (a) shall be applicable: (1) in the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211, or (2) to an addition described in section 6654 or 6655, if no return is filed for the taxable year.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT; ADDITIONS TO TAX ASSESSED AND COLLECTED ON OR BEFORE MAY 14, 1960

Section 2 of Pub. L. 86–470 provided that: "The amendment made by the first section of this Act [to subsec. (b) of this section] shall apply with respect to assessments made after the date of the enactment of this Act [May 14, 1960]. Any addition to tax under section 6651, 6654, or 6655 of the Internal Revenue Code of 1954, assessed and collected on or before the date of the enactment of this Act [May 14, 1960], shall not be considered an overpayment solely on the ground that such assessment was invalid, if such assessment would not have been invalid had the amendment made by the first section of this Act applied with respect to such assessment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5684, 5761 of this title.

Subchapter B.—Assessable Penalties

Sec.
6671. Rules for application of assessable penalties.
6672. Failure to collect and pay over tax, or attempt to evade or defeat tax.
6673. Damages assessable for instituting proceedings before the Tax Court merely for delay.
6674. Fraudulent statement or failure to furnish statement to employee.
6675. Excessive claims with respect to the use of certain fuels or lubricating oil.
6676. Failure to supply identifying numbers.
6677. Failure to file information returns with respect to certain foreign trusts.
6678. Failure to furnish certain statements.
6679. Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.
6680. Failure to file interest equalization tax returns.
6881. False equalization tax certificates.
6682. False information with respect to withholding allowances based on itemized deductions.
6683. Failure of foreign corporation to file return of personal holding company tax.
6684. Repeated liability for tax under chapter 42.
6685. Assessable penalties with respect to private foundation annual reports.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 207(d)(13), May 21, 1970, 84 Stat. 249, substituted "fuels" for "gasoline" in item 6675.

1969—Pub. L. 91–172, title I, § 101(j)(60), Dec. 30, 1969, 83 Stat. 532, added items 6684 and 6685.

1966—Pub. L. 89–809, title I, § 104(h)(4)(B), Nov. 13, 1966, 80 Stat. 1560, added item 6683.

Pub. L. 89–368, title I, § 101(e)(4)(B), Mar. 15, 1966, 80 Stat. 62, added item 6682.

1965—Pub. L. 89–44, title II, § 202(c)(3)(B), June 21, 1965, 79 Stat. 139, inserted "or lubricating oil" following "certain gasoline" in item 6675.

1964—Pub. L. 88–563, § 6(c)(1), Sept. 2, 1964, 78 Stat. 847, inserted items 6680 and 6681.

1962—Pub. L. 87–834, §§ 7(i)(3), 19(g)(2), 20(d)(3), Oct. 16, 1962, 76 Stat. 989, 1058, 1063, added items 6677–6679.

1961—Pub. L. 87–397, § 1(c)(2), Oct. 5, 1961, 75 Stat. 829, added item 6676.

1956—Act Apr. 2, 1956, ch. 160, § 4(g), 70 Stat. 91, inserted item 6675.

Act June 29, 1956, ch. 462, title II, § 208(e)(8), 70 Stat. 397, substituted "Excessive claims with respect to the use of certain gasoline" for "Excessive claims for gasoline used on farms" in item "6675."

§ 6671. Rules for application of assessable penalties.

(a) Penalty assessed as tax.

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary or his delegate, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) Person defined.

The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Aug. 16, 1954, ch. 736, 68A Stat. 828.)

CROSS REFERENCES

Failure to pay stamp tax, additions to tax for, see section 6653 (e) of this title.

Notice and demand for tax, see section 6303 of this title.

Payment on notice and demand, see section 6155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6653 of this title.

§ 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable. (Aug. 16, 1954, ch. 736, 68A Stat. 828.)

CROSS REFERENCES

Liability for taxes withheld or collected, see sections 3403 and 7501 of this title.

Willful failure to collect or pay over tax, punishment for, see section 7202 of this title.

§ 6673. Damages assessable for instituting proceedings before the Tax Court merely for delay.

Whenever it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary or his delegate and shall be collected as a part of the tax. (Aug. 16, 1954, ch. 736, 68A Stat. 828.)

CROSS REFERENCES

Assessment of deficiency found by Tax Court, see section 6215 of this title.

Reports and decisions of Tax Court, see section 7459 of this title.

§ 6674. Fraudulent statement or failure to furnish statement to employee.

In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 or 6053(b) to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051 or 6053(b), or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111. (Aug. 16, 1954, ch. 736, 68A Stat. 828; July 30, 1965, Pub. L. 89-97, title III, § 313(e)(2)(C), 79 Stat. 385.)

AMENDMENTS

1965—Pub. L. 89-97 substituted "6051 or 6053(b)" for "6051" wherever appearing.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 313 of Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as a note under section 6053 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7204 of this title.

§ 6675. Excessive claims with respect to the use of certain fuels or lubricating oil.

(a) Civil penalty.

In addition to any criminal penalty provided by law, if a claim is made under section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), 6424 (relating to lubricating oil not used in highway motor vehicles), or 6427 (relating to fuels not used for taxable purposes) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

(b) Excessive amount defined.

For purposes of this section, the term "excessive amount" means in the case of any person the amount by which—

(1) the amount claimed under section 6420, 6421, 6424 or 6427, as the case may be, for any period, exceeds

(2) the amount allowable under such section for such period.

(c) Assessment and collection of penalty.

For assessment and collection of penalty provided by subsection (a), see section 6206.

(Added Apr. 2, 1956, ch. 160, § 3, 70 Stat. 90, and amended June 29, 1956, ch. 462, title II, § 208 (d) (2), 70 Stat. 396; June 21, 1965, Pub. L. 89-44, title II, § 202(c)(3)(A), 79 Stat. 139; May 21, 1970, Pub. L. 91-258, title II, § 207(d)(8), 84 Stat. 249.)

AMENDMENTS

1970—Pub. L. 91-258, § 207(d)(8)(A), substituted "fuels" for "gasoline" in catchline.

Subsec. (a). Pub. L. 91-258, § 207(d)(8)(B), inserted reference to section 6427 relating to fuels not used for taxable purposes.

Subsec. (b)(1). Pub. L. 91-258, § 207(d)(8)(C), included reference to section 6427.

1965—Pub. L. 89-44, § 202(c)(3)(A)(i), inserted "or lubricating oil" after "gasoline" in catchline.

Subsec. (a). Pub. L. 89-44, § 202(c)(3)(A)(ii), included claims made under section 6424.

Subsec. (b)(1). Pub. L. 89-44, § 202(c)(3(A)(iii), included amounts claimed under section 6424.

1956—Act June 29, 1956, § 208(d)(2)(A), substituted "with respect to the use of certain gasoline" for "for gasoline used on farms" in the catchline.

Subsec. (a). Act June 29, 1956, § 208(d)(2)(B), included claims made under section 6421.

Subsec. (b). Act June 29, 1956, § 208(d)(2)(C), included amounts claimed under section 6421.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 to take effect January 1, 1966, see section 701(a) (1), (2), of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6206 of this title.

§ 6676. Failure to supply identifying numbers.

(a) Civil penalty.

If any person who is required by regulations prescribed under section 6109—

(1) to include his identifying number in any return, statement, or other document,

(2) to furnish his identifying number to another person, or

(3) to include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $5 for each such failure, unless it is shown that such failure is due to reasonable cause.

(b) Deficiency procedures not to apply.

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a). (Added Pub. L. 87-397, § 1(b), Oct. 5, 1961, 75 Stat. 828, and amended Pub. L. 91-172, title I, § 101 (j)(52), Dec. 30, 1969, 83 Stat. 531.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

§ 6677. Failure to file information returns with respect to certain foreign trusts.

(a) Civil penalty.

In addition to any criminal penalty provided by law, any person required to file a return under section 6048 who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty equal to 5 percent of the amount transferred to a trust, but not more than $1,000, unless it is shown that such failure is due to reasonable cause.

(b) Deficiency procedures not to apply.

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a). (Added Pub. L. 87–834, § 7(g), Oct. 16, 1962, 76 Stat. 988, and amended Pub. L. 91–172, title I, § 101 (j)(53), Dec. 30, 1969, 83 Stat. 531.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 6678. Failure to furnish certain statements.

In the case of each failure to furnish a statement under section 6039(b), 6042(c), 6044(e), 6049(c), or 6052(b) on the date prescribed therefor to a person with respect to whom a return has been made under section 6039(a), 6042(a)(1), 6044(a)(1), 6049(a)(1), or 6052(a), respectively, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so furnish the statement, $10 for each such statement not so furnished, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000. (Added Pub. L. 87–834, § 19(e), Oct. 16, 1962, 76 Stat. 1058, and amended Pub. L. 88–272, title II, §§ 204(c)(2), 221 (b)(3), Feb. 26, 1964, 78 Stat. 37, 75.)

AMENDMENTS

1964—Pub. L. 88–272 inserted references to sections 6039(a), 6039(b), 6052(a), and 6052(b).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as a note under section 79 of this title.

Amendment of section by Pub. L. 83–272 applicable to stock transferred pursuant to options exercised on or after Jan. 1, 1964, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

EFFECTIVE DATE

Section applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative, beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as a note under section 6042 of this title.

§ 6679. Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

(a) Civil penalty.

In addition to any criminal penalty provided by law, any person required to file a return under section 6046 who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty of $1,000, unless it is shown that such failure is due to reasonable cause.

(b) Deficiency procedures not to apply.

Subchapter B of chapter 63 (relating to deficiency procedure for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a). (Added Pub. L. 87–834, § 20(c), Oct. 16, 1962, 76 Stat. 1062, and amended Pub. L. 91–172, title I, § 101(j)(54), Dec. 30, 1969, 83 Stat. 532.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 6680. Failure to file interest equalization tax returns.

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax)—

(1) Return required under section 6011(d)(1).

Any person who is required under section 6011 (d)(1) (relating to interest equalization tax returns) to file a return for any period in respect of which, by reason of the provisions of section 4918, he incurs no liability for payment of the tax imposed by section 4911 and who fails to file such return within the time prescribed by section 6076, shall pay a penalty of $10 or 5 percent of the amount of tax for which he would incur liability for payment under section 4911 but for the provisions of section 4918, whichever is the greater, for each such failure unless it is shown that the failure is due to reasonable cause. The penalty imposed by this paragraph shall not exceed $1,000 for each failure to file a return.

(2) Return required under section 6011(d)(3).

Any person required to file a return under section 6011(d)(3) who fails to file such return at the time prescribed by the Secretary or his delegate, or who files a return which does not show the information required, shall pay a penalty of $1,000, unless it is shown that such failure is due to reasonable cause.

(Added Pub. L. 88–563, § 6(a), Sept. 2, 1964, 78 Stat. 845, and amended Pub. L. 91–128, § 4(h)(1), Nov. 26, 1969, 83 Stat. 268.)

AMENDMENTS

1969—Pub. L. 91–128 added provisions imposing a penalty for failure to file a return required under section 6011(d)(3) of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(h)(2) of Pub. L. 91–128 provided that: "The amendment made by paragraph (1) of this subsection

[amending this section] shall apply with respect to returns required to be filed after the date of the enactment of this Act [Nov. 26, 1969]."

Amendment of section by section 4 of Pub. L. 91–128 applicable with respect to acquisitions of debt obligations made after Nov. 26, 1969, see section 4(i)(4) of Pub. L. 91–128, set out as a note under section 4920 of this title.

§ 6681. False equalization tax certificates.

(a) False statement of United States person status.

In addition to the criminal penalty imposed by section 7241, any person who, for purposes of section 4918(e) or 4918(h), knowingly executes a statement as to his status as a United States person and ownership of stock and debt obligations which contains a misstatement of material fact shall be liable to a penalty equal to 125 percent of the amount of the tax imposed by section 4911 on the acquisition of any stock or debt obligation which, but for the provisions of section 4918, would be payable by the person acquiring such stock or debt obligation.

(b) Liability of participating firms and participating custodians.

(1) Confirmations and comparisons.

A participating firm described in section 4918(c) shall be liable to a penalty equal to 125 percent of the amount of tax imposed by section 4911 on the acquisition of stock or a debt obligation which, but for the provisions of section 4918, would be payable by the person acquiring the stock or debt obligation, if such participating firm knowingly—

(A) furnishes an IET clean confirmation referred to in section 4918(b) other than in accordance with the provisions of section 4918(d),

(B) furnishes a written comparison or broker-dealer confirmation other than in accordance with the provisions of section 4918(e), or

(C) violates the rules of an exchange or association referred to in section 4918(d)(2) and as a result thereof an IET clean confirmation referred to in section 4918(b) is issued under section 4918(d)(2) by another participating firm.

(2) Transfer of custody certificates.

A participating firm or participating custodian (described in section 4918(f)) shall be liable to a penalty equal to 125 percent of the amount of tax imposed by section 4911 on the acquisition of stock or a debt obligation which, but for the provisions of section 4918, would be payable by the person acquiring the stock or debt obligation, if such firm or custodian knowingly issues a transfer of custody certificate (described in section 4918(h)(1)) which contains a misstatement of material fact or knowingly issues a transfer of custody certificate other than in accordance with the provisions of section 4918.

(c) False certificate of sales to foreign persons.

In addition to the criminal penalty imposed by section 7241, any person who willfully executes a certificate of sales to foreign persons described in section 4919(b)(2) which contains a misstatement of material fact shall be liable to a penalty equal to 125 percent of the amount of the tax imposed by section 4911 on the acquisition by the underwriter of the stock or debt obligation with respect to which such certificate is executed.

(d) False confirmations or comparisons furnished by dealers.

(1) Members of national securities exchanges.

A member or member organization of a national securities exchange described in section 4919(b)(3)(A) who, in a transaction subject to the rules of such exchange as described in such section, willfully furnishes a written confirmation or comparison which contains a misstatement of material fact or which fails to state a material fact shall be liable to a penalty equal to 125 percent of the amount of the tax imposed by section 4911 on the acquisition of the debt obligation by the dealer for whose benefit such confirmation or comparison is furnished.

(2) Dealers.

Any person who sells as a dealer a debt obligation in a transaction subject to the rules of a national securities exchange as described in section 4919(b)(3)(A), in which such sale is effected on his behalf by a member or member organization of such exchange, and who willfully fails to disclose to such member of member organization that such sale is being made by him as a dealer, shall be liable to a penalty equal to 125 percent of the amount of the tax imposed on his acquisition of such debt obligation.

(3) Members of national securities associations.

A member or member organization of a national securities association described in section 4919(b)(3)(B) who willfully furnishes a written confirmation described in such section (in a transaction subject to the rules of such association as described in such section) which contains a misstatement of material fact or which fails to state a material fact shall be liable to a penalty equal to 125 percent of the amount of the tax imposed by section 4911 on the acquisition of the debt obligation by the dealer for whose benefit such confirmation is furnished.

(e) Penalty to be in lieu of tax in certain cases.

Unless the person acquiring the stock or debt obligation involved had reason to know that the IET clean confirmation which he received was false in any material respect, the penalty under subsection (b)(1) shall be in lieu of any tax on the acquisition of stock or debt obligation under section 4911.

(f) False application for validation certificate, etc.

Any person who knowingly supplies information in connection with an application for a validation certificate (described in section 4918(b)(1)(A)) which contains a misstatement of a material fact, or who knowingly obtains or uses a validation certificate for the purpose of establishing an exemption for prior American ownership and compliance under section 4918(a) other than in accordance with the provisions of section 4918, shall be liable to a penalty equal to 125 percent of an amount equal to the tax which would have been imposed by section 4911 if the stock or debt obligation described in such certificate had been acquired by a person required to pay such tax on the date of application. (Added Pub. L. 88–563, § 6(a), Sept. 2, 1964, 78 Stat. 845, and amended Pub. L. 90–59, § 4(d), July 31, 1967, 81 Stat. 155; Pub. L. 90–73, § 2(d), Aug. 29, 1967, 81 Stat. 176.)

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–73 inserted reference to section 4918(h).

Pub. L. 90–59, § 4(d)(1), substituted reference to the statement as to status as a United States person and ownership of stock and debt obligations for reference to certificate of American ownership or blanket certificate of American ownership described in section 4918(e).

Subsec. (b). Pub. L. 90–59, § 4(d)(1), denominated existing provisions as par. (1), added par. (2), and, in par. (1) as so denominated, substituted reference to participating firms described in section 4918(c) for reference to members or member organizations of a national securities exchange described in section 4918(c) or a national securities association described in section 4918(d) in the material preceding subpars. (A)—(C), struck out list of acts subjecting participating firms to penalty, including unauthorized sale of stock or debt obligations, furnishing unauthorized written confirmation thereof, and having actual knowledge that the certificate in his possession in connection with a sale of stock or debt obligation is false or that the person who filed the certificate was not a United States person at the time of sale, and added subpars. (A)—(C).

Subsec. (e). Pub. L. 90–59, § 4(d)(2), substituted "reason to know that the IET clean confirmation which he received was false in any material respect, the penalty under subsection (b)(1)" for "actual knowledge that the certificate was false in any material respect, the penalty under subsection (a) or (c)."

Subsec. (f). Pub. L. 90–59, § 4(d)(3), added subsec. (f).

EFFECTIVE DATE OF 1967 AMENDMENTS

Amendment of subsec. (a) of this section by Pub. L. 90–73 effective Aug. 29, 1967, see section 2(f) of Pub. L. 90–73, set out as a note under section 4918 of this title.

Amendment of section by Pub. L. 90–59 effective July 31, 1967, see section 4(h) of Pub. L. 90–59, set out as a note under section 4918 of this title.

§ 6682. False information with respect to withholding allowances based on itemized deductions.

(a) Civil penalty.

In addition to any criminal penalty provided by law, if any individual in claiming a withholding allowance under section 3402(f)(1)(F) states (1) as the amount of the wages (within the meaning of chapter 24) shown on his return for any taxable year an amount less than such wages actually shown, or (2) as the amount of the itemized deductions referred to in section 3402(m) shown on the return for any taxable year an amount greater than such deductions actually shown, he shall pay a penalty of $50 for such statement, unless (1) such statement did not result in a decrease in the amounts deducted and withheld under chapter 24, or (2) the taxes imposed with respect to the individual under subtitle A for the succeeding taxable year do not exceed the sum of (A) the credits against such taxes allowed by part IV of subchapter A of chapter 1, and (B) the payments of estimated tax which are considered payments on account of such taxes.

(b) Deficiency procedures not to apply.

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a). (Added Pub. L. 89–368, title I, § 101(e)(4)(A), Mar. 15, 1966, 80 Stat. 61, and amended Pub. L. 91–172, title I, § 101(j)(55), Dec. 30, 1969, 83 Stat. 532.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7205 of this title.

§ 6683. Failure of foreign corporation to file return of personal holding company tax.

Any foreign corporation which—

(1) is a personal holding company for any taxable year, and

(2) fails to file or to cause to be filed with the Secretary or his delegate a true and accurate return of the tax imposed by section 541,

shall, in addition to other penalties provided by law, pay a penalty equal to 10 percent of the taxes imposed by chapter 1 (including the tax imposed by section 541) on such foreign corporation for such taxable year. (Added Pub. L. 89–809, title I, § 104(h)(4)(A), Nov. 13, 1966, 80 Stat. 1560.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

§ 6684. Assessable penalties with respect to liability for tax under chapter 42.

If any person becomes liable for tax under any section of chapter 42 (relating to private foundations) by reason of any act or failure to act which is not due to reasonable cause and either—

(1) such person has theretofore been liable for tax under such chapter, or

(2) such act or failure to act is both willful and flagrant,

then such person shall be liable for a penalty equal to the amount of such tax. (Added Pub. L. 91–172, title I, § 101(c), Dec. 30, 1969, 83 Stat. 519.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4948 of this title.

§ 6685. Assessable penalties with respect to private foundation annual reports.

In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to file the report and the notice required under section 6056 (relating to annual reports by private foundations) or to comply with the requirements of section 6104(d) (relating to public inspection of private foundations' annual reports) and who fails so to file or comply, if such failure is willful, shall pay a penalty of $1,000 with respect to each such report or notice. (Added Pub. L. 91–172, title I, § 101(e)(4), Dec. 30, 1969, 83 Stat. 524.)

EFFECTIVE DATE

Section to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

Chapter 69.—GENERAL PROVISIONS RELATING TO STAMPS

Sec.
6801. Authority for establishment, alteration, and distribution.
6802. Supply and distribution.
6803. Accounting and safeguarding.
6804. Attachment and cancellation.
6805. Redemption of stamps.
6806. Posting occupational tax stamps.[1]
6807. Stamping, marking, and branding seized goods.
6808. Special provisions relating to stamps.

§ 6801. Authority for establishment, alteration, and distribution.

(a) Establishment and alteration.

The Secretary or his delegate may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) Preparation and distribution of regulations, forms, stamps and dies.

The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes. (Aug. 16, 1954, ch. 736, 68A Stat. 829.)

CROSS REFERENCES

Attachment and cancellation, see section 6804 of this title.

Miscellaneous stamp provisions respecting distilled spirits, wines and beer, see section 5205 of this title.

Penalties for offenses relating to stamps, see section 7208 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6803 of this title.

§ 6802. Supply and distribution.

The Secretary or his delegate shall furnish, without prepayment, to—

(1) Postmaster General.

The Postmaster General a suitable quantity of adhesive stamps, coupons, tickets, or such other devices as may be prescribed by the Secretary or his delegate pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) are located in county seats, or

(B) are certified by the Secretary to the Postmaster General as necessary;

(2) Designated depositary of the United States.

Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary.

(Aug. 16, 1954, ch. 736, 68A Stat. 829; June 21, 1965, Pub. L. 89–44, title VI, § 601(d), 79 Stat. 154.)

AMENDMENTS

1965—Par. (1). Pub. L. 89–44, § 601(d)(1), struck out "(other than the stamps on playing cards)" following "quantity of adhesive stamps."

Par. (3). Pub. L. 89–44, § 601(d)(2), struck out par. (3) which related to supply and distribution of stamps to state agents.

[1] Section catchline amended without reflecting change in analysis.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6804 of this title.

§ 6803. Accounting and safeguarding.

(a) The Postmaster General.

(1) Bond and accounting.

The Postmaster General may require each postmaster under paragraph (1) of section 6802 to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe.

(2) Deposit of receipts.

The Postmaster General shall at least once a month transfer to the Treasury as internal revenue collections all receipts so deposited.

(b) Depositaries and State agents.

(1) Bond.

In cases coming within the provisions of paragraph (2) or (3) of section 6802, the Secretary or his delegate may require a bond, with sufficient sureties, in a sum to be fixed by the Secretary or his delegate, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of and for the payment monthly for all quantities or amounts sold or not remaining on hand.

(2) Regulations.

The Secretary or his delegate may from time to time make such regulations as he may find necessary to insure the safekeeping or prevent the illegal use of all adhesive stamps referred to in paragraphs (2) and (3) of section 6802.

(Aug. 16, 1954, ch. 736, 68A Stat. 830.)

CROSS REFERENCES

Expenditures incurred by Post Office Department, see section 7509 of this title.

Form of bonds, see section 7101 of this title.

Other provisions for bonds, see section 7103 of this title.

Single bond in lieu of multiple bonds, see section 7102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7101, 7509 of this title.

§ 6804. Attachment and cancellation.

Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary or his delegate may prescribe by rules or regulations. (Aug. 16, 1954, ch. 736, 68A Stat. 830.)

CROSS REFERENCES

Penalties for failure to attach or cancel stamps, etc., see section 7271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7271 of this title.

§ 6805. Redemption of stamps.

(a) Authorization.

The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

(b) Method and conditions of allowance.

Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) Time for filing claims.

No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) Finality of decisions.

The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer. (Aug. 16, 1954, ch. 736, 68A Stat. 830; Sept. 2, 1958, Pub. L. 85–859, title I, § 165 (b), (c), 72 Stat. 1313.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–859, § 165(b), eliminated provisions which authorized the Secretary to make allowances for or redeem stamps which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

Subsec. (c). Pub. L. 85–859, § 165(c), inserted "under this section" following "shall be allowed".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on the first day of the first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, set out as a note under section 4001 of this title.

§ 6806. Occupational tax stamps.

Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax (other than a special tax under subchapter B of chapter 35, under subchapter B of chapter 36, or under subtitle E) shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of such special tax. (Aug. 16, 1954, ch. 736, 68A Stat. 831; June 21, 1965, Pub. L. 89–44, title VI, § 601(e), 79 Stat. 155; Oct. 22, 1968, Pub. L. 90–618, title II, § 204, 82 Stat. 1235.)

AMENDMENTS

1968—Pub. L. 90–618 substituted "Occupational tax stamps" for "Posting occupational tax stamps" in the section catchline, and substituted provisions that every person liable for a special tax (other than a special tax under subchapter B of chapter 35, under subchapter B of chapter 36, or under subtitle E of this title) conspicuously place and keep in his place of business all stamps denoting payment of such special tax for provisions that every person liable for a special tax conspicuously place and keep in his place or business all stamps denoting payment of said special tax, provisions that authorized the Secretary or his delegate to require that the stamps denoting the payment of the special tax imposed by section 4461 of this title be posted on or in each device so that it will be visible to any person operating the device, and provisions that every person liable for the special tax under section 4411 of this title place the stamp denoting payment of such special tax in a conspicuous place in his place of business, or, if he has no such place of business, to keep such stamp on his person.

1965—Subsec. (b). Pub. L. 89–44 struck out "amusement and" following "Coin-operated" in the heading.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Oct. 22, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

CROSS REFERENCES

Penalties relating to failure to post special tax stamps, see section 7273 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7273 of this title.

§ 6807. Stamping, marking, and branding seized goods.

If any article of manufacture or produce requiring brands, stamps, or marks of whatever kind to be placed thereon, is sold upon levy, forfeiture (except as provided in section 5688 with respect to distilled spirits), or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks so required. (Aug. 16, 1954, ch. 736, 68A Stat. 831.)

§ 6808. Special provisions relating to stamps.

For special provisions on stamps relating to—

(1) Repealed. Pub. L. 89–44, title VI, § 601(f), June 21, 1965, 79 Stat. 155.

(2) Cotton futures, see subchapter D of chapter 39.

(3) Distilled spirits and fermented liquors, see chapter 51.

(4) Documents and other instruments, see chapter 34.

(5) Filled cheese, see subchapter C of chapter 39.

(6) Machine guns and short-barrelled firearms, see chapter 53.

(7) Oleomargarine, see subchapter F of chapter 38.

(8) Repealed. Pub. L. 91–513, title III, § 1102(c), Oct. 27, 1970, 84 Stat. 1292.

(9) Repealed. Pub. L. 89–44, title VI, § 601(f), June 21, 1965, 79 Stat. 155.

(10) Process, renovated, or adulterated butter, see subchapter C of chapter 39.

(11) Tobacco, snuff, cigars and cigarettes, see chapter 52.

(12) White phosphorous matches, see subchapter B of chapter 39.

(Aug. 16, 1954, ch. 736, 68A Stat. 831; June 4, 1963, Pub. L. 88–36, title II, § 201(d), 77 Stat. 54; June 21, 1965, Pub. L. 89–44, title VI, § 601(f), 79 Stat. 155; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(c), 84 Stat. 1292.)

AMENDMENTS

1970—Par. (8). Pub. L. 91–513 struck out par. (8) relating to opium, opium for smoking, opiates, coca leaves, and marihuana, with the included reference to subchapter A of chapter 39.

1965—Par. (1). Pub. L. 89–44 struck out par. (1) relating to capital stock.

Par. (9). Pub. L. 89–44 struck out par (9) relating to playing cards.

1963—Par. (11). Pub. L. 88–36 redesignated former par. (12) as (11) and eliminated former par. (11), which was a cross reference provision for silver bullion, to subchapter F of chapter 9.

Par. (12). Pub. L. 88–36 redesignated former par. (13) as (12). Former par. (12) redesignated as (11).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section as applicable only with respect to transfers after June 4, 1963, see section 202 of Pub. L. 88–36, set out as a note under former sections 4891—4897 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

Chapter 70.—JEOPARDY, BANKRUPTCY AND RECEIVERSHIPS

Subchapter
A. Jeopardy.
B. Bankruptcy and receiverships.

Subchapter A.—Jeopardy

Part
I. Termination of taxable year.
II. Jeopardy assessments.

PART I.—TERMINATION OF TAXABLE YEAR

Sec.
6851. Termination of taxable year.

§ 6851. Termination of taxable year.

(a) Income tax in jeopardy.

(1) In general.

If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(2) Corporation in liquidation.

If the Secretary or his delegate finds that the collection of the income tax of a corporation for the current or the preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) Reopening of taxable period.

Notwithstanding the termination of the taxable period of the taxpayer by the Secretary or his delegate, as provided in subsection (a), the Secretary or his delegate may reopen such taxable period each time the taxpayer is found by the Secretary or his delegate to have received income, within the current taxable year, since a termination of the period under subsection (a). A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable period, together with such other information as the Secretary or his delegate may by regulations prescribe. If the taxpayer is a nonresident alien the taxable period so terminated may be reopened by him if he files, or causes to be filed, with the Secretary or his delegate a true and accurate return of his total income derived from all sources within the United States, in the manner prescribed in this title.

(c) Citizens.

In the case of a citizen of the United States or of a possession of the United States about to depart from the United States, the Secretary or his delegate may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(d) Departure of alien.

Subject to such exceptions as may, by regulations, be prescribed by the Secretary or his delegate—

(1) No alien shall depart from the United States unless he first procures from the Secretary or his delegate a certificate that he has complied with all the obligations imposed upon him by the income tax laws.

(2) Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if, in the case of an alien about to depart from the United States, the Secretary or his delegate determines that the collection of the tax will not be jeopardized by the departure of the alien.

(e) Furnishing of bond where taxable year is closed by the Secretary or his delegate.

Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the Secretary or his delegate, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any income or excess profits taxes for prior years. (Aug. 16, 1954, ch. 736, 68A Stat. 833; Sept. 2, 1958, Pub. L. 85–866, title I, § 87, 72 Stat. 1665.)

AMENDMENTS

1958—Subsec. (d). Pub. L. 85–866 designated existing provisions as par. (1) and added opening provisions and par. (2).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (d) of this section by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Addition to tax in case of jeopardy, see section 6658 of this title.

Other provisions for bonds, see section 7103 of this title.

Returns for short period on termination of taxable year for jeopardy, see section 443 (a) (3) of this title.

Time for performing certain acts postponed by reason of war, see section 7508 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6659, 7508 of this title; title 5 section 5568; title 37 section 558.

PART II.—JEOPARDY ASSESSMENTS

Sec.
6861. Jeopardy assessments of income, estate, and gift taxes.
6862. Jeopardy assessment of taxes other than income, estate, and gift taxes.
6863. Stay of collection of jeopardy assessments.
6864. Termination of extended period for payment in case of carryback.

§ 6861. Jeopardy assessments of income, estate, and gift taxes.

(a) Authority for making.

If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213 (a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) Deficiency letters.

If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212 (a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) Amount assessable before decision of Tax Court.

The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 6212 (c) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Tax Court. The Secretary or his delegate may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Secretary or his delegate shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of Tax Court.

If the jeopardy assessment is made after the decision of the Tax Court is rendered, such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) Expiration of right to assess.

A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the taxpayer has filed a petition for review of the decision of the Tax Court.

(f) Collection of unpaid amounts.

When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by bond as provided in section 6863 (b) shall be collected as part of the tax upon notice and demand from the Secretary or his delegate, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the Secretary or his delegate.

(g) Abatement if jeopardy does not exist.

The Secretary or his delegate may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

(h) Cross references.

(1) For the effect of the furnishing of security for payment, see section 6863.

(2) For provision permitting immediate levy in case of jeopardy, see section 6331 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 834.)

CROSS REFERENCES

Corporations improperly accumulating surplus, burden of proof with respect to jeopardy assessment, see section 534 of this title.

Proration of deficiency to installments, see section 6152 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 534, 6152, 6212, 6213, 6863 of this title; title 5 section 5568; title 37 section 558.

§ 6862. Jeopardy assessment of taxes other than income, estate, and gift taxes.

(a) Immediate assessment.

If the Secretary or his delegate believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) Immediate levy.

For provision permitting immediate levy in case of jeopardy, see section 6331 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 836.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6863 of this title.

§ 6863. Stay of collection of jeopardy assessments.

(a) Bond to stay collection.

When a jeopardy assessment has been made under section 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary or his delegate, within such time as may be fixed by regulations prescribed by the Secretary or his delegate, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Further conditions in case of income, estate, or gift taxes.

In the case of taxes subject to the jurisdiction of the Tax Court—

(1) Prior to petition to Tax Court.

If the bond is given before the taxpayer has filed his petition under section 6213 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) Effect of Tax Court decision.

The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) Stay of sale of seized property pending Tax Court decision.

(A) General rule.

Where, notwithstanding the provisions of section 6213 (a), a jeopardy assessment has been made under section 6861 the property seized for the collection of the tax shall not be sold—

(i) if section 6861 (b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 6213 (a) for filing petition with the Tax Court, and

(ii) if petition is filed with the Tax Court (whether before or after the making of such jeopardy assessment under section 6861), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if section 6861 (a) were not applicable.

(B) Exceptions.

Such property may be sold if—

(i) the taxpayer consents to the sale,

(ii) the Secretary or his delegate determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or

(iii) the property is of the type described in section 6336.

(C) Applicability.

Subparagraphs (A) and (B) shall be applicable only with respect to a jeopardy assessment made on or after January 1, 1955, and shall apply with respect to taxes imposed by this title and with respect to taxes imposed by the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 836.)

CROSS REFERENCES

Bond to stay assessment and collection, see section 7485 of this title.

Other provisions for bonds, see section 7103 of this title.

Sale of seized property, see section 6335 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6861 of this title.

§ 6864. Termination of extended period for payment in case of carryback.

For termination of extensions of time for payment of income tax granted to corporations expecting carrybacks in case of jeopardy, see section 6164 (h).

(Aug. 16, 1954, ch. 736, 68A Stat. 837.)

Subchapter B.—Bankruptcy and Receiverships

Sec.
6871. Claims for income, estate, and gift taxes in bankruptcy and receivership proceedings.
6872. Suspension of period on assessment.
6873. Unpaid claims.

§ 6871. Claims for income, estate, and gift taxes in bankruptcy and receivership proceedings.

(a) Immediate assessment.

Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided by law) determined by the Secretary or his delegate in respect of a tax imposed by subtitle A or B upon such taxpayer shall, despite the restrictions imposed by section 6213 (a) upon assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

(b) Claim filed despite pendency of Tax Court proceedings.

In the case of a tax imposed by subtitle A or B claims for the deficiency and such interest, additional amounts, and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Tax Court; but no petition for any such redetermination shall be filed with the Tax Court after the adjudication of backruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of the receiver. (Aug. 16, 1954, ch. 736, 68A Stat. 838; Sept. 2, 1958, Pub. L. 85-866, title I, § 88, 72 Stat. 1665.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsecs. (a) and (b), is classified generally to Title 11, Bankruptcy.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-866, § 88(a), substituted "the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer" for "the approval of a petition of, or against, any taxpayer".

Subsec. (b). Pub. L. 85-866, § 88(b), substituted "the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer" for "approval of the petition".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a) and (b) of this section by Pub. L. 85-866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85-866, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5568; title 37 section 558.

§ 6872. Suspension of period on assessment.

If the regulations issued pursuant to section 6036 require the giving of notice by any fiduciary in any proceeding under the Bankruptcy Act, or by a receiver in any other court proceeding, to the Secretary or his delegate of his qualification as such, the running of the period of limitations on the making of assessments shall be suspended for the period from the date of the institution of the proceeding to a date 30 days after the date upon which the notice from the receiver or other fiduciary is received by the Secretary or his delegate; but the suspension under this sentence shall in no case be for a period in excess of 2 years. (Aug. 16, 1954, ch. 736, 68A Stat. 838.)

CROSS REFERENCES

Bankruptcy Act, referred to in the text, is classified to section 1 et seq. of Title 11, Bankruptcy.

§ 6873. Unpaid claims.

(a) General rule.

Any portion of a claim for taxes allowed in a receivership proceeding or any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding.

(b) Cross references.

(1) For suspension of running of period of limitations on collection, see section 6503 (b).

(2) For extension of time for payment, see section 6161 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 838.)

CROSS REFERENCES

Payment on notice and demand, see section 6155 of this title.

Chapter 71.—TRANSFEREES AND FIDUCIARIES

Sec.
6901. Transferred assets.
6902. Provisions of special application to transferees.
6903. Notice of fiduciary relationship.
6904. Prohibition of injunctions.
6905. Discharge of executor from personal liability for decedent's income and gift taxes.

AMENDMENTS

1970—Pub. L. 91-614, title I, § 101(e)(2), Dec. 31, 1970, 84 Stat. 1837, added item 6905.

§ 6901. Transferred assets.

(a) Method of collection.

The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

(1) Income, estate, and gift taxes.

(A) Transferees.

The liability, at law or in equity, of a transferee of property—

(i) of a taxpayer in the case of a tax imposed by subtitle A (relating to income taxes),

(ii) of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), or

(iii) of a donor in the case of a tax imposed by chapter 12 (relating to gift taxes),

in respect of the tax imposed by subtitle A or B.

(B) Fiduciaries.

The liability of a fiduciary under section 3467 of the Revised Statutes (31 U. S. C. 192) in respect of the payment of any tax described in subparagraph (A) from the estate of the taxpayer, the decedent, or the donor, as the case may be.

(2) Other taxes.

The liability, at law or in equity of a transferee of property of any person liable in respect of any tax imposed by this title (other than a tax imposed by subtitle A or B), but only if such liability arises on the liquidation of a partnership or corporation, or on a reorganization within the meaning of section 368 (a).

(b) Liability.

Any liability referred to in subsection (a) may be either as to the amount of tax shown on a return or as to any deficiency or underpayment of any tax.

(c) Period of limitations.

The period of limitations for assessment of any such liability of a transferee or a fiduciary shall be as follows:

(1) Initial transferee.

In the case of the liability of an initial transferee, within 1 year after the expiration of the period of limitation for assessment against the transferor;

(2) Transferee of transferee.

In the case of the liability of a transferee of a transferee, within 1 year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the initial transferor;

except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire 1 year after the return of execution in the court proceeding.

(3) Fiduciary.

In the case of the liability of a fiduciary, not later than 1 year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(d) Extension by agreement.

(1) Extension of time for assessment.

If before the expiration of the time prescribed in subsection (c) for the assessment of the liability, the Secretary or his delegate and the transferee or fiduciary have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or fiduciary of overpayments of tax made by such transferee or fiduciary or overpayments of tax made by the transferor of which the transferee or fiduciary is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in section 6511 (c).

(2) Extension of time for credit or refund.

If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, then in applying the limitations under section 6511 (c) on the amount of the credit or refund, the periods specified in section 6511 (b) (2) shall be increased by the period from the date of such expiration to the date of the agreement.

(e) Period for assessment against transferor.

For purposes of this section, if any person is deceased, or is a corporation which has terminated its existence, the period of limitation for assessment against such person shall be the period that would be in effect had death or termination of existence not occurred.

(f) Suspension of running of period of limitations.

The running of the period of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 6212 (relating to income, estate, and gift taxes), be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(g) Address for notice of liability.

In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, any notice of liability enforceable under this section required to be mailed to such person, shall, if mailed to the person subject to the liability at his last known address, be sufficient for purposes of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(h) Definition of transferee.

As used in this section, the term "transferee" includes donee, heir, legatee, devisee, and distributee, and with respect to estate taxes, also includes any person who, under section 6324 (a) (2), is personally liable for any part of such tax.

(i) Extension of time.

For extensions of time by reason of armed service in a combat zone, see section 7508.

(Aug. 16, 1954, ch. 736, 68A Stat. 841.)

CROSS REFERENCES

Gifts for reduction of public debt subject to gift or inheritance tax payments, see section 903 of Title 31, Money and Finance.

Prohibition of suits to restrain assessment or collection, see section 7421 of this title.

Suspension of running of period of limitation, see section 6503 of this title.

Time for performing certain acts postponed by reason of war, see section 7508 of this title.

§ 6902. Provisions of special application to transferees.

(a) Burden of proof.

In proceedings before the Tax Court the burden of proof shall be upon the Secretary or his delegate to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

(b) Evidence.

Upon application to the Tax Court, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Tax Court, to a preliminary examination of books, papers, documents, correspondence, and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Tax Court for the redetermination of his liability in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application, the Tax Court may require by subpoena, ordered by the Tax Court or any division thereof and signed by a judge, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Tax Court or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena. (Aug. 16, 1954, ch. 736, 68A Stat. 843.)

CROSS REFERENCES

Burden of proof in fraud cases, see section 7454 of this title.

RULES OF PRACTICE IN THE TAX COURT

Burden of proof, see rule 32, Appendix to this title.

Subpoenas, see rule 44, Appendix to this title.

§ 6903. Notice of fiduciary relationship.

(a) Rights and obligations of fiduciary.

Upon notice to the Secretary or his delegate that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.

(b) Manner of notice.

Notice under this section shall be given in accordance with regulations prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 843.)

CROSS REFERENCES

Address for notice of—

Deficiency, see section 6212 of this title.

Liability, see section 6901 of this title.

Notice of qualification as executor or receiver, see section 6036 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6211, 6901 of this title.

§ 6904. Prohibition of injunctions.

For prohibition of suits to restrain enforcement of liability of transferee, or fiduciary, see section 7421 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 843.)

§ 6905. Discharge of executor from personal liability for decedents income and gift taxes.

(a) Discharge of liability.

In the case of liability of a decedent for taxes imposed by subtitle A or by chapter 12, if the executor makes written application (filed after the return with respect to such taxes is made and filed in such manner and such form as may be prescribed by regulations of the Secretary or his delegate) for release from personal liability for such taxes, the Secretary or his delegate may notify the executor of the amount of such taxes. The executor, upon payment of the amount of which he is notified, after 1 year after receipt of the application if no notification is made by the Secretary or his delegate before such date, shall be discharged from personal liability for any deficiency in such tax thereafter found to be due, and shall be entitled to a receipt or writing showing such discharge.

(b) Definition of executor.

For purposes of this section, the term "executor" means the executor or administrator of the decedent appointed, qualified, and acting within the United States.

(c) Cross reference.

For discharge of executor from personal liability for taxes imposed under chapter 11, see section 2204.

(Added Pub. L. 91–614, title I, § 101(e)(1), Dec. 31, 1970, 84 Stat. 1837.)

ESTATES OF DECEDENTS DYING AFTER DEC. 31, 1973

Pub. L. 91–614, title I, § 101(f), Dec. 31, 1970, 84 Stat. 1838 provided that, effective with respect to the estates of decedents dying after Dec. 31, 1973, this section is amended by substituting "9 months" for "1 year".

EFFECTIVE DATE

Section effective with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note uder section 2032 of this title.

Chapter 72.—LICENSING AND REGISTRATION

Subchapter
A. Licensing.
B. Registration.

Subchapter A.—Licensing

Sec.
7001. Collection of foreign items.

§ 7001. Collection of foreign items.

(a) License.

All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or

bills of exchange shall obtain a license from the Secretary or his delegate and shall be subject to such regulations enabling the Government to obtain the information required under subtitle A (relating to income taxes) as the Secretary or his delegate shall prescribe.

(b) Penalty for failure to obtain license.

For penalty for failure to obtain the license provided for in this section, see section 7231.

(Aug. 16, 1954, ch. 736, 68A Stat. 845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7231 of this title.

Subchapter B.—Registration

Sec.
7011. Registration—persons paying a special tax.
7012. Cross references.

§ 7011. Registration—persons paying a special tax.

(a) Requirement.

Every person engaged in any trade or business on which a special tax is imposed by law shall register with the Secretary or his delegate his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) Registration in case of death or change of location.

Any person exempted under the provisions of section 4905 from the payment of a special tax, shall register with the Secretary or his delegate in accordance with regulations prescribed by the Secretary (Aug. 16, 1954, ch. 736, 68A Stat. 845.)

CROSS REFERENCES

Death or change of location, see section 5144 of this title.

Penalty for failure to register, see section 7272 of this title.

§ 7012. Cross references.

(a), (b) Repealed. Pub. L. 91–513, title III, § 1102(d), Oct. 27, 1970, 84 Stat. 1292.

(c) Firearms.—For provisions relating to registration in connection with firearms, see sections 5802, 5841, and 5854.

(d) Repealed. Pub. L. 89–44, title VI, § 601(g), June 21, 1965, 79 Stat. 155.

(e) For provisions relating to registration in relation to the manufacture of white phosphorus matches, see section 4804 (d).

(f) For special rules with respect to registration by persons engaged in receiving wagers, see section 4412.

(g) For provisions relating to registration in relation to the production or importation of gasoline, see section 4101.

(h) For provisions relating to registration in relation to the manufacture or production of lubricating oils, see section 4101.

(i) Penalty.—

(1) For penalty for failure to register, see section 7272.

(2) For other penalties for failure to register with respect to wagering, see section 7262.

(Aug. 16, 1954, ch. 736, 68A Stat. 846; June 30, 1958, Pub. L. 85–475, § 4(b)(7), 72 Stat. 260; June 21, 1965, Pub. L. 89–44, title VI, § 601(g), 79 Stat. 155; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(d), 84 Stat. 1292.)

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91–513 struck out subsecs. (a) and (b) which related to narcotic drugs and marihuana, respectively, and which had made reference to sections 4722 and 4753, respectively.

1965—Subsec. (d). Pub. L. 89–44 struck out subsec. (d) relating to the manufacture of playing cards.

1958—Subsec. (i). Pub. L. 85–475, redesignated subsec. (j) as (i) and struck out former subsec. (i) which referred to section 4273.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see sections 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–475, see section 4 (c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

Chapter 73.—BONDS

Sec.
7101. Form of bonds.
7102. Single bond in lieu of multiple bonds.
7103. Cross references—other provisions for bonds.

§ 7101. Form of bonds.

Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803 (a) (1)), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) General rule.

Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary or his delegate.

(2) United States bonds and notes in lieu of surety bonds.

The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U. S. C. 15.

(Aug. 16, 1954, ch. 736, 68A Stat. 847.)

CROSS REFERENCES

Special disposition of perishable goods, see section 7324 of this title.

§ 7102. Single bond in lieu of multiple bonds.

In any case in which two or more bonds are required or authorized, the Secretary or his delegate may provide for the acceptance of a single bond complying with the requirements for which the several bonds are required or authorized. (Aug. 16, 1954, ch. 736, 68A Stat. 847.)

§ 7103. Cross references—Other provisions for bonds.

(a) Extensions of time.

(1) For bond where time to pay tax or deficiency has been extended, see section 6165.

(2) For bond to stay collection of a jeopardy assessment, see section 6863.

(3) For bond to stay assessment and collection prior to review of a Tax Court decision, see section 7485.

(4) For furnishing of bond where taxable year is closed by the Secretary or his delegate, see section 6851 (e).

(5) For bond in case of an election to postpone payment of estate tax where the value of a reversionary or remainder interest is included in the gross estate, see section 6165.

(b) Release of lien or seized property.

(1) For the release of the lien provided for in section 6325 by furnishing the Secretary or his delegate a bond, see section 6325 (a) (2).

(2) For bond to obtain release of perishable goods which have been seized under forfeiture proceeding, see section 7324 (3).

(3) For bond to release perishable goods under levy, see section 6336.

(4) For bond executed by claimant of seized goods valued at $1000 or less, see section 7325 (3).

(c) Miscellaneous.

(1) For bond as a condition precedent to the allowance of the credit for accrued foreign taxes, see section 905 (c).

(2) For bonds relating to alcohol and tobacco taxes, see generally subtitle E.

(d) Bonds required with respect to certain products.

(1) For bond in case of articles taxable under subchapter B of chapter 37 processed for exportation without payment of the tax provided therein, see section 4513 (c).

(2) For bond in case of oleomargarine removed from the place of manufacture for exportation to a foreign country, see section 4593 (b).

(3) For requirement of bonds with respect to certain industries see—

(A) section 4596 relating to a manufacturer of oleomargarine;

(B) section 4814 (c) relating to a manufacturer of process or renovated butter or adulterated butter;

(C) section 4833 (c) relating to a manufacturer of filled cheese;

(D) Repealed. Pub. L. 91–513, title III, § 1102(e), Oct. 27, 1970, 84 Stat. 1292.

(E) section 4804 (c) relating to a manufacturer of white phosphorus matches.

(e) Personnel bonds.

(1) For bonds of internal revenue personnel to insure faithful performance of duties, see section 7803 (c).

(2) For jurisdiction of United States district courts, concurrently with the courts of the several States, in an action on the official bond of any internal revenue officer or employee, see section 7402 (d).

(3) For bonds of postmasters to whom stamps have been furnished under section 6802 (1), see section 6803 (a) (1).

(4) For bonds in cases coming within the provisions of section 6802 (2) or (3), relating to stamps furnished a designated depositary of the United States or State agent, see section 6803 (b) (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 847; June 21, 1965, Pub. L. 89–44, title VIII, § 802(b)(3), 79 Stat. 159; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(e), 84 Stat. 1292.)

REFERENCES IN TEXT

Section 4513(c), referred to in par. (1) of subsec. (d), was repealed by Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

AMENDMENTS

1970—Subsec. (d)(3)(D). Pub. L. 91–513 struck out subsec. (d)(3)(D) which related to the manufacturer of opium suitable for smoking and which made reference to section 4713(b).

1965—Subsec. (d)(3). Pub. L. 89–44 struck out subpar. (F) relating to producers and importers of gasoline and manufacturers and producers of lubricating oils.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (d)(3) by Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

Chapter 74.—CLOSING AGREEMENTS AND COMPROMISES

Sec.
7121. Closing agreements.
7122. Compromises.
7123. Cross references.

§ 7121. Closing agreements.

(a) Authorization.

The Secretary or his delegate is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) Finality.

If such agreement is approved by the Secretary or his delegate (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(Aug. 16, 1954, ch. 736, 68A Stat. 849.)

CROSS REFERENCES

Deduction for deficiency dividends, see section 547 of this title.

Fraud and false statements, see section 7206 of this title.

Joint returns of income tax by husband and wife, see section 6013 of this title.

Mitigation of effect of limitations and other provisions, see section 1313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 281, 453, 547, 1313, 6013, 7206 of this title.

§ 7122. Compromises.

(a) Authorization.

The Secretary or his delegate may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) Record.

Whenever a compromise is made by the Secretary or his delegate in any case, there shall be placed on file in the office of the Secretary or his delegate the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500. (Aug. 16, 1954, ch. 736, 68A Stat. 849.)

CROSS REFERENCES

Compromise of liability under the Federal Alcohol Administration Act, see section 207 of Title 27, Intoxicating Liquors.

Deposit of collections, see section 7809 of this title.

Election by taxpayer for application of section 1333, see section 1335 of this title.

Election of standard deduction, see section 144 of this title.

Fraud and false statement, see section 7206 of this title.

Joint returns of income tax by husband and wife, see section 6013 of this title.

Limitation on—

Credit or refund, see section 6511 of this title.

Deductions allowable to individuals in certain cases, see section 270 of this title.

Mitigating effect of—

Limitation in case of related taxes under different chapters, see section 6521 of this title.

Limitations and other provisions, see section 1311 of this title.

Renegotiation of government contracts, see section 1481 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 144, 281, 453, 1311, 1335, 1481, 6013, 6325, 6511, 6521, 7182, 7809 of this title.

§ 7123. Cross references.

(a) Criminal penalties.

For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

(b) Compromises after judgment.

For compromises after judgment, see R. S. 3469 (31 U. S. C. 194).

(Aug. 16, 1954, ch. 736, 68A Stat. 850.)

Chapter 75.—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter

A. Crimes.

B. Other offenses.

C. Forfeitures.

D. Miscellaneous penalty and forfeiture provisions.

Subchapter A.—Crimes

Part

I. General provisions.

II. Penalties applicable to certain taxes.

PART I.—GENERAL PROVISIONS

Sec.

7201. Attempt to evade or defeat tax.

7202. Willful failure to collect or pay over tax.

7203. Willful failure to file return, supply information, or pay tax.

7204. Fraudulent statement or failure to make statement to employees.

7205. Fraudulent withholding exemption certificate or failure to supply information.

7206. Fraud and false statements.

7207. Fraudulent returns, statements, or other documents.

7208. Offenses relating to stamps.

7209. Unauthorized use or sale of stamps.

7210. Failure to obey summons.

7211. False statements to purchasers or lessees relating to tax.

7212. Attempts to interfere with administration of internal revenue laws.

7213. Unauthorized disclosure of information.

7214. Offenses by officers and employees of the United States.

7215. Offenses with respect to collected taxes.

AMENDMENTS

1958—Pub. L. 85-321, § 3(b), Feb. 11, 1958, 72 Stat. 6 added item 7215.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 section 1421i.

§ 7201. Attempt to evade or defeat tax.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 851.)

CROSS REFERENCES

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Definition of person, see section 7343 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Failure to pay, or attempt to evade payment of, tax on cotton futures, see section 7233 of this title.

Penalty for—

Delivery or disclosure of false or fraudulent return, statement or other document, see section 7207 of this title.

Making or subscribing false return, see section 7206 (1) of this title.

Period of limitation—

Criminal prosecutions arising under internal revenue laws, see section 6531 (2) of this title.

Offenses not capital, see section 3282 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3237.

§ 7202. Willful failure to collect or pay over tax.

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 851.)

CROSS REFERENCES

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such

estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 851; June 28, 1968, Pub. L. 90-364, title I, § 103(e)(5), 82 Stat. 264.)

AMENDMENTS

1968—Pub. L. 90-364 struck out reference to section 6016.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90-364, set out as a note under section 6154 of this title.

CROSS REFERENCES

Cost in criminal proceedings, see section 1918 (b) of Title 18, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Information returns, see section 6031 et seq. of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Persons required to make returns—

Estate tax, see section 6018 of this title.

Gift tax, see section 6019 of this title.

Income tax, see section 6012 of this title.

Period of limitation on criminal prosecution for offense of willfully failing to pay any tax or make a return, see section 6531 (4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6680 of this title; title 18 section 3237.

§ 7204. Fraudulent statement or failure to make statement to employees.

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 852.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for fraud against Social Security Act, see section 1307 of Title 42, The Public Health and Welfare.

Penalty for furnishing fraudulent statement to employee, see section 6674 of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6674 of this title.

§ 7205. Fraudulent withholding exemption certificate or failure to supply information.

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any other penalty provided by law (except the penalty provided by section 6682), upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 852; Mar. 15, 1966, Pub. L. 89-368, title I, § 101(e)(5), 80 Stat. 62.)

AMENDMENTS

1966—Pub. L. 89-368 substituted "section 3402" and "any other penalty provided by law (except the penalty provided by section 6682)" for "section 3402(f)" and "any penalty otherwise provided" respectively.

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7206. Fraud and false statements.

Any person who—

(1) Declaration under penalties of perjury.

Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance.

Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries.

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud.

Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements.

In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) Concealment of property.

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records.

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 852.)

CROSS REFERENCES

Attempt to evade or defeat tax, see section 7201 of this title.

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for making—

False affidavit for purpose of defrauding United States, see section 494 of Title 18, Crimes and Criminal Procedure.

False claim against United States, see section 287 of Title 18, Crimes and Criminal Procedure.

False or fraudulent statement with any department or agency of United States, see section 1001 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecution of offense described in subdivision (1) of this section, see section 6531 (5) of this title.

Period of limitation on criminal prosecution of offense described in subdivision (2) of this section, see section 6531 (3) of this title.

Perjury, see section 1621 of Title 18, Crimes and Criminal Procedure.

Verification of return under penalty of perjury, see section 6065 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6013, 6531 of this title; title 18 section 3237.

§ 7207. Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to the Secretary or his delegate any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. Any person required pursuant to sections 6047 (b) or (c), 6056, or 6104(d) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both (Aug. 16, 1954, ch. 736, 68A Stat. 853; Oct. 10, 1962, Pub. L. 87-792, § 7(m)(3), 76 Stat. 831; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(e)(5), 83 Stat. 524.)

AMENDMENTS

1969—Pub. L. 91-172 substituted "sections 6047 (b) or (c), 6056, or 6104(d)" for "section 6047(b) or (c)".

1962—Pub. L. 87-792 inserted sentence providing that any person required pursuant to section 6047 (b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(h)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

CROSS REFERENCES

Attempt to evade or defeat tax, see section 7201 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Period of limitation on criminal prosecution for offense described in this section, see section 6531 (5) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6013, 6513, 7303 of this title.

§ 7208. Offenses relating to stamps.

Any person who—

(1) Counterfeiting.

With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) Mutilation or removal.

Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) Use of mutilated, insufficient, or counterfeited stamps.

Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) Reuse of stamps.

(A) Preparation for reuse.

Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) Trafficking.

Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) Possession.

Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) Emptied stamped packages.

Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 853.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7303 of this title.

§ 7209. Unauthorized use or sale of stamps.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 854.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7210. Failure to obey summons.

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 854; Apr. 2, 1956, ch. 160, § 4(h), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208(d)(3), 70 Stat. 396; June 21, 1965, Pub. L. 89-44, title II, § 202(c)(4), 79 Stat. 139; May 21, 1970, Pub. L. 91-258, title II, § 201(b)(9), 84 Stat. 249.)

AMENDMENTS

1970—Pub L. 91-258 inserted reference to section 6427(e)(2).

1965—Pub. L. 89-44 inserted reference to section 6424 (d)(2) of this title.

1956—Act June 29, 1956, inserted reference to section 6421(f)(2) of this title.

Act Apr. 2, 1956, inserted reference to section 6420(e)(2) of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 to take effect January 1, 1966, see section 701(a) (1), (2), of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, as effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

CROSS REFERENCES

Attachment for contempt for refusal to obey summons to produce books or give testimony, see section 7604 (b) of this title.

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7211. False statements to purchasers or lessees relating to tax.

Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral—

(1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or

(2) ascribing a particular part of such price to a tax imposed under the authority of the United States,

knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 854.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7212. Attempts to interfere with administration of Internal Revenue laws.

(a) Corrupt or forcible interference.

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned

not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) Forcible rescue of seized property.

Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years. (Aug. 16, 1954, ch. 736, 68A Stat. 855.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Entry of premises for examination of taxable objects, see section 7606 of this title.

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for refusal to permit entry or examination, see section 7342 of this title.

Period of limitation on criminal prosecution for offense under this section, see section 6531 (6) of this title.

Punishment for assaulting, resisting or impeding certain federal officers and employees, see section 111 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6531 of this title.

§ 7213. Unauthorized disclosure of information.

(a) Income returns.

(1) Federal employees and other persons.

It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) State employees.

Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103 (b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under section 6103 (b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103 (b), to be seen or examined by any person except as provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(3) Shareholders.

Any shareholder who pursuant to the provisions of section 6103 (c) is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year or both, together with the costs of prosecution.

(b) Disclosure of operations of manufacturer or producer.

Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Offenses relating to reproduction of documents.

Any person who uses any film or photoimpression, or reproduction therefrom, or who discloses any information contained in any such film, photoimpression, or reproduction, in violation of any provision of the regulations prescribed pursuant to section 7513 (b), shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(d) Disclosures by certain delegates of Secretary.

All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(e) Cross reference.

(1) Returns of Federal unemployment tax.

For special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax), see section 6106.

(2) Penalties for disclosure of confidential information.

For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

(Aug. 16, 1954, ch. 736, 68A Stat. 855; Sept. 2, 1958, Pub. L. 85–866, title I, § 90(c), 72 Stat. 1666; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(s), 74 Stat. 940.)

AMENDMENTS

1960—Subsec. (d). Pub. L. 86–778 added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 86–778 redesignated former subsec. (d) as (e).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 85–866 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1960 AMENDMENT

Subsec. (d) of this section effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1958 AMENDMENT

Subsec. (c) of this section effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

Publicity of returns and lists of taxpayers, see section 6103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6106 of this title.

§ 7214. Offenses by officers and employees of the United States.

(a) Unlawful acts of revenue officers or agents.

Any officer or employee of the United States acting in connection with any revenue law of the United States—

(1) who is guilty of any extortion or willful oppression under color of law; or

(2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

(4) who conspires or colludes with any other person to defraud the United States; or

(5) who knowingly makes opportunity for any person to defraud the United States; or

(6) who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

(8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary or his delegate; or

(9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

(b) Interest of internal revenue officer or employee in tobacco or liquor production.

Any internal revenue officer or employee interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigarettes, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and each such officer or employee so interested in any such manufacture or production, rectification, or redistillation or production of fermented liquors shall be fined not more than $5,000.

(c) Cross reference

For penalty on collecting or disbursing officers trading in public funds or debts or property, see 18 U. S. C. 1901.

(Aug. 16, 1954, ch. 736, 68A Stat. 856; Sept. 2, 1958, Pub. L. 85–859, title II, § 204(5), 72 Stat. 1429.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–859 eliminated a cross reference that related to penalty imposed for unlawfully removing or permitting to be removed distilled spirits from a bonded warehouse.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Bribery, graft, and conflicts of interests, see section 201 et seq. of Title 18, Crimes and Criminal Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty—

Officer in charge of warehouse for unlawful removal of spirits, see section 5633 of this title.

Unlawful affixing, cancelling, or issue of stamps by officer, see section 5645 of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6531 of this title

§ 7215. Offenses with respect to collected taxes.

(a) Penalty.

Any person who fails to comply with any provision of section 7512 (b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) Exceptions.

This section shall not apply—

(1) to any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and

(2) to any person, if such person shows that the failure to comply with the provisions of section 7512 (b) was due to circumstances beyond his control.

For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person. (Added Pub. L. 85-321, § 2, Feb. 11, 1958, 72 Stat. 6.)

PART II.—PENALTIES APPLICABLE TO CERTAIN TAXES

Sec.
7231. Failure to obtain license for collection of foreign items.
7232. Failure to register, or false statement by manufacturer or producer of gasoline or lubricating oil.
7233. Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.
7234. Violation of laws relating to oleomargarine or adulterated butter operations.
7235. Violation of laws relating to adulterated butter and process or renovated butter.
7236. Violation of laws relating to filled cheese.
7239. Violations of laws relating to white phosphorus matches.
7240. Officials investing or speculating in sugar.
7241. Penalty for fraudulent equalization tax certificates.

AMENDMENTS

1970—Pub. L. 91-513, title III, § 1101(b)(4)(B), Oct. 27, 1970, 84 Stat. 1292, struck out items "7237. Violation of laws relating to narcotic drugs and to marihuana." and "7238. Violation of laws relating to opium for smoking."

1965—Pub. L. 89-44, title VIII, § 802(b)(6), June 21, 1965, 79 Stat. 159, struck out "or give bond" following "Failure to register" in item 7232.

1964—Pub. L. 88-563, § 6(c)(2), Sept. 2, 1964, 78 Stat. 847, inserted item 7241.

§ 7231. Failure to obtain license for collection of foreign items.

Any person required by section 7001 (relating to collection of certain foreign items) to obtain a license who knowingly undertakes to collect the payments described in section 7001 without having obtained a license therefor, or without complying with regulations prescribed under section 7001, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 857.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7232. Failure to register, or false statement by manufacturer or producer of gasoline or lubricating oil.

Every person who fails to register as required by section 4101, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered as provided by section 4101, or who willfully makes any false statement in an application for registration under section 4101, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 858; June 21, 1965, Pub. L. 89-44, title VIII, § 802(b)(4), 79 Stat. 159.)

AMENDMENTS

1965—Pub. L. 89-44 struck out "or give bond" following "Failure to register" in the section heading and "or give bond" following "register" and "and bonded" following "registered" in the text.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89-44, set out as a note under section 4082 of this title.

CROSS REFERENCES

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7263 of this title.

§ 7233. Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.

Any person—

(1) Nonpayment or evasion of tax.

Liable to the payment of any tax imposed by subchapter D of chapter 39, who fails to pay, or evades, or attempts to evade the payment of such tax; and

(2) Other violations.

Who otherwise violates any provision of subchapter D of chapter 39, or any rule or regulation made in pursuance thereof;

shall, upon conviction thereof, be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than 60 days nor more than 3 years, in the discretion of the court. (Aug. 16, 1954, ch. 736, 68A Stat. 858.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for attempt to evade or defeat tax, see section 7201 of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7234. Violation of laws relating to oleomargarine or adulterated butter operations.

(a) False branding, selling, or packing, in violation of law.

Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tinplate, or paper packages, as described in section 4594 (a) and (b), or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than

that required by law shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) Removal or defacement of stamps, marks, or brands.

Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine or adulterated butter, taxed as provided by subchapter F of chapter 38, or subchapter C of chapter 39, respectively, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $100 nor more than $2,000, and by imprisonment for not less than 30 days nor more than 6 months.

(c) Failure of wholesale dealers to keep or permit inspection of books, or to render returns.

Any person who willfully violates any of the provisions of section 4597 (a) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(d) Imported oleomargarine or adulterated butter.

(1) Failure of customs officer to comply with law.

Every officer or employee of the Treasury Department having duties under section 4591 who permits any imported oleomargarine or adulterated butter to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 4591 relating thereto, shall be fined not less than $1,000 nor more than $5,000, and imprisoned not less than 6 months nor more than 3 years.

(2) Empty packages.

(A) Failure to destroy stamps.

Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine or adulterated butter, or filled cheese shall for each such offense be fined not exceeding $50, and imprisoned not less than 10 days nor more than 6 months; and

(B) Trafficking.

Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine or adulterated butter, any such stamped package shall for each such offense be fined not exceeding $100, and be imprisoned not more than 1 year.

(3) Sale when improperly packed or stamped.

Every person who sells or offers for sale any imported oleomargarine or adulterated butter, or oleomargarine or adulterated butter purporting or claimed to have been imported, not put up in packages and stamped as provided by subchapter F of chapter 38 or subchapter C of chapter 39, shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than 6 months nor more than 2 years.

(4) Fraud by importer.

Whenever any person importing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine imported by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

(Aug. 16, 1954, ch. 736, 68A Stat. 858.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7235. Violation of laws relating to adulterated butter and process or renovated butter.

(a) Adulterated butter—false branding, sale, packing, or stamping in violation of law.

Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tinplate, or paper packages as described in section 4815 (a), or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) Failure of wholesale dealers to keep or permit inspection of books, or to render returns.

Any person who willfully violates any of the provisions of section 4815 (b) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(c) Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.

Any person, firm, or corporation violating any of the provisions of section 4817 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, in the discretion of the court.

(d) Dealers in adulterated butter.

Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $50 nor more than $500 for each offense.

(e) Fraud by manufacturer.

Whenever any person manufacturing adulterated butter defrauds, or attempts to defraud, the United States of the tax on the adulterated butter manufactured by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years. (Aug. 16, 1954, ch. 736, 68A Stat. 859.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7236. Violation of laws relating to filled cheese.

False branding, sale, packing, or stamping in violation of law.

Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in section 4834 (b), or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than $50 and not more than $500, or be imprisoned not less than 30 days nor more than 1 year. (Aug. 16, 1954, ch. 736, 68A Stat. 860.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Offenses relating to filled cheese, see section 7266 of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§§ 7237, 7238. Repealed. Pub. L. 91–513, title III, § 1101 (b)(4)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 7237, acts Aug. 16, 1954, ch. 736, 68A Stat. 860; Jan. 20, 1955, ch. 1, 69 Stat. 3; July 18, 1956, ch. 629, title I, § 103, 70 Stat. 568; Nov. 8, 1966, Pub. L. 89–793, title V, § 501, 80 Stat. 1449, set out acts constituting violations relating to narcotic drugs and marihuana. See section 801 et seq. of Title 21, Food and Drugs.

Section 7238, act Aug. 16, 1954, ch. 736, 68A Stat. 861, set the penalty for the violation of provisions of this title relating to opium for smoking.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISIONS

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 7239. Violations of laws relating to white phosphorus matches.

(a) Selling unstamped matches.

Any manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute, white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by subchapter B of chapter 39 effectually canceled as provided by section 4804 (a) (2), shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

(b) Use of insufficient stamps.

Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 861.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7240. Officials investing or speculating in sugar.

Any person, while acting in any official capacity in the administration of subchapter A of chapter 37, relating to manufactured sugar, who invests or speculates in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacture of sugar or liquid sugar, shall be dismissed from office or discharged from employment and shall be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than 2 years, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 861.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for sugar investments by governmental officials, see section 1157 of Title 7, Agriculture.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7241. Penalty for fraudulent equalization tax certificates.

(a) Any person who, on or after the date of the enactment of the Interest Equalization Tax Act, willfully executes a certificate of American ownership or blanket certificate of American ownership described in section 4918(e), or a certificate of sales to foreign persons described in section 4919(b) (2), which is known by him to be fraudulent or to be false in any material respect shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) Any person who, on or after the date of the enactment of the Interest Equalization Tax Extension Act of 1967, willfully executes, for purposes of section 4918(e) or 4918(h), a statement as to his status as a United States person and ownership of stock and debt obligations which is known by him to be fraudulent or to be false in any material respect shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not more than $1,000, or imprisoned not more than 1 year, or both. (Added Pub. L. 88–563, § 6(b), Sept. 2, 1964, 78 Stat. 847, and amended Pub. L. 90–59, § 4(e), July 31, 1967, 81 Stat. 156; Pub. L. 90–73, § 2(e), Aug. 29, 1967, 81 Stat. 176.)

REFERENCES IN TEXT

The date of enactment of the Interest Equalization Tax Extension Act of 1967, referred to in subsec. (b), is July 31, 1967.

On or after the date of the enactment of the Interest Equalization Tax Act, referred to in subsec. (a), means on or after the date of the enactment of Pub. L. 88–563, which was approved on September 2, 1964.

AMENDMENTS

1967—Pub. L. 90–59 denominated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (b). Pub. L. 90–73 inserted reference to section 4918(h).

EFFECTIVE DATE OF 1967 AMENDMENTS

Amendment of section by Pub. L. 90–59 effective July 31, 1967, see section 4(h) of Pub. L. 90–59, set out as a note under section 4918 of this title.

Amendment of subsec. (b) of this section by Pub. L. 90–73 effective Aug. 29, 1967, see section 2(f) of Pub. L. 90–73, set out as a note under section 4918 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6681 of this title.

Subchapter B.—Other Offenses

Sec.
7261. Representation that retailers' excise tax is excluded from price of article.
7262. Violation of occupational tax laws relating to wagering—failure to pay special tax.
7263. Penalties relating to cotton futures.
7264. Offenses relating to renovated or adulterated butter.
7265. Other offenses relating to oleomargarine or adulterated butter operations.
7266. Offenses relating to filled cheese.
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7268. Possession with intent to sell in fraud of law or to evade tax.
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7271. Penalties for offenses relating to stamps.
7272. Penalty for failure to register.
7273. Penalties for offenses relating to special taxes.
7274. Penalty for offenses relating to white phosphorus matches.
7275. Penalty for offenses relating to certain airline tickets and advertising.

AMENDMENTS

1970—Pub. L. 91–258, title II, § 203(c)(2), May 21, 1970, 84 Stat. 239, added item 7275.

1965—Pub. L. 89–44, title VI, § 601(i), June 21, 1965, 79 Stat. 155, struck out item 7275.

§ 7261. Representation that retailers' excise tax is excluded from price of article.

Whoever, in connection with the sale or lease, or offer for sale or lease, of any article taxable under chapter 31, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by chapter 31, shall on conviction thereof be fined not more than $1,000. (Aug. 16, 1954, ch. 736, 68A Stat. 862.)

CROSS REFERENCES

Authorization for action to recover fine, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Jurisdiction of district court of the United States of proceeding for recovery or enforcement of fine, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7262. Violation of occupational tax laws relating to wagering—failure to pay special tax.

Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000. (Aug. 16, 1954, ch. 736, 68A Stat. 862.)

CROSS REFERENCES

Authorization for action to recover fine, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Jurisdiction of district court of the United States of proceeding for recovery or enforcement of fine, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Penalty for failure to post or exhibit special wagering tax stamp, see section 7273 (b) of this title.

§ 7263. Penalties relating to cotton futures.

(a) Withholding information.

Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 4862 (b), or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than $500.

(b) Civil penalties.

In addition to the criminal penalties provided by section 7233, there shall be imposed, on account of each violation of subchapter D of chapter 39, relating to cotton futures, a penalty of $2,000, to be recovered in a civil action founded on subchapter D of chapter 39 in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of subchapter D of chapter 39 is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection. (Aug. 16, 1954, ch. 736, 68A Stat. 862.)

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Jurisdiction of district court of the United States of action or proceeding for recovery of fines and penalties, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7264. Offenses relating to renovated or adulterated butter.

Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $1,000 nor more than $5,000. (Aug. 16, 1954, ch. 736, 68A Stat. 863.)

CROSS REFERENCES

Authorization for action to recover fine, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Jurisdiction of district court of the United States of proceeding for recovery or enforcement of fine, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Tax on manufacturers of adulterated or renovated butter, see section 4821 of this title.

§ 7265. Other offenses relating to oleomargarine or adulterated butter operations.

(a) Omission or removal of label.

(1) Every manufacturer of oleomargarine who neglects to affix the label described in section 4594 (c) to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label

so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(2) Every manufacturer of adulterated butter who neglects to affix the label required under section 4814 (a) (1) to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined $50 for each package in respect to which such offense is committed.

(b) Purchasing when not properly branded or stamped.

Every person who knowingly purchases or receives for sale any oleomargarine or adulterated butter which has not been branded or stamped according to law shall be liable to a penalty of $50 for each such offense.

(c) Other offenses.

If any manufacturer of oleomargarine or adulterated butter, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything prohibited by subchapter F of chapter 38 or subchapter C of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of $1,000. (Aug. 16, 1954, ch. 736, 68A Stat. 863.)

CROSS REFERENCES

Authorization for action to recover fines and penalties, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Jurisdiction of district court of the United States of action or proceeding for recovery or enforcement of fines and penalties, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Oleomargarine tax generally, see section 4591 et seq. of this title.

Tax on adulterated and process or renovated butter generally, see section 4811 et seq. of this title.

§ 7266. Offenses relating to filled cheese.

(a) Failure to pay special tax.

Every person, firm, or corporation—

(1) Manufacturers.

Who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $400 nor more than $3,000; and

(2) Wholesale dealers.

Who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $250 nor more than $1,000; and

(3) Retail dealers.

Who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than $40 nor more than $500 for each and every offense.

(b) Other offenses.

Any manufacturer of filled cheese who fails to comply with the provisions of section 4833 (b) and (c), or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 nor more than $1,000.

(c) Failure of wholesale and retail dealers to display signs.

Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of section 4834 (a) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than $50 and not more than $200.

(d) Omission or removal of label.

Every manufacturer of filled cheese who neglects to affix the label provided for in section 4833 (a) (2) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(e) Purchasing when special tax not paid.

Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 4841 shall be liable, for each offense, to a penalty of $100.

(f) Purchasing when not stamped, branded, or marked according to law.

Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of $50 for each such offense. (Aug. 16, 1954, ch. 736, 68A Stat. 863.)

CROSS REFERENCES

Authorization for action to recover fines and penalties, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Jurisdiction of district court of the United States of proceeding for recovery or enforcement of fines, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

Violation of laws relating to filled cheese, see section 7236 of this title.

§ 7267. Offenses relating to white phosphorus matches.

(a) Exportation of matches.

Any person guilty of violation of section 4805 (b) shall be fined not less than $1,000 and not more than $5,000.

(b) Offenses not specifically covered.

If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for

the doing or causing to be done, the thing required or prohibited, he shall be fined $1,000 for each offense.

(c) Omission of label from packages.

Every manufacturer of white phosphorus matches who neglects to affix the label required by section 4804 (a) (4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than $50 for each package in respect of which such offense is committed.

(d) Omission of factory number from packages.

Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804 (b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be fined not more than $50 for each package in respect of which such offense is committed. (Aug. 16, 1954, ch. 736, 68A Stat. 864.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Jurisdiction of district court of the United States of proceeding for recovery or enforcement of fines, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7268. Possession with intent to sell in fraud of law or to evade tax.

Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of $500 or not less than double the amount of taxes fraudulently attempted to be evaded. (Aug. 16, 1954, ch. 736, 68A Stat. 865.)

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Penalty for attempt to evade tax, see section 7201 of this title.

§ 7269. Failure to produce records.

Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075 (a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Secretary or his delegate who desires to examine the same in the performance of his duties under chapter 11 (relating to estate taxes), shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 865.)

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7270. Insurance policies.

Any person who fails to comply with the requirements of section 4374 (relating to the affixing of stamps on insurance policies, etc.), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax. (Aug. 16, 1954, ch. 736, 68A Stat. 865.)

CROSS REFERENCES

Authorization for action to recover fine, see section 7401 of this title.

Jurisdiction of district court of the United States of proceeding for recovery or enforcement of fines, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7271. Penalties for offenses relating to stamps.

Any person who with respect to any tax payable by stamps—

(1) Failure to attach or cancel stamps, etc.

Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

(2) Manufacture or offer for sale.

Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid; or

(3) Instruments.

Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(4) Disposal and receipt of stamped packages.

In the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked—

(A) Transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or

(B) Stamps, brands, or marks such container, or otherwise produces such a stamped, branded, or marked container, knowing it to be empty or to contain such other contents;

shall be liable for each such offense to a penalty of $50.

(Aug. 16, 1954, ch. 736, 68A Stat. 865.)

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7208, 7303 of this title.

§ 7272. Penalty for failure to register.

(a) In general.

Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary or his delegate as required by this title or by regulations issued thereunder shall be liable to a penalty of $50.

(b) Cross references.

For provisions relating to persons required by this title to register, see sections 4101, 4412, 4722, 4753, 4804(d), and 7011.

(Aug. 16, 1954, ch. 736, 68A Stat. 866; June 30, 1958, Pub. L. 85–475, § 4(b)(8), 72 Stat. 260; Sept. 2, 1958, Pub. L. 85–859, title II, § 204 (6), (7), 72 Stat. 1429; June 21, 1965, Pub. L. 89–44, title VI, § 601(h), 79 Stat. 155.)

AMENDMENTS

1965—Subsec. (b). Pub. L. 89–44 struck out "4455," following "4412,".

1958—Subsec. (a). Pub. L. 85–859, § 204(6), excluded persons required to register under subtitle E and persons engaging in a trade or business on which a special tax is imposed by such subtitle.

Subsec. (b). Pub. L. 85–859, § 204(7), eliminated references to sections 5802 and 5841 of this title.

Subsec. (b). Pub. L. 85–475, struck out a reference to section 4273.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

For effective date of amendment by Pub. L. 85–475, see section 4 (c) of Pub. L. 85–475, set out as a note under section 4292 of this title.

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7273. Penalties for offenses relating to special taxes.

Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 shall be liable to a penalty (not less than $10) equal to the special tax for which his business rendered him liable, unless such failure is shown to be due to reasonable cause. If such failure to comply with section 6806 is through willful neglect or refusal, then the penalty shall be double the amount above prescribed. (Aug. 16, 1954, ch. 736, 68A Stat. 866; Oct. 22, 1968, Pub. L. 90–618, title II, § 205, 82 Stat. 1235.)

AMENDMENTS

1968—Pub. L. 90–618 redesignated former subsec. (a) as existing provisions, and, as so redesignated, struck out subsec. catchline "General rule", all references to subsecs. (a) or (b) of section 6806 of this title, provision that nothing in this subsec. affects the liability of any person doing any act, etc., upon which a special tax is imposed for such special tax, and struck out subsec. (b) setting forth penalties for the failure to comply with the provisions of section 6806(c) of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Oct. 22, 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Penalty for failure to pay wagering tax, see section 7262 of this title.

§ 7274. Penalty for offenses relating to white phosphorus matches.

Any manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804 (b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be liable to a penalty of $50 for each package in respect of which such offense is committed. (Aug. 16, 1954, ch. 736, 68A Stat. 866.)

CROSS REFERENCES

Authorization for action to recover penalty, see section 7401 of this title.

Jurisdiction of district court of the United States of action for penalty, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7275. Penalty for offenses relating to certain airline tickets and advertising.

(a) Tickets.

In the case of transportation by air all of which is taxable transportation (as defined in section 4262), the ticket for such transportation—

(1) shall show the total of (A) the amount paid for such transportation and (B) the taxes imposed by sections 4261 (a) and (b), and

(2) if the ticket shows amounts paid with respect to any segment of such transportation, shall comply with paragraph (1) with respect to such segments as well as with respect to the sum of the segments.

(b) Advertising.

In the case of transportation by air all of which is taxable transportation (as defined in section 4262) or would be taxable transportation if section 4262 did not include subsection (b) thereof, any advertising made by or on behalf of any person furnishing such transportation (or offering to arrange such transportation) which states the cost of such transportation shall—

(1) state such cost as the total of (A) the amount to be paid for such transportation, and (B) the taxes imposed by sections 4261 (a), (b), and (c), and

(2) if any such advertising states separately the amount to be paid for such transportation or the amount of such taxes, shall state such total at least as prominently as the more prominently stated of the amount to be paid for such transportation or the amount of such taxes and shall describe such taxes substantially as: "user taxes to pay for airport construction and airway safety and operations."

(c) Penalty.

Any person who violates any provision of subsection (a) or (b) is, for each violation, guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $100. (Added Pub. L. 91–258, title II, § 203(c)(1), May 21, 1970, 84 Stat. 239, and amended Pub. L. 91–680, § 3, Jan. 12, 1971, 84 Stat. 2064.)

AMENDMENTS

1971—Subsec. (a)(1). Pub. L. 91–680, § 3(a)(1), added "and" following "and (b),".

Subsec. (a)(2). Pub. L. 91–680, § 3(a)(2), (3), redesignated former subsec. (a)(3) as (a)(2), and, as so redesignated, struck out reference to par. (2). Former subsec. (a)(2), which prohibited airline tickets from separately stating the amount paid for the air transportation and the amount paid for taxes, was struck out.

Subsec. (a)(3). Pub. L. 91–680, § 3(a)(3), redesignated subsec. (a)(3) as (a)(2).

Subsec. (b)(1). Pub. L. 91–680, § 3(b), struck out "only" following "state such cost".

Subsec. (b)(2). Pub. L. 91–680, § 3(b), substituted provisions authorizing advertising to separately state in the prescribed manner the amount paid for the air transportation and the amount paid for taxes, for provisions prohibiting advertising from separately stating the amount paid for the air transportation and the amount paid for taxes.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 4 of Pub. L. 91–680 provided that: "The amendments made by the third section of this Act [amending subsecs. (a) and (b) of this section] shall apply to transportation beginning after June 30, 1970".

EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as Effective Date of 1970 Amendment note under section 4041 of this title.

Subchapter C.—Forfeitures

Part

I. Property subject to forfeiture.

II. Provisions common to forfeitures.

PART I.—PROPERTY SUBJECT TO FORFEITURE

Sec.

7301. Property subject to tax.

7302. Property used in violation of internal revenue laws.

7303. Other property subject to forfeiture.

7304. Penalty for fraudulently claiming drawback.

§ 7301. Property subject to tax.

(a) Taxable articles.

Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed, deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(b) Raw materials.

All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

(c) Equipment.

All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a) may also be seized, and shall be forfeited to the United States.

(d) Packages.

All property used as a container for, or which shall have contained, property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

(e) Conveyances.

Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging of property described in subsection (a), may also be seized, and shall be forfeited to the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 867; Sept. 2, 1958, Pub. L. 85–859, title II, § 204(8), 72 Stat. 1429.)

AMENDMENTS

1958—Subsec. (e). Pub. L. 85–859 included property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging of property described in subsec. (a).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Authorization for action to recover forfeiture, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Firearms subject to internal revenue seizure and forfeiture provisions, see section 924(c) of title 18, Crimes and Criminal Procedure.

Forfeiture of marihuana, see section 4745 of this title.

Judicial action to enforce forfeiture, see section 7323 of this title.

Jurisdiction of district court of the United States of proceeding for recovery of forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Other property subject to seizure and forfeiture, see section 7303 of this title.

Penalty for removal or concealment of goods or commodities, see section 7206 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7324 of this title.

§ 7302. Property used in violation of internal revenue laws.

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any

other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws. (Aug. 16, 1954, ch. 736, 68A Stat. 867.)

CROSS REFERENCES

Confiscation and disposal of seized narcotic drugs, see section 4733 of this title.

Disposition of proceeds of perishable goods, see section 7324 (4) (C) of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Forfeiture and destruction of opium, see section 4714 of this title.

Forfeiture and disposal of marihuana, see section 4745 of this title.

Forfeiture of property for violation of chapter 52 of this title in accordance with this section, see section 5763 of this title.

Judicial action to enforce forfeiture, see section 7323 of this title.

Jurisdiction of district court of the United States of proceeding for recovery of forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Provisions common to forfeitures, see section 7321 et seq. of this title.

Remission or mitigation of forfeiture, see section 7327 of this title.

Section 3041 of Title 18 made applicable to enforcement of this section, see section 5314 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5763, 7324 of this title.

§ 7303. Other property subject to forfeiture.

There may be seized and forfeited to the United States the following:

(1) Counterfeit stamps.

Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum, parchment, document, paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

(2) Repealed. Pub. L. 85-881, § 1 (c), Sept. 2, 1958, 72 Stat. 1704.

(3) Offenses by manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter.

All oleomargarine or adulterated butter owned by any manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter, or in which he has any interest as owner, if he shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or if he shall do anything prohibited by subchapter F of chapter 38, or subchapter C of chapter 39.

(4) Purchase or receipt of filled cheese or adulterated butter.

All articles of filled cheese or adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821 or 4841.

(5) Packages of oleomargarine or filled cheese.

All packages of oleomargarine or filled cheese subject to the tax under subchapter F of chapter 38, or part II of subchapter C of chapter 39, whichever is applicable, that shall be found without the stamps or marks provided for in the applicable subchapter or part thereof.

(6) White phosphorus matches.

(A) All packages of white phosphorus matches subject to tax under subchapter B of chapter 39 and found without the stamps required by subchapter B of chapter 39.

(B) All the white phosphorus matches owned by any manufacturer of white phosphorus matches, or any importer or exporter of matches, or in which he has any interest as owner if he shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of subchapter B of chapter 39 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited.

(7) False stamping of packages.

Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(8) Fraudulent bonds, permits, and entries.

All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 868; Sept. 2, 1958, Pub. L. 85-881, § 1(c), 72 Stat. 1704.)

AMENDMENTS

1958—Pub. L. 85-881 repealed par. (2) which related to oleomargarine or filled cheese adjudged to contain deleterious ingredients.

CROSS REFERENCES

Authorization for action to recover forfeiture, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a), (b) (C) (iii) of this title.

Forfeiture—

Unstamped packages of narcotic drugs, see section 4706 of this title.

Jurisdiction of district court of the United States of proceedings for recovery of forfeitures, see section 1355 of Title 28, Judiciary and Judicial Procedure.

Penalties relating to stamps, see section 7271 of this title.

Provisions common to forfeitures, see section 7321 et seq. of this title.

Remission or mitigation of forfeitures, see section 7327 of this title.

§ 7304. Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 869.)

CROSS REFERENCES

Authorization for action to recover forfeiture, see section 7401 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Judicial action to enforce forfeiture, see section 7323 of this title.

Jurisdiction of district court of the United States of proceeding for recovery of forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

PART II.—PROVISIONS COMMON TO FORFEITURES

Sec.
7321. Authority to seize property subject to forfeiture.
7322. Delivery of seized personal property to United States marshal.
7323. Judicial action to enforce forfeiture.
7324. Special disposition of perishable goods.
7325. Personal property valued at $2,500 or less.
7326. Disposal of forfeited or abandoned property in special cases.
7327. Customs laws applicable.
7328. Confiscation of matches exported.
7329. Cross references.

AMENDMENTS

1958—Pub. L. 85-859, title II, § 204(11), Sept. 2, 1958, 72 Stat. 1429, substituted "$2,500" for "$1,000" in item 7325.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 31 section 396.

§ 7321. Authority to seize property subject to forfeiture.

Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 869.)

§ 7322. Delivery of seized personal property to United States marshal.

Any forfeitable property which may be seized under the provisions of this title may, at the option of the Secretary or his delegate, be delivered to the United States marshal of the district, and remain in the care and custody and under the control of such marshal, pending disposal thereof as provided by law. (Aug. 16, 1954, ch. 736, 68A Stat. 869.)

§ 7323. Judicial action to enforce forfeiture.

(a) Nature and venue.

The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the United States District Court for the district where such seizure is made.

(b) Service of process when property has been returned under bond.

In case bond as provided in section 7324 (3) shall have been executed and the property returned before seizure thereof by virtue of process in the proceedings in rem authorized in subsection (a) of this section, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

(c) Cost of seizure taxable.

The cost of seizure made before process issues shall be taxable by the court. (Aug. 16, 1954, ch. 736, 68A Stat. 869.)

CROSS REFERENCES

Authorization for action to recover forfeiture, see section 7401 of this title.

Jurisdiction of district court of the United States of proceeding for recovery of forfeiture, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7324. Special disposition of perishable goods.

When any property which is seized under the provisions of section 7301 or section 7302 is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense—

(1) Application for examination.

The owner thereof, or the United States marshal of the district, may apply to the Secretary or his delegate to examine it; and

(2) Appraisal.

If, in the opinion of the Secretary or his delegate, it shall be necessary that such property should be sold to prevent such waste or expense, the Secretary or his delegate shall appraise the same; and thereupon

(3) Return to owner under bond.

The owner shall have such property returned to him upon giving bond in an amount equal to such appraised value to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the Secretary or his delegate, the United States marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the Secretary or his delegate with the United States attorney for the district in which the proceedings in rem authorized in section 7323 may be commenced.

(4) Sale in absence of bond.

(A) Order to sell.

If such owner shall neglect or refuse to give such bond, the Secretary or his delegate shall issue to any Treasury officer or employee or to the United States marshal an order to sell the same.

(B) Manner of sale.

Such Treasury officer or employee or the marshal shall as soon as practicable make public sale of such property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(C) Disposition of proceeds.

The proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court to abide its final order, decree, or judgment.

(5) Form of bond and sureties.

For provisions relating to form and sureties on bonds, see section 7101.

(Aug. 16, 1954, ch. 736, 68A Stat. 870; Sept. 2, 1958, Pub. L. 85-859, title II, § 204(9), 72 Stat. 1429; Sept. 2, 1958, Pub. L. 85-866, title I, § 78, 72 Stat. 1662.)

AMENDMENTS

1958—Pub. L. 85–866 eliminated "district" preceding "attorney" in par. (3).

Pub. L. 85–859 included property seized under section 7302 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment of par. (3) of this section by Pub. L. 85–866 effective Aug. 17, 1954, section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Disposition of proceeds of forfeited property in customs cases, see section 1613 of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7323 of this title.

§ 7325. Personal property valued at $2,500 or less.

In all cases of seizure of any goods, wares, or merchandise as being subject to forfeiture under any provision of this title which, in the opinion of the Secretary or his delegate, are of the appraised value of $2,500 or less, the Secretary or his delegate shall, except in cases otherwise provided, proceed as follows:

(1) List and appraisement.

The Secretary or his delegate shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by the Secretary or his delegate who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisement shall be properly attested by the Secretary or his delegate and such appraisers. Each appraiser shall be allowed for his services such compensation as the Secretary or his delegate shall by regulations prescribe, to be paid in the manner similar to that provided for other necessary charges incurred in collecting internal revenue.

(2) Notice of seizure.

If such goods are found by such appraisers to be of the value of $2,500 or less, the Secretary or his delegate shall publish a notice for 3 weeks, in some newspaper of the district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within 30 days from the date of the first publication of such notice.

(3) Execution of bond by claimant.

Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the Secretary or his delegate a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of $250, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the Secretary or his delegate, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States attorney for the district, and such attorney shall proceed thereon in the ordinary manner prescribed by law.

(4) Sale in absence of bond.

If no claim is interposed and no bond is given within the time above specified, the Secretary or his delegate shall give reasonable notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall, unless otherwise provided by law, sell the articles so seized at public auction, or upon competitive bids, in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(Aug. 16, 1954, ch. 736, 68A Stat. 870; Sept. 2, 1958, Pub. L. 85–859, title II, § 204 (10), (12), 72 Stat. 1429; Sept. 2, 1958, Pub. L. 85–866, title I, § 78, 72 Stat. 1662.)

AMENDMENTS

1958—Pub. L. 85–866 eliminated "district" preceding "attorney" in par. (3).

Pub. L. 85–859 substituted "$2,500" for "$1,000" in catchline, opening par., and par. (2), and inserted ", unless otherwise provided by law," preceding "sell the articles" in par. (4).

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment of par. (3) of this section by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

CROSS REFERENCES

Sale of seized articles or merchandise of value of $2,500 or less, see section 1607 of Title 19, Customs Duties.

§ 7326. Disposal of forfeited or abandoned property in special cases.

(a) Coin-operated gaming devices.

Any coin-operated gaming device as defined in section 4462 upon which a tax is imposed by section 4461 and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary or his delegate.

(b) Repealed. Pub. L. 91–513, title III, § 1102(f), Oct. 27, 1970, 84 Stat. 1292.

(c) Firearms.

For provisions relating to disposal of forfeited firearms, see section 5862 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 871; Sept. 2, 1958, Pub. L. 85–859, title II, § 204(13), 72 Stat. 1429; June 21, 1965, Pub. L. 89–44, title VI, § 601(j), 79 Stat. 155; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(f), 84 Stat. 1292.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–513 struck out subsec. (b) which related to narcotic drugs and which made reference to sections 4714, 4733, and 4745(d) of this title.

1965—Subsec. (a). Pub. L. 89–44 substituted "section 4462" for "section 4462(a)(2)".

1958—Subsec. (a). Pub. L. 85–859 added subsec. (a). Subsecs. (b) and (c). Pub. L. 85–859 redesignated former pars. (1) and (2) as subsecs. (b) and (c) respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by section 601 of Pub. L. 89–44 to take effect in a manner consistent with the effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 7327. Customs laws applicable.

The provisions of law applicable to the remission or mitigation by the Secretary or his delegate of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws. (Aug. 16, 1954, ch. 736, 68A Stat. 871.)

CROSS REFERENCES

Remission or mitigation of forfeitures under—

Customs laws, see section 1618 of Title 19, Customs Duties.

Liquor laws, see section 3617 of Title 18, Crimes and Criminal Procedure.

§ 7328. Confiscation of matches exported.

Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 871.)

CROSS REFERENCES

Penalty for offenses relating to white phosphorus matches, see section 7274 of this title.

§ 7329. Cross references.

(1) For the issuance of certificates of probable cause relieving officers making seizures of responsibility for damages, see 28 U. S. C. 2465.

(2) For provisions relating to forfeitures generally in connection with alcohol taxes, see chapter 51.

(3) For provisions relating to forfeitures generally in connection with tobacco taxes, see chapter 52.

(4) For provisions relating to forfeitures generally in connection with taxes on certain firearms, see chapter 53.

(Aug. 16, 1954, ch. 736, 68A Stat. 871.)

Subchapter D.—Miscellaneous Penalty and Forfeiture Provisions

Sec.
7341. Penalty for sales to evade tax.
7342. Penalty for refusal to permit entry or examination.
7343. Definition of term "person".
7344. Extended application of penalties relating to officers of the Treasury Department.

§ 7341. Penalty for sales to evade tax.

(a) Nonenforceability of contract.

Whenever any person who is liable to pay any tax imposed by this title upon, for, or in respect of, any property sells or causes or allows the same to be sold before such tax is paid, with intent to avoid such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

(b) Forfeiture of sum paid on contract.

If such property has been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

(c) Moiety.

Any person who shall sue for the sum so paid (in an action of debt) shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 872.)

CROSS REFERENCES

Jurisdiction of district court of the United States of proceedings for recovery or enforcement of forfeitures, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7342. Penalty for refusal to permit entry or examination.

Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit $500. (Aug. 16, 1954, ch. 736, 68A Stat. 872.)

CROSS REFERENCES

Authorization for action to recover forfeiture, see section 7401 of this title.

Judicial action to enforce forfeitures, see section 7323 of this title.

Jurisdiction of district court of the United States of proceedings for recovery or enforcement of forfeitures, see section 1355 of Title 28, Judiciary and Judicial Procedure.

§ 7343. Definition of term "person."

The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Aug. 16, 1954, ch. 736, 68A Stat. 872.)

§ 7344. Extended application of penalties relating to officers of the Treasury Department.

All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any agency or office thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or employees in connection with such law, or are persons having the custody or disposition of any public money. (Aug. 16, 1954, ch. 736, 68A Stat. 872.)

CROSS REFERENCES

Acceptance or solicitation of bribe by officer or other person, punishment for, see section 202 of Title 18, Crimes and Criminal Procedure.

Offenses by officers and employees of the United States, see section 7214 of this title.

Chapter 76.—JUDICIAL PROCEEDINGS

Subchapter
A. Civil actions by the United States.
B. Proceeding by Taxpayers and Third Parties.
C. The Tax Court.
D. Court review of Tax Court decisions.
E. Miscellaneous provisions.

AMENDMENTS

1966—Pub. L. 89–719, title I, § 110(d)(3), Nov. 2, 1966, 80 Stat. 1145, substituted "Taxpayers and Third Parties" for "taxpayers" in the heading of Subchapter B.

Subchapter A.—Civil Actions by the United States

Sec.
7401. Authorization.
7402. Jurisdiction of district courts.
7403. Action to enforce lien or to subject property to payment of tax.
7404. Authority to bring civil action for estate taxes.
7405. Action for recovery of erroneous refunds.
7406. Disposition of judgments and moneys recovered.
7407. Cross references.

§ 7401. Authorization.

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced. (Aug. 16, 1954, ch. 736, 68A Stat. 873.)

§ 7402. Jurisdiction of district courts.

(a) To issue orders, processes, and judgments.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) To enforce summons.

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) For damages to United States officers or employees.

Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) Action on bonds.

The United States district courts, concurrently with the courts of the several States, shall have jurisdiction of any action brought on the official bond of any internal revenue officer or employee required to give bond under regulations promulgated by authority of section 7803.

(e) To quiet title.

The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

(f) General jurisdiction.

For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 873; Nov. 2, 1966, Pub. L. 89–719, title I, § 107(a), 80 Stat. 1140.)

AMENDMENTS

1966—Subsec. (e). Pub. L. 89–719 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 89–719 redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§ 7403. Action to enforce lien or to subject property to payment of tax.

(a) Filing.

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(b) Parties.

All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) Adjudication and decree.

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

(d) Receivership.

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary or his delegate during the pendency of such

proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. (Aug. 16, 1954, ch. 736, 68A Stat. 874; Nov. 2, 1966, Pub. L. 89-719, title I, § 107(b), 80 Stat. 1140.)

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-719 inserted sentence permitting the United States, if the property is sold to satisfy a first lien held by the United States, to bid at the sale such sum, not more than the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Distilled spirits, lien for taxes, see section 5004 of this title.

Intervention by United States to enforce lien, see section 7424 of this title.

Lien for taxes, see section 6321 et seq. of this title.

Priority of lien of United States in case of insolvency, see section 191 of Title 31, Money and Finance.

Seizure of property for collection of taxes, see section 6331 et seq. of this title.

§ 7404. Authority to bring civil action for estate taxes.

If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary or his delegate shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6601. (Aug. 16, 1954, ch. 736, 68A Stat. 874.)

§ 7405. Action for recovery of erroneous refunds.

(a) Refunds after limitation period.

Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) Refunds otherwise erroneous.

Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

(c) Interest.

For provision relating to interest on erroneous refunds, see section 6602.

(d) Periods of limitation.

For periods of limitations on actions under this section, see section 6532 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 874.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6532 of this title.

§ 7406. Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary or his delegate as collections of internal revenue taxes. (Aug. 16, 1954, ch. 736, 68A Stat. 875.)

§ 7407. Cross references.

(1) For provisions for collecting taxes in general, see chapter 64.

(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.

(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 875.)

Subchapter B.—Proceedings by Taxpayers and Third Parties

AMENDMENTS

1966—Pub. L. 89-719, title I, § 110(d)(1), Nov. 2, 1966, 80 Stat. 1145, inserted "and Third Parties" in the heading of Subchapter B.

Sec.
7421. Prohibition of suits to restrain assessment or collection.
7422. Civil actions for refund.
7423. Repayments to officers or employees.
7424. Intervention.
7425. Discharge of liens.
7426. Civil actions by persons other than taxpayers.
7427. Cross references.

AMENDMENTS

1966—Pub. L. 89-719, title I, § 110(d)(2), Nov. 2, 1966, 80 Stat. 1145, substituted "Intervention" for "Civil action to clear title to property" in item 7424, added items 7425 and 7426, and redesignated former item 7425 as 7427.

§ 7421. Prohibition of suits to restrain assessment or collection.

(a) Tax.

Except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary.

No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U. S. C. 192) in respect of any such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Nov. 2, 1966, Pub. L. 89-719, title I, § 110(c), 80 Stat. 1144.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-719 inserted reference to section 7426(a), (b)(1), and words "by any person, whether or not such person is the person against whom such tax was assessed."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6213 of this title.

§ 7422. Civil actions for refund.

(a) No suit prior to filing claim for refund.

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

(b) Protest or duress.

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) Suits against collection officer a bar.

A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits instituted after June 15, 1942, in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court where the petition to the Tax Court was filed after such date.

(d) Credit treated as payment.

The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

(e) Stay of proceedings.

If the Secretary or his delegate prior to the hearing of a suit brought by a taxpayer in a district court or the Court of Claims for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 42 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the Court of Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

(f) Limitation on right of action for refund.

(1) General rule.

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue).

(2) Misjoinder and change of venue.

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

(g) Special rules for certain excise taxes imposed by chapter 42.

(1) Right to bring actions.

With respect to any act (or failure to act) giving rise to liability under section 4941, 4942, 4943, 4944, of 4945, payment of the full amount of tax imposed under section 4941(a) (relating to initial taxes on self-dealing), section 4942(a) (relating to initial tax on failure to distribute income), section 4943 (a) (relating to initial tax on excess business holdings), section 4944(a) (relating to initial taxes on investments which jeopardize charitable purpose),

section 4945(a) (relating to initial taxes on taxable expenditures), section 4941(b) (relating to additional taxes on self-dealing), section 4942(b) (relating to additional tax on failure to distribute income), section 4943(b) (relating to additional tax on excess business holdings), section 4944(b) (relating to additional taxes on investments which jeopardize charitable purpose), or section 4945(b) (relating to additional taxes on taxable expenditures) shall constitute sufficient payment in order to maintain an action under this section with respect to such act (or failure to act).

(2) Limitation on suit for refund.

No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, or 4945 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

(3) Final determination of issues.

For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, or 4945 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

(h) Cross references.

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Sept. 2, 1958, Pub. L. 85–866, title I, § 78, 72 Stat. 1662; Nov. 2, 1966, Pub. L. 89–713, § 3(a), 80 Stat. 1108; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(i), (j)(56), 83 Stat. 525, 532.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91–172, § 101(j)(56), inserted reference to chapter 42 taxes.

Subsec. (g). Pub. L. 91–172, § 101(i), added subsec. (g). Former subsec. (g) was redesignated (h).

Subsec. (h). Pub. L. 91–172, § 101(i), redesignated former subsec. (g) as (h).

1966—Subsec. (f). Pub. L. 89–713 added subsec. (f). Former subsec. (f) was redesignated as subsec. (g).

Subsec. (g). Pub. L. 89–713 redesignated former subsec. (f) as subsec. (g).

1958—Subsec. (f)(2). Pub. L. 85–866 deleted "district" preceding "attorneys".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(d) of Pub. L. 89–713 provided that: "The amendments made by subsections (a) and (b) [redesignating former subsec. (f) of this section as subsec. (g), and adding section 2502(b) of Title 28] shall apply to suits brought against officers, employees, or personal representatives referred to therein which are instituted 90 days or more after the date of the enactment of this Act [Nov. 2, 1966]. The amendment made by subsection (c) [amending section 7482(b)(1) of this title] shall apply to all decisions of the Tax Court entered after the date of enactment of this Act."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (f)(2) of this section by Pub. L. 85–866 as effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Credits against estimated income tax considered an overpayment of tax for preceding taxable year, see section 6402(b) of this title.

Overpayment of income tax credited to estimated income tax, see section 6513(d) of this title.

Period of limitation on action by taxpayer for refund, see section 6532(a) of this title.

Period of limitation on filing claim for refund, see section 6511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6423, 6532, 7426 of this title; title 28 section 2502.

§ 7423. Repayments to officers or employees.

The Secretary or his delegate, subject to regulations prescribed by the Secretary or his delegate, is authorized to repay—

(1) Collections recovered.

To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) Damages and costs.

All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the due performance of his official duty under this title.

(Aug. 16, 1954, ch. 736, 68A, Stat. 877.)

CROSS REFERENCES

Delinquent internal revenue officers and employees, see section 7803(d) of this title.

§ 7424. Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Nov. 2, 1966, Pub. L. 89–719, title I, § 108, 80 Stat. 1140.)

AMENDMENTS

1966—Pub. L. 89–719 substituted "Intervention" for "Civil action to clear title to property" as the section catchline and substituted provisions, set out in a single paragraph, granting the government authority to inter-

vene in a court proceeding to assert any lien arising under this title on property which is the subject of a civil action or suit to which the government is not a party with the same procedural rules to apply as where the government is initially joined properly as a party and with the proceedings to have no effect on the government's lien if the application to intervene is denied, for provisions, formerly set out in three subsections, setting out a procedure by which a person having a lien upon or interest in property referred to in section 7403 could file a civil action to clear title to the property and obtain an adjudication of the matter involved in the same manner as in the case of a civil action filed under section 7403.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CIVIL ACTIONS TO CLEAR TITLE TO PROPERTY COMMENCED BEFORE NOV. 2, 1966

Section 114(d) of Pub. L. 89–719 provided that: "If before the date of enactment of this Act [Nov. 2, 1966], any person has commenced a civil action to clear title to property pursuant to section 7424 of the Internal Revenue Code of 1954 [this section] as in effect immediately before the enactment of this Act, such action shall be determined in accordance with section 7424 of such Code as in effect immediately before the enactment of this Act."

§ 7425. Discharge of liens.

(a) Judicial proceedings.

If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

(b) Other sales.

Notwithstanding subsection (a) a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the place where such property is situated, if—

(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) the law makes no provision for such filing, or

(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

(c) Special rules.

(1) Notice of sale.

Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary or his delegate.

(2) Consent to sale.

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

(3) Sale of perishable goods.

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary or his delegate) in writing, by registered or certified mail or by personal service, to the Secretary or his delegate before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

(d) Redemption by United States.

(1) Right to redeem.

In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary or his delegate may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

(2) Amount to be paid.

In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

(3) Certificate of redemption.

(A) In general.

In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary or his delegate shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary or his delegate shall execute a certificate of redemption therefor.

(B) Filing.

The Secretary or his delegate shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United States is situated has not by law designated an office in which such certificate may be recorded, the Secretary or his delegate shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

(C) Effect.

A certificate of redemption executed by the Secretary or his delegate shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

(Added Pub. L. 89–719, title I, § 109, Nov. 2, 1966, 80 Stat. 1141.)

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the section would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7810 of this title.

§ 7426. Civil actions by persons other than taxpayers.

(a) Actions permitted.

(1) Wrongful levy.

If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

(2) Surplus proceeds.

If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

(3) Substituted sale proceeds.

If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

(b) Adjudication.

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) Injunction.

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) Recovery of property.

If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(3) Surplus proceeds.

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

(4) Substituted sale proceeds.

If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(c) Validity of assessment.

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

(d) Limitation on rights of action.

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

(e) Substitution of United States as party.

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

(f) Provision inapplicable.

The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

(g) Interest.

Interest shall be allowed at the rate of 6 percent per annum—

(1) in the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary or his delegate receives the money wrongfully levied upon to the date of payment of such judgment; and

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment.

(h) Cross reference.

For period of limitation, see section 6532(c).

(Added Pub. L. 89-719, title I, § 110(a), Nov. 2, 1966, 80 Stat. 1142.)

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the section would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(e) of Pub. L. 89-719, set out as a note under section 6323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6503, 6532, 7421 of this title; title 28 section 1346.

§ 7427. Cross references.

(1) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U. S. C. 35).

(2) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57 (j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U. S. C. 93).

(3) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876-877; 11 U. S. C. 107).

(4) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added June 22, 1938 (52 Stat. 938; 11 U. S. C. 1080).

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see R. S. 3466 (31 U. S. C. 191).

(7) For interest on judgments for overpayments, see section 2411 (a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 878, § 7427, formerly § 7425, renumbered Nov. 2, 1966, Pub. L. 89-719, title I, § 109, 80 Stat. 1141.)

Subchapter C.—The Tax Court

Part
I. Organization and jurisdiction.
II. Procedure.
III. Miscellaneous provisions.

PART I.—ORGANIZATION AND JURISDICTION

Sec.
7441. Status.
7442. Jurisdiction.
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7444. Organization.
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7446. Times and places of sessions.
7447. Retirement.
7448. Annuities to widows and dependent children of judges.

AMENDMENTS

1961—Pub. L. 87-370, § 2, Oct. 4, 1961, 75 Stat. 801, added item 7448.

§ 7441. Status.

There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 879; Dec. 30, 1969, Pub. L. 91-172, title IX, § 951, 83 Stat. 730.)

AMENDMENTS

1969—Pub. L. 91-172 substituted provisions establishing Tax Court as a Constitutional court, and enumerating the members that comprise its bench, for provisions continuing the Board of Tax Appeals, known as the Tax Court, as an independent agency in the Executive Branch of Government and enumerating the members that comprise its bench.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(a) of Pub. L. 91-172 provided that: "The amendments made by sections 951, 953, 954 (c) and (e),

955, 956, 958, and 960 (c), (d), (e), (g), and (j) [amending this section and sections 7443(c), 7447(a), (g), 7448, 7456, 7471, and 7701 of this title] shall take effect on the date of enactment of this Act [Dec. 30, 1969]."

CONTINUATION OF STATUS

Section 961 of Pub. L. 91–172 provided that: "The United States Tax Court established under the amendment made by section 951 [amending this section] is a continuation of the Tax Court of the United States as it existed prior to the date of enactment of this Act [Dec. 30, 1969], the judges of the Tax Court of the United States immediately prior to the date of enactment of this Act [Dec. 30, 1969] shall become the judges of the United States Tax Court upon the enactment of this Act [Dec. 30, 1969], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Tax Court of the United States before the date of enactment of this Act [Dec. 30, 1969] shall result from the enactment of this Act [Dec. 30, 1969]."

CROSS REFERENCES

Procedure before Tax Court generally, see section 7451 et seq. of this title.

§ 7442. Jurisdiction.

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926. (Aug. 16, 1954, ch. 736, 68A Stat. 879.)

CROSS REFERENCES

Action for refund, see section 7422 of this title.

Definition of Tax Court, see section 7701 (a) (27) of this title.

Effect of repeal of Internal Revenue Code of 1939, existing rights and liabilities, see section 7851 (b) (1) of this title.

Effective date of repeal of chapters 1, 2, 3, and 4 of Internal Revenue Code of 1939, see section 7851 (a) (1) (A), (B) of this title.

Exclusive jurisdiction of Tax Court of petitions for redetermination of excessive profits under Government contracts, see section 1218 (b) of Appendix to Title 50, War and National Defense.

Jurisdiction as to increase of deficiency, additional amounts, or additions to tax, see section 6214 (a) of this title.

Jurisdiction over other years, see section 6214 (b) of this title.

Notice of deficiency generally, see section 6212 of this title.

Stay of proceedings in district court or Court of Claims upon filing of petition with Tax Court, see section 7422 (e) of this title.

Time for filing petition in Tax Court, see section 6213 (a) of this title.

§ 7443. Membership.

(a) Number.

The Tax Court shall be composed of 16 members.

(b) Appointment.

Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. No individual shall be a judge of the Tax Court unless he is appointed to that office before attaining the age of 65.

(c) Salary.

(1) Each judge shall receive salary at the same rate and in the same installments as judges of the district courts of the United States.

(2) For rate of salary and frequency of installment see section 135, title 28, United States Code, and section 5505, title 5, United States Code.

(d) Expenses for travel and subsistence.

Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Customs Court.

(e) Term of office.

The term of office of any judge of the Tax Court shall expire 15 years after he takes office.

(f) Removal from office.

Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) Disbarment of removed judges.

A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 879; Mar. 2, 1955, ch. 9, § 1(h), 69 Stat. 10; Aug. 14, 1964, Pub. L. 88–426, title IV, § 403(i), 78 Stat. 434; Dec. 30, 1969, Pub. L. 91–172, title IX, §§ 952, 953, 83 Stat. 730.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–172, § 952(a), provided that an individual may not be appointed a judge of the Tax Court after reaching age 65.

Subsec. (c). Pub. L. 91–172, § 953, substituted provisions fixing salary of Tax Court judges at the same rate and same installments as District Court judges, for provisions that each judge of the Tax Court receive a salary of $30,000 per annum, to be paid in monthly installments.

Subsec. (e). Pub. L. 91–172, § 952(b), substituted provisions that a term in office of any Tax Court judge would expire 15 years after he takes office, for provisions that a term in office of any Tax Court judge would expire 12 years after the expiration of the term for which his predecessor was appointed, and any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed would be appointed only for the unexpired term of his predecessor.

1964—Subsec. (c). Pub. L. 88–426 increased the salary of the judges from $22,500 to $30,000.

1955—Subsec. (c). Act Mar. 2, 1955, increased the salary of the judges from "$15,000" a year to "$22,500".

EFFECTIVE DATE OF 1969 AMENDMENT

Section 962 (b) and (c) of Pub. L. 91–172 provided that:

"(b) The amendment made by section 952(a) [amending subsec. (b) of this section] shall apply to judges appointed after the date of enactment of this Act [Dec. 30, 1969].

"(c) The amendment made by section 952(b) [amending subsec (e) of this section] shall take effect on the date of enactment of this Act [Dec. 30, 1969], except that—

"(1) the term of office being served by a judge of the Tax Court on that date shall expire on the date it would have expired under the law in effect on the date preceding the date of enactment of this Act [Dec. 30, 1969]; and

"(2) a judge of the Tax Court on the date of enactment of this Act [Dec. 30, 1969] may be reappointed in the same manner as a judge of the Tax Court hereafter appointed."

Amendment of subsec. (c) by section 953 of Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426, set out as a note under section 1113 of Title 5, Executive Departments and Government Officers and Employees.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment to this section by act Mar. 2, 1955, effective Mar. 1, 1955, see note under section 31 of Title 2, The Congress.

CERTIFICATION BY JUDGE OF TRAVELING EXPENSES

Pub. L. 91-422, title IV, § 401, Sept. 26, 1970, 84 Stat. 878, provided in part: "That travel expenses of the judges shall be paid upon the written certificate of the judge."

Similar provisions were contained in the following prior appropriation acts:

1969—Sept. 29, 1969, Pub. L. 91-74, title IV, § 5401, 83 Stat. 123.

1968—June 19, 1968, Pub. L. 90-350, title IV, § 401, 82 Stat. 196.

1967—July 7, 1967, Pub. L. 90-47, title IV, § 401, 81 Stat. 118.

1966—June 29, 1966, Pub. L. 89-474, title IV, § 401, 80 Stat. 228.

1965—June 30, 1965, Pub. L. 89-57, title IV, § 401, 79 Stat. 203.

1964—Aug. 1, 1964, Pub. L. 88-392, title IV, § 401, 78 Stat. 375.

1963—June 13, 1963, Pub. L. 88-39, title IV, § 401, 77 Stat. 65.

1962—Aug. 6, 1962, Pub. L. 87-575, title V, § 501, 76 Stat. 317.

1961—Aug. 21, 1961, Pub. L. 87-159, title III, § 301, 75 Stat. 398.

1960—June 30, 1960, Pub. L. 86-561, title III, § 301, 74 Stat. 283.

1959—June 11, 1959, Pub. L. 86-39, title III, § 301, 73 Stat. 70.

1958—Mar. 28, 1958, Pub. L. 85-355, title III, § 301, 72 Stat. 66.

1957—May 31, 1957, Pub. L. 85-37, title III, § 301, 71 Stat. 41.

1956—Apr. 2, 1956, ch. 161, title III, § 301, 70 Stat. 98.

1955—June 1, 1955, ch. 113, title III, § 301, 69 Stat. 78.

1969 INCREASE IN SALARY

Salary of judge increased from $30,000 to $40,000 per annum, commencing February 14, 1969, upon recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

CROSS REFERENCES

Expenditures by Tax Court, see section 7472 of this title.

Retirement of judges, see section 7447 of this title.

Traveling expenses of justices and judges of the United States, see section 456 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7448 of this title.

§ 7444. Organization.

(a) Seal.

The Tax Court shall have a seal which shall be judicially noticed.

(b) Designation of chief judge.

The Tax Court shall at least biennially designate a judge to act as chief judge.

(c) Divisions.

The chief judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the chief judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) Quorum.

A majority of the judges of the Tax Court or of any division thereof shall constitute a quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively. (Aug. 16, 1954, ch. 736, 68A Stat. 880.)

CROSS REFERENCES

Employees of Tax Court, see section 7471 of this title.

Provisions of special application to divisions, see section 7460 of this title.

§ 7445. Offices.

The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 880.)

RULES OF PRACTICE IN THE TAX COURT

Office of the Court, see rule 1, Appendix to this title.

§ 7446. Times and places of sessions.

The times and places of the sessions of the Tax Court and of its divisions shall be prescribed by the chief judge with a view to securing reasonable opportunity to taxpayers to appear before the Tax Court or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable. (Aug. 16, 1954, ch. 736, 68A Stat. 880.)

RULES OF PRACTICE IN THE TAX COURT

Place of trial, see rule 26, Appendix to this title.

Requests for place of trial, see rule 26a, Appendix to this title.

§ 7447. Retirement.

(a) Definitions.

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

(2) The term "Civil Service Commission" means the United States Civil Service Commission.

(3) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(4) Repealed. Pub. L. 91-172, title IX, § 954 (e)(1), Dec. 30, 1969, 83 Stat. 732.

(5) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge, as judge of the Tax Court of the United States, or as a member of the Board of Tax Appeals.

(b) Retirement.

(1) Any judge shall retire upon attaining the age of 70.

(2) Any judge who has attained the age of 65 may retire any time after serving as judge for 15 years or more.

(3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if (A) he has served as a judge of the Tax Court for 15 years or more and (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.

(4) Any judge who becomes permanently disabled from performing his duties shall retire.

Section 8335(a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respect of judges.

(c) Recalling of retired judges.

Any individual who is receiving retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) he shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443 (a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) Retired pay.

Any individual who—

(1) retires under paragraph (1), (2), or (3) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as judge bears to 10; except that the rate of such retired pay shall not be more than the rate of such salary for such period; or

(2) retires under paragraph (4) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate—

(A) equal to the rate of the salary payable to a judge during such period if before he retired he had served as a judge not less than 10 years; or

(B) one-half of the rate of the salary payable to a judge during such period if before he retired he had served as a judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more.

(e) Election to receive retired pay.

Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) may be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) once made, shall be irrevocable;

(3) in the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Civil Service Commission.

The chief judge shall transmit to the Civil Service Commission a copy of each notice filed with him under this subsection.

(f) Individuals receiving retired pay to be available for recall.

Any individual who has elected to receive retired pay under subsection (d) who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

(2) performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer's clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.

(g) Coordination with civil service retirement.

(1) General rule.

Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

(2) Effect of electing retired pay.

In the case of any individual who has filed an election to receive retired pay under subsection (d)—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise);

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to him under subsection (d) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) of title 5 of the United States Code upon making application therefor with the Civil Service Commission.

(h) Retirement for disability.

(1) Any judge who becomes permanently disabled from performing his duties shall certify to the President his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President. If any other judge retires for disability, he shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever any judge who becomes permanently disabled from performing his duties does not retire and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President shall declare such judge to be retired.

(Aug. 16, 1954, ch. 736, 68A Stat. 880; Feb. 2, 1966, Pub. L. 89-354, § 1, 80 Stat. 5; Dec. 30, 1969, Pub. L. 91-172, title IX, §§ 954, 960 (c), (d), 83 Stat. 730, 734.)

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsec. (g)(2)(A), are classified generally to section 8301 et seq. of Title 5, Government Organization and Employees.

The Civil Service Retirement and Disability Fund, referred to in subsec. (g)(2)(B), is provided for in section 8348 of Title 5.

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 954(e)(1), struck out par. (4) which defined the term "Civil Service Retirement Act".

Subsec. (a)(1). Pub. L. 91-172, § 960(c), substituted "United States Tax Court" for "Tax Court of the United States".

Subsec. (a)(5). Pub. L. 91-172, § 960(d), inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (b). Pub. L. 91-172, § 954(a), substituted provisions authorizing retirement at age 70, or age 65 after serving 15 years, or when any judge has become permanently disabled, authorizing any judge not reappointed who has served 15 years or more to retire under enumerated condition, and rendering section 8335(a) of Title 5 not applicable to judges, for provisions authorizing retirement after a judge has served 18 years, requiring anyone who served as a judge for 10 years or more and attained the age of 70 years to retire no later than the close of the third month beginning after the month in which he attained 70 years or the month completing the tenth year of service or August 1953, and rendering section 2(a) of the Civil Service Retirement Act not applicable to judges.

Subsec. (d). Pub. L. 91-172, § 954(b), substituted provisions specifying methods of computation of retirement pay under subsec. (b) of this section so as to conform such provisions to subsec. (b) (relating to conditions for retiring), for provisions specifying methods of computation for retirement pay under former subsec. (b) of this section (relating to conditions for retiring).

Subsec. (g)(1). Pub. L. 91-172, § 954(e)(2), substituted "civil service retirement laws" and "such civil service retirement laws apply" for "Civil Service Retirement Act" and "such Act applies", respectively.

Subsec. (g)(2). Pub. L. 91-172, § 954(c), substituted provisions that any individual electing to receive retirement pay under subsec. (d) of this section is not to receive any payment under the civil service retirement laws, and no deduction is to be made for the Civil Service Retirement and Disability Fund, and a lump-sum credit computed under section 8331(8) of Title 5 is to be paid, for provisions which enumerated the effects and conditions of electing retirement pay under former subsec. (d) of this section.

Subsec. (g)(3). Pub. L. 91-172, § 954(c), struck out subsec. (g)(3) which enumerated the conditions and effects of waiving civil service benefits in lieu of retirement pay under former subsec. (d) of this section.

Subsec. (g)(4). Pub. L. 91-172, § 954(c), struck out subsec. (g)(4) which provided that section (6)(4), (6) of the Civil Service Retirement Act would be applicable to retirement pay accruing under former subsec. (d) of this section.

Subsec. (h). Pub. L. 91-172, § 954(d), added subsec. (h).

1966—Subsec. (d). Pub. L. 89-354 substituted "during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period" for "at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge" and "the rate of such salary for such period" for "the rate of such salary" wherever appearing.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(d) of Pub. L. 91-172 provided that: "The amendments made by subsections (a), (b), and (d) of section 954 [amending subescs. (b), (d), and (h) of this ection] shall apply to—

"(1) all judges of the Tax Court retiring on or after the date of enactment of this Act [Dec. 30, 1969], and

"(2) all individuals performing judicial duties pursuant to section 7447(c) [subsec. (c) of this section] or receiving retired pay pursuant to section 7447(d) [subsec. (d) of this section] on the day preceding the date of enactment of this Act—[this section] [Dec. 30, 1969].

Any individual who has served as a judge of the Tax Court for 18 years or more by the end of one year after the date of the enactment of this Act [Dec. 30, 1969] may retire in accordance with the provisions of section 7447 of the Internal Revenue Code of 1954 [this section] as in effect on the day preceding the date of the enactment of this Act—[Dec. 30, 1969]. Any individual who is a judge of the Tax Court on the date of the enactment of this Act [Dec. 30, 1969] may retire under the provisions of section 7447 of such Code [this section] upon the completion of the term of his office, if he is not reappointed as a judge of the Tax Court and gives notice to the President within the time prescribed by section 7447(b) of such Code [subsec. (b) of this section] (or if his term expires within 6 months after the date of enactment of this Act [Dec. 30, 1969], gives notice to the President before the expiration of 3 months after the date of enactment of this Act [Dec. 30, 1969]), and shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to a judge as the number of years he has served as a judge of the Tax Court bears to 15; except that the rate of such retired pay shall not exceed the rate of the salary of a judge of the Tax Court. For purposes of the preceding sentence the years of service as a judge of the Tax Court shall be determined in the manner set forth in section 7447(d) of such Code [subsec. (d) of this section]."

Amendment of subsecs. (a)(4) and (g) of this section by section 954(c), (e), of Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–354 provided that: "The amendments made by the first section of this Act [to subsec. (d) of this section and section 1106(d) of I.R.C. 1939] shall apply with respect to retired pay accruing under section 1106 of the Internal Revenue Code of 1939 or section 7447 of the Internal Revenue Code of 1954 [this section] on or after the first day of the first calendar month which begins after the date of enactment of this Act [Feb. 2, 1966]."

CROSS REFERENCES

Retirement of judges of courts of the United States generally, see section 371 et seq., of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7448 of this title.

§ 7448. Annuities to widows and dependent children of judges.

(a) Definitions.

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

(2) The term "judge" means the chief judge or a judge of the Tax Court, including any individual receiving retired pay (or compensation in lieu of retired pay) under section 7447 or under section 1106 of the Internal Revenue Code of 1939 whether or not performing judicial duties pursuant to section 7447(c) or pursuant to section 1106(d) of the Internal Revenue Code of 1939.

(3) The term "chief judge" means the chief judge of the Tax Court.

(4) The term "judge's salary" means the salary of a judge received under section 7443(c), retired pay received under section 7447(d), and compensation (in lieu of retired pay) received under section 7447(c).

(5) The term "survivors annuity fund" means the Tax Court judges survivors annuity fund established by this section.

(6) The term "widow" means a surviving wife of an individual, who either (A) shall have been married to such individual for at least 2 years immediately preceding his death or (B) is the mother of issue by such marriage, and who has not remarried.

(7) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of 18 years or who because of physical or mental disability is incapable of self-support.

(b) Election.

Any judge may by written election filed while he is a judge (except that in the case of an individual who is not reappointed following expiration of his term of office, it may be made at any time before the day after the day on which his successor takes office) bring himself within the purview of this section. In the case of any judge other than the chief judge the election shall be filed with the chief judge; in the case of the chief judge the election shall be filed as prescribed by the Tax Court.

(c) Salary deductions.

There shall be deducted and withheld from the salary of each judge electing under subsection (b) a sum equal to 3 percent of such judge's salary. The amounts so deducted and withheld from such judge's salary shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "Tax Court judges survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Each judge electing under subsection (b) shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judical services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

(d) Deposits in survivors annuity fund.

Each judge electing under subsection (b) shall deposit, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the survivors annuity fund, a sum equal to 3 percent of his judge's salary and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of section 8332 of title 5 of the United States Code. Each such judge may elect to make such deposits in installments during the continuance of his service as a judge in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (n), except that no deposit shall be required from a judge for any year with respect to which deductions from his salary were actually made under the civil service retirement laws and no deposit shall be required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(e) Investment of survivors annuity fund.

The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the survivors annuity fund as in his judgment may not be immediately required for the payment of the annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (g), (h), and (j).

(f) Crediting of deposits.

The amount deposited by or deducted and withheld from the salary of each judge electing to bring himself within the purview of this section for credit to the survivors annuity fund shall be credited to an individual account of such judge.

(g) Termination of service.

If the service of any judge electing under subsection (b) terminates other than pursuant to the provisions of section 7447 or other than pursuant to section 1106 of the Internal Revenue Code of 1939, the amount credited to his individual account, together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. For the purpose of this section, the service of any judge electing under subsection (b) who is not reappointed following expiration of his term but who, at the time of such expiration, is eligible for and elects to receive retired pay under section 7447 shall be deemed to have terminated pursuant to said section.

(h) Entitlement to annuity.

In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made—

(1) if such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) if such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed $900 per year divided by the number of such children or $360 per year, whichever is lesser; or

(3) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed $480 per year.

The annuity payable to a widow under this subsection shall be terminable upon such widow's death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

(i) Determination of dependency and disability.

Questions of dependency and disability arising under this section shall be determined by the chief judge subject to review only by the Tax Court, the decision of which shall be final and conclusive The chief judge may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination so ordered or directed.

(j) Payments in certain cases.

(1) In any case in which—

(A) a judge electing under subsection (b) shall die while in office (whether in regular active service or retired from such service under section 7447), before having rendered 5 years of civilian service computed as prescribed in subsection (n), or after having rendered 5 years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (h), or

(B) the right of all persons entitled to annuity under subsection (h) based on the service of such judge shall terminate before a valid claim therefor shall have been established,

the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

(i) to the beneficiary or beneficiaries whom the judge may have designated by a writing filed prior to his death with the chief judge, except that in the case of the chief judge such designation shall be by a writing filed by him, prior to his death, as prescribed by the Tax Court;

(ii) if there be no such beneficiary, to the widow of such judge;

(iii) if none of the above, to the child or children of such judge and the descendents of any deceased children by representation;

(iv) if none of the above, to the parents of such judge or the survivor of them;

(v) if none of the above, to the duly appointed executor or administrator of the estate of such judge; and

(vi) if none of the above, to such other next of kin of such judge as may be determined by the chief judge to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the widow, child, or parent of a judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in subsections (a) (6) and (7).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (1).

(3) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) to the duly appointed executor or administrator of the estate of such person;

(B) if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(k) Payments to persons under legal disability.

Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(*l*) Method of payment of annuities.

Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(m) Computation of annuities.

The annuity of the widow of a judge electing under subsection (b) shall be an amount equal to the sum of (1) 1¼ percent of the average annual salary received by such judge for judicial service and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5 of the United States Code, and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½ percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable.

(n) Includible service.

Subject to the provisions of subsection (d), the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a member of the United States Board of Tax Appeals, as a judge of the Tax Court of the United States, and as a judge of the Tax Court, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 8332 of title 5 of the United States Code.

(*o*) Simultaneous entitlement.

Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.

(p) Estimates of expenditures.

The chief judge shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Govern-

ment temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

(q) Transitional provision.

In the case of a judge who dies within 6 months after the date of enactment of this section after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his widow and surviving dependents as is provided in this section, as if such judge had elected on the day of his death to bring himself within the purview of this section but had not made the deposit provided for by subsection (d). An annuity shall be payable under this section computed upon the basis of the actual length of service as a judge and other allowable service of the judge and subject to the reduction required by subsection (d) even though no deposit has been made, as required by subsection (h) with respect to any of such service.

(r) Waiver of civil service benefits.

Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the civil service retirement laws. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7447(e).

(s) Authorization of appropriation.

Funds necessary to carry out the provisions of this section may be appropriated out of any money in the Treasury not otherwise appropriated. (Added Pub. L. 87-370, § 1, Oct. 4, 1961, 75 Stat. 796, and amended Pub. L. 91-172, title IX, §§ 955, 960(c), (e), Dec. 30, 1969, 83 Stat. 732, 734.)

REFERENCES IN TEXT

The civil service retirement laws referred to in text, are classified generally to section 8331 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1969—Subsec. (a)(1). Pub. L. 91-172, § 960(c), substituted "United States Tax Court" for "Tax Court of the United States."

Subsec. (b). Pub. L. 91-172, § 955(a), substituted provisions authorizing a judge to file notice of election to take benefits relating to survivor annuities while a judge, and if not reappointed, authorizing such election at any time before the day after the day on which his successor takes office, for provisions authorizing a judge to file within 6 months after he takes office or is reappointed, or within 6 months after he becomes eligible for retirement under former section 7447(b) of this title, or within 6 months after Oct. 4, 1961.

Subsec. (d). Pub. L. 91-172, § 955(d) (1), (2), substituted "civil service retirement laws" for "Civil Service Retirement Act" and "section 8332 of title 5 of the United States Code" for "section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)".

Subsec. (h). Pub. L. 91-172, § 955(b)(1), substituted "civil service retirement laws" for "Civil Service Retirement Act".

Subsec. (m). Pub. L. 91-172, § 955(b)(3), substituted "section 2107 of title 5 of the United States Code" for "section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2251(c))".

Subsec. (n). Pub. L. 91-172, §§ 955(b)(2), 960(e), substituted "section 8332 of title 5 of the United States Code" for "section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)" and inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (r). Pub. L. 91-172, § 955(b)(1), (4), substituted "civil service retirement laws" for "Civil Service Retirement Act" and substituted "an election filed under section 7447(e)" for "a waiver filed under section 7447(g)(3)".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91-172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91-172, set out as a note under section 7441 of this title.

PART II.—PROCEDURE

Sec.
7451. Fee for filing petition.
7452. Representation of parties.
7453. Rules of practice, procedure, and evidence.
7454. Burden of proof in fraud and transferee cases.
7455. Service of process.
7456. Administration of oaths and procurement of testimony.
7457. Witness fees.
7458. Hearings.
7459. Reports and decisions.
7460. Provisions of special application to divisions.
7461. Publicity of proceedings.
7462. Publication of reports.
7463. Disputes involving $1,000 or less.
7464. Provisions of special application to transferees.

AMENDMENTS

1969—Pub. L. 91-172, title IX, § 957(b), Dec. 30, 1969, 83 Stat. 733, added item 7463 and redesignated former item 7463 as 7464.

§ 7451. Fee for filing petition.

The Tax Court is authorized to impose a fee in an amount not in excess of $10 to be fixed by the Tax Court for the filing of any petition for the redetermination of a deficiency. (Aug. 16, 1954, ch. 736, 68A Stat. 884.)

CROSS REFERENCES

Disposition of fees, see section 7473 of this title.

RULES OF PRACTICE IN THE TAX COURT

Fee for filing petition, see rule 7 (b), Appendix to this title.

Method of payment of fees, see rule 1 (e), Appendix to this title.

§ 7452. Representation of parties.

The Secretary or his delegate shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling. (Aug. 16, 1954, ch. 736, 68A Stat. 884; Sept. 22, 1959, Pub. L. 86-368, § 2(a), 73 Stat. 648.)

AMENDMENTS

1959—Pub. L. 86-368 substituted "Chief Counsel for the Internal Revenue Service or his delegate" for "Assistant General Counsel of the Treasury Department serving as Chief Counsel of the Internal Revenue Service, or the delegate of such Chief Counsel,".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-368 effective when the Chief Counsel for the Internal Revenue Service first appointed pursuant to amendment of section 7801 of this title by Pub. L. 86-368 qualifies and takes office, see note set out under section 7801 of this title.

§ 7453. Rules of practice, procedure, and evidence.

Except in the case of proceedings conducted under section 7463, the proceedings of the Tax Court and

its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia. (Aug. 16, 1954, ch. 736, 68A Stat. 884; Dec. 30, 1969, Pub. L. 91-172, title IX, § 960(f), 83 Stat. 734.)

AMENDMENTS

1969—Pub. L. 91-172 inserted reference to the exception in the case of proceedings conducted under section 7463 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91-172, set out as a note under section 7463 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7463 of this title.

§ 7454. Burden of proof in fraud, foundation manager, and transferee cases.

(a) Fraud.

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(b) Foundation managers.

In any proceeding involving the issue whether a foundation manager (as defined in section 4946(b)) has "knowingly" participated in an act of self-dealing (within the meaning of section 4941), participated in an investment which jeopardizes the carrying out of exempt purposes (within the meaning of section 4944), or agreed to the making of a taxable expenditure (within the meaning of section 4945), the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(c) Cross reference.

For provisions relating to burden of proof as to transferee liability, see section 6902 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(57), 83 Stat. 532.)

AMENDMENTS

1969—Pub. L. 91-172 added "foundation manager" cases to section catchline.

Subsec. (b). Pub. L. 91-172 added subsec. (b). Former subsec. (b) was redesignated (c).

Subsec. (c). Pub. L. 91-172 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as a note under section 4940 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 162 of this title.

§ 7455. Service of process.

The mailing by certified mail or registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process. (Aug. 16, 1954, ch. 736, 68A Stat. 884; Sept. 2, 1958, Pub. L. 85-866, title I, § 89 (b), 72 Stat. 1665.)

AMENDMENTS

1958—Pub. L. 85-866 inserted "certified mail or" preceding "registered mail".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment applicable only if mailing occurred after Sept. 2, 1958, see section 89 (d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

§ 7456. Administration of oaths and procurement of testimony.

(a) In general.

For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

(1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) Production of records in the case of foreign corporations, foreign trusts or estates and nonresident alien individuals.

The Tax Court or any division thereof, upon motion and notice by the Secretary or his delegate, and upon good cause shown therefor, shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions, that the petitioner is unable to produce, to make available to the Secretary or his delegate, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any division thereof, may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control. If the petitioner fails or refuses to comply with any of the provisions of such order, after reasonable time for compliance has been afforded to him, the Tax Court or any division thereof, upon motion, shall make an order striking out pleadings or parts thereof, or dismissing the proceeding or any part thereof, or rendering a judgment by default against the petitioner. For the purpose of this subsection, the term "foreign trust or estate" includes an estate or trust, any fiduciary of which is a foreign corporation or nonresident alien individual; and the term "control" is not limited to legal control.

(c) Commissioners.

The chief judge may from time to time appoint commissioners who shall proceed under such rules and regulations as may be promulgated by the Tax Court. Each commissioner shall receive the same compensation and travel and subsistence allowances provided by law for commissioners of the United States Court of Claims.

(d) Incidental powers.

The Tax Court and each division thereof shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

It shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 885; Dec. 30, 1969, Pub. L. 91–172, title IX, §§ 956, 958, 83 Stat. 732, 734.)

AMENDMENTS

1969—Subsec (c). Pub. L. 91–172, § 958, provided that commissioners be compensated at rates identical to those of commissioners of the United States Court of Claims, and substituted provisions authorizing the chief judge of the Tax Court to appoint Commissioners for provisions authorizing attorneys from the legal staff of the Tax Court to act as Commissioners.

Subsec. (d). Pub. L. 91–172, § 956, added subsec. (d).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

CROSS REFERENCES

Travel and subsistence expenses of employees of the Tax Court, see section 7471 (b) of this title.

Travel and maintenance expenses of commissioners of Court of Claims, see section 792 (b) of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7457 of this title.

§ 7457. Witness fees.

(a) Amount.

Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) Payment.

Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) Witnesses for Secretary or his delegate.

In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

(2) Other Witnesses.

In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

(Aug. 16, 1954, ch. 736, 68A Stat. 886.)

CROSS REFERENCES

Fees and mileage of witnesses in courts of United States, see section 1821 of Title 28, Judiciary and Judicial Procedure.

§ 7458. Hearings.

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary or his delegate. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary nor his delegate shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies. (Aug. 16, 1954, ch. 736, 68A Stat. 886.)

§ 7459. Reports and decisions.

(a) Requirement.

A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) Inclusion of findings of fact or opinions in report.

It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions.

(c) Date of decision.

A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Secretary or his delegate, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

(d) Effect of decision dismissing petition.

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary or his delegate. An

order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(e) Effect of decision that tax is barred by limitation.

If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) Findings of fact as evidence.

The findings of the Board of Tax Appeals made in connection with any decision prior to February 26, 1926, shall, notwithstanding the enactment of the Revenue Act of 1926 (44 Stat. 9), continue to be prima facie evidence of the facts therein stated.

(g) Penalty.

For penalty for taxpayer instituting proceedings before Tax Court merely for delay, see section 6673.

(Aug. 16, 1954, ch. 736, 68A Stat. 886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7463 of this title.

§ 7460. Provisions of special application to divisions.

(a) Hearings, determinations, and reports.

A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) Effect of action by a division.

The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 887.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7463 of this title.

§ 7461. Publicity of proceedings.

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Secretary or his delegate, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable. (Aug. 16, 1954, ch. 736, 68A Stat. 887.)

CROSS REFERENCES

Management and disposition of records, see chapters 29, 31 and 33 of Title 44, Public Printing and Documents.

§ 7462. Publication of reports.

The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents. (Aug. 16, 1954, ch. 736, 68A Stat. 887.)

§ 7463. Disputes involving $1,000 or less.

(a) In general.

In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) $1,000 for any one taxable year, in the case of the taxes imposed by subtitle A and chapter 12, or

(2) $1,000, in the case of the tax imposed by chapter 11,

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

(b) Finality of decisions.

A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

(c) Limitation of jurisdiction.

In any case in which the proceedings are conducted under this section, notwithstanding the provisions of sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

(d) Discontinuance of proceedings.

At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary or his delegate may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the amount of such excess is large enough to justify

granting such request, discontinue further proceedings in such case under this section. Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of sections 6214(a) and 6512(b) apply.

(e) Amount of deficiency in dispute.

For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply. (Added Pub. L. 91–172, title IX, § 957(a), Dec. 30, 1969, 83 Stat. 733.)

EFFECTIVE DATE

Section 962(e) of Pub. L. 91–172 provided that: "The amendments made by sections 957 [enacting this section] and 960 (a), (b), (f), and (i) [amending sections 6214 (a), 6512(b), 7453, and 7487 of this title] shall take effect one year after the date of enactment of this Act [Dec. 30, 1969]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6214, 6512, 7453, 7481 of this title.

§ 7464. Provisions of special application to transferees.

(1) For rules of burden of proof in transferee proceedings, see section 6902 (a).

(2) For authority of Tax Court to prescribe rules by which a transferee of property of a taxpayer shall be entitled to examine books, records and other evidence, see section 6902 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 888, § 7464, formerly § 7463, renumbered Dec. 30, 1969, Pub. L. 91–172, title IX, § 957(a), 83 Stat. 733.)

PART III.—MISCELLANEOUS PROVISIONS

Sec.
7471. Employees.
7472. Expenditures.
7473. Disposition of fees.
7474. Fee for transcript of record.

§ 7471. Employees.

(a) Appointment and compensation.

The Tax Court is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 (63 Stat. 954; 5 U. S. C. chapter 21), as amended, to fix the compensation of, such employees as may be necessary efficiently to execute the functions vested in the Tax Court.

(b) Expenses for travel and subsistence.

The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U. S. C. chapter 16).

(c) Commissioners.

For compensation and travel and subsistence allowances of commissioners of the Tax Court, see section 7456(c).

(Aug. 6, 1954, ch. 736, 68A Stat. 888; Dec. 30, 1969, Pub. L. 91–172, title IX, § 960(g), 83 Stat. 734.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–172 inserted reference to the compensation of commissioners.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

§ 7472. Expenditures.

The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. All expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the chief judge. (Aug. 16, 1954, ch. 736, 68A Stat. 888.)

§ 7473. Disposition of fees.

All fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts. (Aug. 16, 1954, ch. 736, 68A Stat. 888.)

CROSS REFERENCES

Fees—

Filing petition, see section 7451 of this title.

Transcript of record, see section 7474 of this title.

§ 7474. Fee for transcript of record.

The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof. (Aug. 16, 1954, ch. 736, 68A Stat. 888.)

CROSS REFERENCES

District court, subject to approval of Judicial Conference, to fix fees for transcripts of records, see section 753 (f) of Title 28, Judiciary and Judicial Procedure.

Subchapter D.—Court Review of Tax Court Decisions

Sec.
7481. Date when Tax Court decision becomes final.
7482. Courts of review.
7483. Notice of appeal.
7484. Change of incumbent in office.
7485. Bond to stay assessment and collection.
7486. Refund, credit, or abatement of amounts disallowed.
7487. Cross references.

AMENDMENTS

1969—Pub. L. 91–172, title IX, §§ 959(b), 960(i)(2), Dec. 30, 1969, 83 Stat. 734, 735, substituted "Notice of appeal" for "Petition for review" in item 7483 and substituted "Cross references" for "Cross reference" in item 7487.

§ 7481. Date when Tax Court decision becomes final.

(a) Reviewable decisions.

Except as provided in subsection (b), the decision of the Tax Court shall become final—

(1) Timely notice of appeal not filed.

Upon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time; or

(2) Decision affirmed or appeal dismissed.

(A) Petition for certiorari not filed on time.

Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals and no petition for certiorari has been duly filed; or

(B) Petition for certiorari denied.

Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals; or

(C) After mandate of Supreme Court.

Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the appeal dismissed.

(3) Decision modified or reversed.

(A) Upon mandate of Supreme Court.

If the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(B) Upon mandate of the Court of Appeals.

If the decision of the Tax Court is modified or reversed by the United States Court of Appeals, and if—

(i) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) the petition for certiorari has been denied, or

(iii) the decision of the United States Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the United States Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(4) Rehearing.

If the Supreme Court orders a rehearing; or if the case is remanded by the United States Court of Appeals to the Tax Court for a rehearing, and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals has been affirmed by the Supreme Court,

then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered.

(5) Definition of "mandate."

As used in this section, the term "mandate", in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

(b) Nonreviewable decisions.

The decision of the Tax Court in a proceeding conducted under section 7463 shall become final upon the expiration of 90 days after the decision is entered. (Aug. 16, 1954, ch. 736, 68A Stat. 889; Dec. 30, 1969, Pub. L. 91–172, title IX, § 960(h)(1), 83 Stat. 734.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, § 960(h)(1)(A)–(C), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, inserted reference to the exception provided for in subsec. (b), substituted "notice of appeal" for "petition for review" in par. (1), and substituted references to dismissal of appeal for references to dismissal of petition for review in par. (2).

Subsec. (b). Pub. L. 91–172, § 960(h)(1)(D), added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91–172, set out as a note under section 7438 of this title.

CROSS REFERENCES

Date of decision of Tax Court, see section 7459 (c) of this title.

Final decisions of Tax Court for purposes of chapter 63 and Subtitles A or B of this title, see section 6214 (d) of this title.

Time for petition for—

Certiorari to Supreme Court, see section 2101 of Title 28, Judiciary and Judicial Procedure.

Notice of appeal, see section 7483 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6214 of this title.

§ 7482. Courts of review.

(a) Jurisdiction.

The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

(b) Venue.

(1) In general.

Except as otherwise provided in paragraph (2), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

(B) in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises.

If for any reason neither subparagraph (A) nor (B) applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court.

(2) By agreement.

Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary or his delegate and the taxpayer by stipulation in writing.

(c) Powers.

(1) To affirm, modify, or reverse.

Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) To make rules.

Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2072 of title 28 of the United States Code.

(3) To require additional security.

Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) To impose damages.

The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the notice of appeal was filed merely for delay.

(Aug. 16, 1954, ch. 736, 68A Stat. 890; Nov. 2, 1966, Pub. L. 89–713, § 3(c), 80 Stat. 1109; Dec. 30, 1969, Pub. L. 91–172, title IX, § 960(h)(2), 83 Stat. 735.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–172 substituted "section 2072 of title 28" for "section 2074 of title 28" in par. (2) and struck out provision for the applicability of rules adopted under authority of section 1141 (c)(2) of the Internal Revenue Act of 1939 until such time as rules prescribed by the Supreme Court under section 2072 of title 28 become effective and, in par. (4), substituted "notice of appeal" for "petition".

1966—Subsec. (b)(1). Pub. L. 89–713 substituted provisions requiring that appeals from Tax Court decisions be made to the Court of Appeals for the circuit in which the taxpayer resides, in the case of a taxpayer other than a corporation, and, in the case of appeals by corporations, to the Court of Appeals for the circuit in which the corporation has its principal place of business or principal office or agency for provisions prescribing review by the Court of Appeals for the circuit in which was located the office to which was made the return of the tax in respect of which the liability arose, and added provision for the time of determining legal residence, place of business, or principal office or agency.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91–172, set out as a note under section 7483 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of subsec. (b)(1) by section 3(c) of Pub. L. 89–713 applicable to all decisions of the Tax Court entered after Nov. 2, 1966, see section 3(d) of Pub. L. 89–713, set out as a note under section 7422 of this title.

CROSS REFERENCES

Courts of appeals; certiorari; appeal; certified questions, see section 1254 of Title 28, Judiciary and Judicial Procedure.

Damages and costs on affirmance, see section 1912 of Title 28, Judiciary and Judicial Procedure.

Determination of appeal by appellate court, see section 2106 of Title 28, Judiciary and Judicial Procedure.

Final decision of the Tax Court, see section 7481 of this title.

Findings of fact or opinion of Tax Court, see section 7459 of this title.

Internal revenue districts, see section 7621 of this title.

Jurisdiction of Tax Court, see section 7442 of this title.

Place for paying tax shown on returns, see section 6151 of this title.

Rules for review of decisions of the Tax Court, see section 2074 of Title 28, Judiciary and Judicial Precedure.

§ 7483. Notice of appeal.

Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered. (Aug. 16, 1954, ch. 736, 68A Stat. 891; Dec. 30, 1969, Pub. L. 91–172, title IX, § 959(a), 83 Stat. 734.)

AMENDMENTS

1969—Pub. L. 91–172 substituted references to notice of appeal for references to petition for review, and otherwise generally altered the section as to time for appeal and terminology in order to confrom section to the form of the Federal Rules of Appellate Procedure.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 962(f) of Pub. L. 91–172 provided that: "The amendments made by sections 959 and 960(h) [amending this section and sections 7481, 7482, and 7485 of this title] shall take effect 30 days after the date of the enactment of this Act [Dec. 30, 1969]. In the case of any decision of the Tax Court entered before the 30th day after the date of the enactment of this Act [Dec. 30, 1969], the United States Courts of Appeals shall have jurisdiction to hear an appeal from such decision, if such appeal was filed within the time prescribed by Rule 13(a) of the Federal Rules of Appellate Procedure or by section 7483 of the Internal Revenue Code of 1954 [this section] as in effect at the time the decision of the Tax Court was entered."

CROSS REFERENCES

Date of decision of Tax Court, see section 7459 (c) of this title.

Fees and costs of Court of Appeals, see section 1913 of Title 28, Judiciary and Judicial Procedure.

Filing of petition for review not operative as stay of assessment or collection, see section 7485 (a) of this title.

Time for filing petition in Tax Court, see section 6213 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7482, 7485 of this title.

§ 7484. Change of incumbent in office.

When the incumbent of the office of Secretary or his delegate changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 891.)

§ 7485. Bond to stay assessment and collection.

(a) Upon notice of appeal.

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a notice of appeal in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) on or before the time his notice of appeal is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the notice of appeal is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) has filed a jeopardy bond under the income or estate tax laws.

If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the appeal bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Cross references.

(1) For requirement of additional security notwithstanding this section, see section 7482 (c) (3).

(2) For deposit of United States bonds or notes in lieu of sureties, see 6 U. S. C. 15.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Dec. 30, 1969, Pub. L. 91–172, title IX, § 960(h)(3), 83 Stat. 735.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172 substituted "notice of appeal" for "petition for review" and "appeal bond" for "review bond".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 to take effect 30 days after Dec. 30, 1969; see section 962(f) of Pub. L. 91–172, set out as a note under section 7483 of this title.

CROSS REFERENCES

Bond to stay collection of jeopardy assessments, see section 6863 of this title.

Notice of appeal, see section 7483 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7101 of this title.

§ 7486. Refund, credit, or abatement of amounts disallowed.

In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated. (Aug. 16, 1954, ch. 736, 68A Stat. 891.)

CROSS REFERENCES

Abatements, credits, and refunds see section 6401 et seq. of this title.

Civil actions for refund, see section 7422 of this title.

§ 7487. Cross references.

(1) Nonreviewability.—For nonreviewability of Tax Court decisions in small claims cases, see section 7463(b).

(2) Transcripts.—For authority of the Tax Court to fix fees for transcript of records, see section 7474.

(Aug. 16, 1954, ch. 736, 68A Stat. 892; Dec. 30, 1969, Pub. L. 91–172, title IX, § 960(i)(1), 83 Stat. 735.)

AMENDMENTS

1969—Pub. L. 91–172 inserted reference to section 7463 (b) for nonreviewability of Tax Court decisions in small claims cases.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 to take effect one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as a note under section 7463 of this title.

Subchapter E.—Miscellaneous Provisions

Sec.
7492. Enforceability of cotton futures contracts.

AMENDMENTS

1970—Pub. L. 91–513, title III, § 1101(b)(5)(B), Oct. 27, 1970, 84 Stat. 1292, struck out item "7491. Burden of proof of exemptions in case of marihuana offenses."

Pub. L. 91–452, title II, § 233, Oct. 15, 1970, 84 Stat. 930, struck out item 7493 "Immunity of witnesses in cases relating to cotton futures."

§ 7491. Repealed. Pub. L. 91–513, title III, § 1101(b)(5)(A), Oct. 27, 1970, 84 Stat. 1292.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 893, placed the burden of proof in establishing the applicability of an exemption upon the defendant in the case of marihuana offenses.

EFFECTIVE DATE OF REPEAL

Repeal effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of this section by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 7492. Enforceability of cotton futures contracts.

No contract of sale of cotton for future delivery mentioned in section 4851 (a), which does not conform to the requirements of section 4853 and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. (Aug. 16, 1954, ch. 736, 68A Stat. 893.)

§ 7493. Repealed. Pub. L. 91–452, title II, § 232, Oct. 15, 1970, 84 Stat. 930.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 893, provided that no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 of this title withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39 of this title or of any regulation made pursuant to such chapter, but that such person called by such officer who testifies in the case be exempt from prosecution for any offense to which his testimony relates. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Repeal of this section by Pub. L. 91–452 not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

Chapter 77.—MISCELLANEOUS PROVISIONS

Sec.
7501. Liability for taxes withheld or collected.
7502. Timely mailing treated as timely filing and paying.
7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.
7504. Fractional parts of a dollar.
7505. Sale of personal property acquired by the United States.
7506. Administration of real estate acquired by the United States.
7507. Exemption of insolvent banks from tax.
7508. Time for performing certain acts postponed by reason of war.
7509. Expenditures incurred by the Post Office Department.
7510. Exemption from tax of domestic goods purchased for the United States.
7512. Separate accounting for certain collected taxes, etc.
7513. Reproduction of returns and other documents.
7514. Authority to prescribe or modify seals.
7515. Special statistical studies and compilations and other services on request.
7516. Supplying training and training aids on request.

AMENDMENTS

1966—Pub. L. 89–719, title I, § 111(c)(2), Nov. 2, 1966, 80 Stat. 1145, substituted "acquired" for "purchased" in item 7505.

Pub. L. 89–713, § 5(b), Nov. 2, 1966, 80 Stat. 1111, added "and paying" at the end of item 7502.

1962—Pub. L. 87–870, § 3(a)(2), Oct. 23, 1962, 76 Stat. 1161, added items 7515 and 7516.

Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, repealed item 7511.

1958—Pub. L. 85–866, title I, §§ 90(b), 91(b) Sept. 2, 1958, 72 Stat. 1666, 1667, added items 7513 and 7514.

Pub. L. 85–321, § 3(a), Feb. 11, 1958, 72 Stat. 6, added item 7512.

§ 7501. Liability for taxes withheld or collected.

(a) General rule.

Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(b) Penalties.

For penalties applicable to violations of this section, see sections 6672 and 7202.

(Aug. 16, 1954, ch. 736, 68A Stat. 895.)

§ 7502. Timely mailing treated as timely filing and paying.

(a) General rule.

(1) Date of delivery.

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(2) Mailing requirements.

This subsection shall apply only if—

(A) the postmark date falls within the prescribed period or on or before the prescribed date—

(i) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or

(ii) for making the payment (including any extension granted for making such payment), and

(B) the return, claim, statement, or other document, or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

(b) Postmarks.

This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations prescribed by the Secretary or his delegate.

(c) Registered and certified mailing.

(1) Registered mail.

For purposes of this section, if any such return, claim, statement, or other document, or payment, is sent by United States registered mail—

(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

(B) the date of registration shall be deemed the postmark date.

(2) Certified mail.

The Secretary or his delegate is authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(d) Exceptions.

This section shall not apply with respect to—

(1) the filing of a document in, or the making of a payment to, any court other than the Tax Court,

(2) currency or other medium of payment unless actually received and accounted for, or

(3) returns, claims, statements, or other documents, or payments, which are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than by mailing.

(e) Mailing of deposits.

(1) Date of deposit.

If any deposit required to be made (pursuant to regulations prescribed by the Secretary or his delegate under section 6302(c)) on or before a prescribed date is, after such date, delivered by the United States mail to the bank or trust company authorized to receive such deposit, such deposit shall be deemed received by such bank or trust company on the date the deposit was mailed.

(2) Mailing requirements.

Paragraph (1) shall apply only if the person required to make the deposit establishes that—

(A) the date of mailing falls on or before the second day before the prescribed date for making the deposit (including any extension of time granted for making such deposit), and

(B) the deposit was, on or before such second day, mailed in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the bank or trust company authorized to receive such deposit.

In applying subsection (c) for purposes of this subsection, the term "payment" includes "deposit", and the reference to the postmark date refers to the date of mailing.

(Aug. 16, 1954, ch. 736, 68A Stat. 895; Sept. 2, 1958, Pub. L. 85–866, title I, § 89(a), 72 Stat. 1665; Nov. 2, 1966, Pub. L. 89–713, § 5(a), 80 Stat. 1110; June 28, 1968, Pub. L. 90–364, title I, § 106(a), 82 Stat. 266.)

AMENDMENTS

1968—Subsec. (e). Pub. L. 90–364 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–713 added the filing of tax returns and the payments of tax to the list of operations to which the timely-mailing-timely-filing provisions of the subsec. apply and altered the subsec. structurally by dividing its provisions into pars. (1) and (2).

Subsec. (b). Pub. L. 89–713 substituted "Postmarks" for "Stamp machine" as the subsec. catchline.

Subsec. (c). Pub. L. 89–713 added returns and payments to the list of operations to which the timely-mailing-timely-filing provisions apply and altered par. (1) structurally by dividing its provisions into subpars. (A) and (B).

Subsec. (d). Pub. L. 89–713 denominated existing provisions as par. (1) and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85–866 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1968 AMENDMENT

Section 106(b) of Pub. L. 90–364 provided that: "The amendment made by subsec. (a) [adding subsec. (e) of this section] shall apply only as to mailing occurring after the date of the enactment of this Act [June 28, 1968]."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 5(c) of Pub L. 89–713 provided that: "The amendments made by this section [amending this section] shall apply only if the mailing occurs after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 89 (d) of Pub. L. 85–866 provided that: "This section [amending subsec. (c) of this section and sections 167 (d), 6164 (d) (2), 6212 (a) (b) (2), 6532 (a) (1) (4) and 7455 of this title] shall apply only if the mailing occurs after the date of the enactment of this Act [Sept. 2, 1958]."

CROSS REFERENCES

Period of limitation on filing claim for refund, see section 6511 of this title.

Time return deemed filed and tax considered paid, see section 6513 of this title.

§ 7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term "legal holiday" means a legal holiday in the District of Columbia; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or his delegate, or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located. (Aug. 16, 1954, ch. 736, 68A Stat. 896.)

RULES OF PRACTICE IN THE TAX COURT

Computation of time; Saturdays, Sundays, and holidays, see rule 61, Appendix to this title.

§ 7504. Fractional parts of a dollar.

The Secretary or his delegate may by regulations provide that in the allowance of any amount as a credit or refund, or in the collection of any amount as a deficiency or underpayment, of any tax imposed by this title, a fractional part of a dollar shall be disregarded, unless it amounts to 50 cents or more, in which case it shall be increased to 1 dollar. (Aug. 16, 1954, ch. 736, 68A Stat. 896.)

CROSS REFERENCES

Computations on returns or other documents, see section 6102 of this title.

Fractional parts of a cent, see section 6313 of this title.

Section as inapplicable to gasoline used on farms, see section 6420 (e) (3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6420 of this title.

§ 7505. Sale of personal property acquired by the United States.

(a) Sale.

Any personal property acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the Secretary or his delegate in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(b) Accounting.

In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered a distinct account of all charges incurred in such sales. (Aug. 16, 1954, ch. 736, 68A Stat. 896; Nov. 2, 1966, Pub. L. 89–719, title I, § 111(a), (c)(1), 80 Stat. 1145.)

AMENDMENTS

1966—Pub. L. 89–719 substituted "acquired by the United States in payment of or as security for debts arising under the internal revenue laws" for "purchased by the United States under the authority of section 6335(e)

(relating to purchase for the account of the United States of property sold under levy)" in subsec. (a) and substituted "acquired" for "purchased" in the section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which alien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§ 7506. Administration of real estate acquired by the United States.

(a) Person charged with.

The Secretary or his delegate shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, or which has been redeemed by the United States, and of all trusts created for the use of the United States in payment of such debts due them.

(b) Sale.

The Secretary or his delegate, may, at public sale, and upon not less than 20 days' notice, sell and dispose of any real estate owned or held by the United States as aforesaid.

(c) Lease.

Until such sale, the Secretary or his delegate may lease such real estate owned as aforesaid on such terms and for such period as the Secretary or his delegate shall deem proper.

(d) Release to debtor.

In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of 1 percent per month, to the United States, within 2 years from the date of the acquisition of such real estate, it shall be lawful for the Secretary or his delegate to release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives. (Aug. 16, 1954, ch. 736, 68A Stat. 896; Nov. 2, 1966, Pub. L. 89–719, title I, § 111(b), 80 Stat. 1145.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–719 inserted reference to real estate which has been redeemed by the United States.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)—(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CROSS REFERENCES

Charge by Administrator of General Services of lands and other property, transferred to the United States in payment of debts other than those arising under the internal revenue laws, see section 301 of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7809 of this title.

§ 7507. Exemption of insolvent banks from tax.

(a) Assets in general.

Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Secretary or his delegate, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) Segregated assets; earnings.

Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, such individual or corporate trustee of such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof. The term "agent", as used in this subsection, shall be deemed to include a corporation acting as a liquidating agent.

(c) Refund; reassessment; statutes of limitation.

(1) Any such tax collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes.

(2) Any tax, the assessment, collection, or payment of which is barred under subsection (a), or any such tax which has been abated or remitted

after May 28, 1938, shall be assessed or reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid.

(3) Any tax, the assessment, collection, or payment of which is barred under subsection (b), or any such tax which has been refunded after May 28, 1938, shall be assessed or reassessed after full payment of such claims of depositors to the extent of the remaining assets segregated or transferred as described in subsection (b).

(4) The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for 90 days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax may be reassessed as provided in paragraphs (2) and (3) of this subsection and collected, during the time within which, had there been no abatement, collection might have been made.

(d) Exception of employment taxes.

This section shall not apply to any tax imposed by chapter 21 or chapter 23. (Aug. 16, 1954, ch. 736, 68A Stat. 897.)

§ 7508. Time for performing certain acts postponed by reason of war.

(a) Time to be disregarded.

In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof;

(C) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(D) Allowance of a credit or refund of any tax;

(E) Filing a claim for credit or refund of any tax;

(F) Bringing suit upon any such claim for credit or refund;

(G) Assessment of any tax;

(H) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(I) Collection, by the Secretary or his delegate, by levy or otherwise, of the amount of any liability in respect of any tax;

(J) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(K) Any other act required or permitted under the internal revenue laws specified in regulations prescribed under this section by the Secretary or his delegate;

(2) The amount of any credit or refund (including interest).

(b) Exceptions.

(1) Tax in jeopardy; bankruptcy and receiverships; and transferred assets.

Notwithstanding the provisions of subsection (a), any action or proceeding authorized by section 6851 (regardless of the taxable year for which the tax arose), chapter 70, or 71, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the Secretary or his delegate determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (a). In any case to which this paragraph relates, if the Secretary or his delegate is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Secretary or his delegate is in an area for which United States post offices under instructions of the Postmaster General are not, by reason of the combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) Action taken before ascertainment of right to benefits.

The assessment or collection of any internal revenue tax or of any liability to the United States in respect of any internal revenue tax, or any action or proceeding by or on behalf of the United States in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 898.)

§ 7509. Expenditures incurred by the Post Office Department.

The Postmaster General or his delegate shall at least once a month transfer to the Treasury of the United States, together with the receipts required to be deposited under section 6803 (a), a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties, if any, imposed upon such Department with respect to chapter 21, relating to the tax under the Federal Insurance Contributions Act, and the Secretary or his delegate shall be authorized and directed to advance from time to time to the credit of the Post Office Department, from appropriations made for the collection of the taxes imposed by chapter 21, such sums as may be required for such additional expenditures incurred by the Post Office Department. (Aug. 16, 1954, ch. 736, 68A Stat. 899.)

§ 7510. Exemption from tax of domestic goods purchased for the United States.

The privilege existing by provision of law on December 1, 1873, or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary or his delegate may prescribe, to all articles of domestic production which are subject to tax by the provisions of this title. (Aug. 16, 1954, ch. 736, 68A Stat. 900.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 5002, 5004, 5005, 5023, 5025, 5174 of this title.

§ 7511. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77.

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 900, related to exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

EFFECTIVE DATE OF REPEAL

Repeal of section effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, set out as a note preceding section 1202 of Title 19, Customs Duties.

§ 7512. Separate accounting for certain collected taxes, etc.

(a) General rule.

Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33—

(1) at the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

(2) is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) Requirements.

Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

(c) Relief from further compliance with subsection (b).

Whenever the Secretary or his delegate is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation. (Added Pub. L. 85-321, § 1, Feb. 11, 1958, 72 Stat. 5.)

NOTIFICATION OF FAILURE TO COLLECT, ACCOUNT FOR, AND PAY OVER TAXES

Section 4 of Pub. L. 85-321 provided that:

"Notification may be made under section 7512 (a) of the Internal Revenue Code of 1954 (as added by the first section of this Act) [subsec. (a) of this section]—

"(1) in the case of taxes imposed by subtitle C of such Code, only with respect to pay periods beginning after the date of the enactment of this Act [February 11, 1958]; and

"(2) in the case of taxes imposed by chapter 33 of such Code, only with respect to taxes so imposed after the date of the enactment of this Act [February 11, 1958]."

CROSS REFERENCES

Penalty for failure to comply with subsec. (b) of this section, see section 7215 (a) of this title.

§ 7513. Reproduction of returns and other documents.

(a) In general.

The Secretary or his delegate is authorized to have any Federal agency or any person process films or other photoimpressions of any return, document, or other matter, and make reproductions from films or photoimpressions of any return, document, or other matter.

(b) Regulations.

The Secretary or his delegate shall prescribe regulations which shall provide such safeguards as in the opinion of the Secretary or his delegate are necessary or appropriate to protect the film, photoimpressions, and reproductions made therefrom, against any unauthorized use, and to protect the information contained therein against any unauthorized disclosure.

(c) Use of reproductions.

Any reproduction of any return, document, or other matter made in accordance with this section shall have the same legal status as the original; and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial

or administrative proceeding, as if it were the original, whether or not the original is in existence.

(d) Penalty.

For penalty for violation of regulations for safeguarding against unauthorized use of any film or photoimpression, or reproduction made therefrom, and against unauthorized disclosure of information contained therein, see section 7213.

(Added Pub. L. 85–866, title I, § 90 (a), Sept. 2, 1958, 72 Stat. 1666.)

EFFECTIVE DATE

Section effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

CROSS REFERENCES

Penalty for unauthorized use or disclosure, see section 7213 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7213 of this title.

§ 7514. Authority to prescribe or modify seals.

The Secretary or his delegate is authorized to prescribe or modify seals of office for the district directors of internal revenue and other officers or employees of the Treasury Department to whom any of the functions of the Secretary shall have been or may be delegated. Each seal so prescribed shall contain such device as the Secretary or his delegate may select. Each seal shall remain in the custody of any officer or employee whom the Secretary or his delegate may designate, and, in accordance with the regulations approved by the Secretary or his delegate, may be affixed in lieu of the seal of the Treasury Department to any certificate or attestation (except for material to be published in the Federal Register) that may be required of such officer or employee. Judicial notice shall be taken of any seal prescribed in accordance with this authority, a facsimile of which has been published in the Federal Register together with the regulations prescribing such seal and the affixation thereof. (Added Pub. L. 85–866, title I, § 91 (a), Sept. 2, 1958, 72 Stat. 1667.)

EFFECTIVE DATE

Section effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 7515. Special statistical studies and compilations and other services on request.

The Secretary or his delegate is authorized within his discretion, upon written request, to make special statistical studies and compilations involving data from any returns, declarations, statements, or other documents required by this title or by regulations or from any records established or maintained in connection with the administration and enforcement of this title, to engage in any such special study or compilation jointly with the party or parties requesting it, and to furnish transcripts of any such special study or compilation, upon the payment, by the party or parties making the request, of the cost of the work or services performed for such party or parties. (Added Pub. L. 87–870, § 3(a)(1), Oct. 23, 1962, 76 Stat. 1160.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7809 of this title.

§ 7516. Supplying training and training aids on request.

The Secretary or his delegate is authorized within his discretion, upon written request, to admit employees and officials of any State, the Commonwealth of Puerto Rico, any possession of the United States, any political subdivision or instrumentality of any of the foregoing, the District of Columbia, or any foreign government to training courses conducted by the Internal Revenue Service, and to supply them with texts and other training aids. The Secretary or his delegate may require payment from the party or parties making the request of a reasonable fee not to exceed the cost of the training and training aids supplied pursuant to such request. (Added Pub. L. 87–870, § 3(a)(1), Oct. 23, 1962, 76 Stat. 1160.)

Chapter 78.—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

Subchapter
A. Examination and inspection.
B. General powers and duties.
C. Supervision of operations of certain manufacturers.
D. Possessions.

Subchapter A.—Examination and Inspection

Sec.
7601. Canvass of districts for taxable persons and objects.
7602. Examination of books and witnesses.
7603. Service of summons.
7604. Enforcement of summons.
7605. Time and place of examination.
7606. Entry of premises for examination of taxable objects.
7607. Additional authority for Bureau of Customs.
7608. Authority of internal revenue enforcement officers.
7609. Cross references.

AMENDMENTS

1970—Pub. L. 91–513, title III, § 1102(g)(2), Oct. 27, 1970, 84 Stat. 1293, struck out "Bureau of Narcotics and" preceding "Bureau of Customs" in item 7607.

1958—Pub. L. 85–859, title II, § 204(16), Sept. 2, 1958, 72 Stat. 1430, added item 7608, and redesignated former item 7608 as 7609.

1956—Act July 18, 1956, ch. 629, § 104 (b), 70 Stat. 570, renumbered item 7607, "Cross references." as item 7608, and inserted new item 7607 "Additional authority for Bureau of Narcotics and Bureau of Customs."

§ 7601. Canvass of districts for taxable persons and objects.

(a) General rule.

The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) Penalties.

For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

(Aug. 16, 1954, ch. 736, 68A Stat. 901.)

§ 7602. Examination of books and witnesses.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(Aug. 16, 1954, ch. 736, 68A Stat. 901.)

CROSS REFERENCES

Authority of officers or employees to administer oaths, see section 7622 of this title.

Books of person liable for occupational tax, see section 4423 of this title.

Distilleries, authority of revenue officers, see section 5203 of this title.

Returns, public records, see section 6103 of this title.

Time and place for examination pursuant to this section, see section 7605 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6480, 6421, 6424, 6427, 7210, 7603, 7604, 7605 of this title.

§ 7603. Service of summons.

A summons issued under section 6420 (e) (2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty. (Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, § 4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208(d)(4), 70 Stat. 396; June 21, 1965, Pub. L. 89-44, title II, § 202(c)(4), 79 Stat. 139; May 21, 1970, Pub. L. 91-258, title II, § 207(d)(9), 84 Stat. 249.)

AMENDMENTS

1970—Pub. L. 91-258 inserted reference to section 6427(e)(2).

1965—Pub. L. 89-44 included any summons issued under section 6424(d)(2) of this title.

1956—Act June 29, 1956, included any summons issued under section 6421(f)(2) of this title.

Act Apr. 2, 1956, included any summons issued under section 6420(e)(2) of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-44 effective Jan. 1, 1966, see section 701(a) (1), (2), of Pub. L. 89-44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

CROSS REFERENCES

Penalties applicable to violation of this section, see section 7210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7210, 7604 of this title.

§ 7604. Enforcement of summons.

(a) Jurisdiction of district court.

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement.

Whenever any person summoned under section 6420 (e) (2), 6421 (f) (2), 6424 (d) (2), 6427 (e) (2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) Cross references.

(1) Authority to issue orders, processes, and judgments.

For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) Penalties.

For penalties applicable to violation of section 6420 (e) (2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602, see section 7210.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, § 4 (i), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208 (d) (4), 70 Stat. 396; June 21, 1965, Pub. L. 89-44, title II, § 202 (c) (4), 79 Stat. 139; May 21, 1970, Pub. L. 91-258, title II, § 207 (d) (9), 84 Stat. 249.)

AMENDMENTS

1970—Pub. L. 91-258 inserted reference to section 6427(e)(2).

1965—Subsecs. (b) and (c). Pub. L. 89-44 inserted references to section 6424(d)(2) of this title.

1956—Subsecs. (b) and (c). Act Apr. 2, 1956, inserted references to section 6420 (e) (2) of this title.

Act June 29, 1956, inserted references to section 6421 (f) (2) of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsecs. (b) and (c) by Pub. L. 89–44 to take effect January 1, 1966, see section 701(a) (1), (2), of Pub. L. 89–44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

CROSS REFERENCES

Contempt—

Constituting crimes, see section 402 of Title 18, Crimes and Criminal Procedure.

Jury trial, see section 3691 of Title 18, Crimes and Criminal Procedure.

Power of court, see section 401 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7210 of this title.

§ 7605. Time and place of examination.

(a) Time and place.

The time and place of examination pursuant to the provisions of section 6320 (e) (2), 6421 (f) (2), 6424 (d) (2), 6427 (e) (2), or 7602 shall be such time and place as may be fixed by the Secretary or his delegate and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420 (e) (2), 6421 (f) (2), 6424 (d) (2), or 6427 (e) (2), the date fixed for appearance before the Secretary or his delegate shall not be less than 10 days from the date of the summons.

(b) Restrictions on examination of taxpayer.

No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) Restriction on examination of churches.

No examination of the books of account of a church or convention or association of churches shall be made to determine whether such organization may be engaged in the carrying on of an unrelated trade or business or may be otherwise engaged in activities which may be subject to tax under part III of subchapter F of chapter 1 of this title (sec. 511 and following, relating to taxation of business income of exempt organizations) unless the Secretary or his delegate (such officer being no lower than a principal internal revenue officer for an internal revenue region) believes that such organization may be so engaged and so notifies the organization in advance of the examination. No examination of the religious activities of such an organization shall be made except to the extent necessary to determine whether such organization is a church or a convention or association of churches, and no examination of the books of account of such an organization shall be made other than to the extent necessary to determine the amount of tax imposed by this title. (Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, § 4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208(d)(4), 70 Stat. 396; June 21, 1965, Pub. L. 89–44, title II, § 202(c)(4), 79 Stat. 139; Dec. 30, 1969, Pub. L. 91–172, title I, § 121(f), 83 Stat. 548; May 21, 1970, Pub. L. 91–258, title II, § 207(d)(9), 84 Stat. 249.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–258 inserted reference to section 6427(e)(2) in first and second sentences.

1969—Subsec. (c). Pub. L. 91–172 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–44 inserted references to section 6424(d)(2) of this title.

1956—Subsec. (a). Act Apr. 2, 1956, inserted references to section 6420 (e) (2) of this title.

Act June 29, 1956, inserted references to section 6421 (f) (2) of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) by Pub. L. 89–44 to take effect January 1, 1966, see section 701(a) (1), (2), of Pub. L. 89–44, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4423 of this title.

§ 7606. Entry of premises for examination of taxable objects.

(a) Entry during day.

The Secretary or his delegate may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) Entry at night.

When such premises are open at night, the Secretary or his delegate may enter them while so open, in the performance of his official duties.

(c) Penalties.

For penalty for refusal to permit entry or examination, see section 7342.

(Aug. 16, 1954, ch. 736, 68A Stat. 903.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7342 of this title.

§ 7607. Additional authority for Bureau of Customs.

Officers of the customs (as defined in section 401 (1) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(1)), may—

(1) carry firearms, execute and serve search warrants and arrest warrants, and serve subpenas and summonses issued under the authority of the United States, and

(2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act) where the violation is committed in the presence of the person making the arrest or

where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

(Added July 18, 1956, ch. 629, title I, § 104 (a), 70 Stat. 570, and amended Oct. 27, 1970, Pub. L. 91-513, title III, § 1102(g)(1), 84 Stat. 1292.)

REFERENCES IN TEXT

Sections 102(16) and 102(15) of the Controlled Substances Act, referred to in par. (2), are set out as sections 802(16) and 802(15), respectively, of Title 21, Food and Drugs.

AMENDMENTS

1970—Pub. L. 91-513 struck out reference to the Bureau of Narcotics in the section catchline, substituted "Officers of the customs" for "The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents, of the Bureau of Narcotics of the Department of the Treasury, and officers of the customs", in par. (1), and substituted "narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act)" for "narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761)" in par. (2).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 7608. Authority of internal revenue enforcement officers.

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms.

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary or his delegate charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary or his delegate is responsible may—

(1) carry firearms;

(2) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

(b) Enforcement of laws relating to internal revenue other than subtitle E.

(1) Any criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service whom the Secretary or his delegate charges with the duty of enforcing any of the criminal provisions of the internal revenue laws or any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary or his delegate is responsible is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

(Added Pub. L. 85-859, title II, § 204 (14), Sept. 2, 1958, 72 Stat. 1429, and amended Pub. L. 87-863, § 6(a), Oct. 23, 1962, 76 Stat. 1143.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-863, § 6(a)(2), redesignated existing provisions as subsec. (a), and added the catchline thereto.

Subsec. (b). Pub. L. 87-863, § 6(a)(1), added subsec. (b).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 6(b) of Pub. L. 87-863 provided that: "The amendments made by subsection (a) [to this section] shall take effect on the day after the date of enactment of this Act [Oct. 23, 1962]."

EFFECTIVE DATE

Section effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

§ 7609. Cross references.

(a) Inspection of books, papers, records, or other data.

For inspection of books, papers, records, or other data in the case of—

(1) Wholesale dealers in oleomargarine, see section 4597.

(2) Wholesale dealers in process or renovated butter or adulterated butter, see section 4815 (b).

(3), (4) Repealed. Pub. L. 91-513, title III, § 1102(h), Oct. 27, 1970, 84 Stat. 1293.

(5) Wagering, see section 4423.

(6) Alcohol, tobacco, and firearms taxes, see subtitle E.

(b) Search warrants.

For provisions relating to—

(1) Searches and seizures, see Rule 41 of the Federal Rules of Criminal Procedure.

(2) Issuance of search warrants with respect to subtitle E, see section 5557.

(3) Search warrants with respect to property used in violation of the internal revenue laws, see section 7302.

(Aug. 16, 1954, ch. 736, 68A Stat. 903, § 7609, formerly § 7607, renumbered § 7608, July 18, 1956, ch. 629, title I, § 104 (a), 70 Stat. 570; renumbered § 7609, and amended Sept. 2, 1958, Pub. L. 85-859, title II, § 204 (14), (15), 72 Stat. 1429, 1430; Oct. 27, 1970, Pub. L. 91-513, title III, § 1102(h), 84 Stat. 1293.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-513 struck out pars. (3) and (4) which related to opium, opiates, and coca leaves and to marihuana, respectively, and which made reference to sections 4702(a), 4705, 4721, and 4773, and to sections 4742, 4753(b), and 4773, respectively.

1958—Subsec. (a) (6). Pub. L. 85-859, § 204(15), added subsec. (a) (6).

Subsec. (b) (2). Pub.. L. 85-859, § 204 (15), substituted "with respect to subtitle E, see section 5557" for "in connection with industrial alcohol, etc., see sections 5314 and 7302."

Subsec. (b) (3). Pub. L. 85-859, § 204 (15), added subsec. (b) (3).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

Subchapter B.—General Powers and Duties

Sec.
7621. Internal revenue districts.
7622. Authority to administer oaths and certify.
7623. Expenses of detection and punishment of frauds.

§ 7621. Internal revenue districts.

(a) Establishment and alteration.

The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

(b) Boundaries.

For the purpose mentioned in subsection (a), the President may subdivide any State, Territory, or the District of Columbia, or may unite into one district two or more States or a Territory and one or more States. (Aug. 16, 1954, ch. 736, 68A Stat. 904; June 25, 1959, Pub. L. 86-70, § 22(e), 73 Stat. 146.)

AMENDMENTS

1959—Subsec. (b). Pub. L. 86-70 substituted "may unite into one district two or more States or a Territory and one or more States" for "may unite two or more States or Territories into one district."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 2202 of this title.

§ 7622. Authority to administer oaths and certify.

(a) Internal revenue personnel.

Every officer or employee of the Treasury Department designated by the Secretary or his delegate for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations made thereunder.

(b) Others.

Any oath or affirmation required or authorized under any internal revenue law or under any regulations made thereunder may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations. (Aug. 16, 1954, ch. 736, 68A Stat. 904.)

§ 7623. Expenses of detection and punishment of frauds.

The Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law. (Aug. 16, 1954, ch. 736, 68A Stat. 904.)

Subchapter C.—Supervision of Operations of Certain Manufacturers

Sec.
7641. Supervision of operations of certain manufacturers.

§ 7641. Supervision of operations of certain manufacturers.

Every manufacturer of filled cheese, oleomargarine, process or renovated butter or adulterated butter, or white phosphorous matches shall conduct his business under such surveillance of officers or employees of the Treasury Department as the Secretary or his delegate may by regulations require. (Aug. 16, 1954, ch. 736, 68A Stat. 905; Oct. 27, 1970, Pub. L. 91-513, title I, § 1102(i), 84 Stat. 1293.)

AMENDMENTS

1970—Pub. L. 91-513 struck out reference to manufacturers of opium suitable for smoking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reasons thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

Subchapter D.—Possessions

Sec.
7651. Administration and collection of taxes in possessions.
7652. Shipments to the United States.
7653. Shipments from the United States.
7654. Payment to Guam and American Samoa of proceeds of tax on coconut and other vegetable oils.[1]
7655. Cross references.

§ 7651. Administration and collection of taxes in possessions.

Except as otherwise provided in this subchapter, and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands and Guam, respectively)—

[1] So in original. Does not conform to section catchline.

(1) Applicability of administrative provisions.

All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(2) Tax imposed in possession.

In the case of any tax which is imposed by this title in any possession of the United States—

(A) Internal revenue collections.

Such tax shall be collected under the direction of the Secretary or his delegate, and shall be paid into the Treasury of the United States as internal revenue collections; and

(B) Applicable laws.

All provisions of the laws of the United States applicable to the administration, collection, and enforcement of such tax (including penalties) shall, in respect of such tax, extend to and be applicable in such possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(3) Other laws relating to possessions.

This section shall apply notwithstanding any other provision of law relating to any possession of the United States.

(4) Canal Zone.

For purposes of this section, the term "possession of the United States" includes the Canal Zone.

(5) Virgin Islands.

(A) For purposes of this section, the reference in section 28 (a) of the Revised Organic Act of the Virgin Islands to "any tax specified in section 3811 of the Internal Revenue Code" shall be deemed to refer to any tax imposed by chapter 2 or by chapter 21.

(B) For purposes of this title, section 28 (a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section had been enacted subsequent to the enactment of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 906; Oct. 27, 1970, Pub. L. 91–513, title III, § 1102(j), 84 Stat. 1293.)

REFERENCES IN TEXT

Section 28 (a) of the Revised Organic Act of the Virgin Islands, referred to in the text, is classified to section 1642 of Title 48, Territories and Insular Possessions.

Section 30 of the Organic Act of Guam, referred to in the text, is classified to section 1421h of said Title 48.

AMENDMENTS

1970—Pub. L. 91–513 struck out reference in the provisions preceding par. (1) to exceptions provided for in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as a note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4774, 7652, 7809 of this title.

§ 7652. Shipments to the United States.

(a) Puerto Rico.

(1) Rate of tax.

Except as provided in section 5314, articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be subject to a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

(2) Payment of tax.

The Secretary or his delegate shall by regulations prescribe the mode and time for payment and collection of the tax described in paragraph (1), including any discretionary method described in section 6302 (b) and (c). Such regulations shall authorize the payment of such tax before shipment from Puerto Rico, and the provisions of section 7651 (2) (B) shall be applicable to the payment and collection of such tax in Puerto Rico.

(3) Deposit of internal revenue collections.

All taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States (less the estimated amount necessary for payment of refunds and drawbacks), or consumed in the island, shall be covered into the treasury of Puerto Rico.

(b) Virgin Islands.

(1) Taxes imposed in the United States.

Except as provided in section 5314, there shall be imposed in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

(2) Exemption from tax imposed in the Virgin Islands.

Such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of such islands.

(3) Disposition of internal revenue collections.

Beginning with the fiscal year ending June 30, 1954, and annually thereafter, the Secretary or his delegate shall determine the amount of all taxes imposed by, and collected during the fiscal year under, the internal revenue laws of the United States on articles produced in the Virgin Islands

and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

(A) There shall be transferred and paid over to the government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the government of the Virgin Islands during the fiscal year, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine: *Provided,* That the approval of the President or his designated representative shall be obtained before such moneys may be obligated or expended.

(B) There shall also be transferred and paid over to the government of the Virgin Islands during each of the fiscal years ending June 30. 1955, and June 30, 1956, the sum of $1,000,000 or the balance of the internal revenue collections available under this paragraph (3) after payments are made under subparagraph (A), whichever amount is greater. The moneys so transferred and paid over shall be deposited in the separate fund established by subparagraph (A), but shall be obligated or expended for emergency purposes and essential public projects only, with the prior approval of the President or his designated representative.

(C) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

If at the end of any fiscal year the total of the Federal contribution made under subparagraph (A) at the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for approved emergency relief purposes and essential public projects as provided in subparagraph (B). The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only, including payments under subparagraph (B), shall not exceed the sum of $5,000,000 at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for emergency relief purposes and essential public projects only to exceed the sum of $5,000,000 shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts.

(Aug. 16, 1954, ch. 736, 68A Stat. 907; Sept. 2, 1958, Pub. L. 85–859, title II, § 204 (17), (18), 72 Stat. 1430; June 21, 1965, Pub. L. 89–44, title VIII, § 808(b) (3), 79 Stat. 164.)

AMENDMENTS

1965—Subsec. (a) (3). Pub. L. 89–44 inserted "(less the estimated amount necessary for payment of refunds and drawbacks)" following "transported to the United States".

1958—Subsec. (a) (1). Pub. L. 85–859, § 204(17), substituted "section 5314" for "section 5318".

Subsec. (b) (1). Pub. L. 85–859, § 204(18), substituted "section 5314" for "section 5318".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of subsec. (a) (3) by Pub. L. 89–44 effective July 1, 1965, see section 808(d) (1) of Pub. L. 89–44, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a) (1) and (b) (1) of this section by Pub. L. 85–859 effective on July 1, 1959, see section 210(a) (1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

EX. ORD. NO. 10602. SECRETARY OF THE INTERIOR AS REPRESENTATIVE OF PRESIDENT

Ex. Ord. No. 10602, Mar. 24. 1955, 20 F. R. 1795, provided: By virtue of the authority vested in me by section 7652 (b) (3) of the Internal Revenue Code of 1954 (Public Law 591, 83rd Congress, 68A Stat. 907) [subsection (b) (3) of this section], I hereby designate the Secretary of the Interior as the representative of the President to approve the obligation and expenditure by the government of the Virgin Islands of the moneys referred to in the said section 7652 (b) (3) [subsection (b) (3) of this section].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5314, 5705, 7809 of this title; title 18 section 1644.

§ 7653. Shipments from the United States.

(a) Tax imposed.

(1) Puerto Rico.

All articles of merchandise of United States manufacture coming into Puerto Rico shall be entered at the port of entry upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture.

(2) Virgin Islands.

There shall be imposed in the Virgin Islands upon articles imported from the United States a tax equal to the internal revenue tax imposed in such islands upon like articles there manufactured.

(b) Exemption from tax imposed in the United States.

Articles, goods, wares, or merchandise going into Puerto Rico, the Virgin Islands, Guam, and American Samoa from the United States shall be exempted from the payment of any tax imposed by the internal revenue laws of the United States.

(c) Drawback of tax paid in the United States.

All provisions of law for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(d) Cross reference.

For the disposition of the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in Guam and transported into the United States or its possessions, or consumed in Guam, see the Act of August 1, 1950 (ch. 512, 64 Stat. 392, section 30; 48 U.S.C. 1421h).

(Aug. 16, 1954, ch. 736 68A Stat. 908; June 25, 1959, Pub. L. 86–70, § 22(f), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, § 18(h), 74 Stat. 416.)

AMENDMENTS

1960—Subsec. (d). Pub. L. 86–624 substituted "or its possessions" for ", its possessions or the Territory of Hawaii."

1959—Subsec. (d). Pub. L. 86–70 substituted "its possessions or the Territory of Hawaii" for "its Territories or possessions."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of subsec. (d) of this section by Pub. L. 86-624 effective August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 2202 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 2202 of this title.

§ 7654. Payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.

All taxes collected under subchapter B of chapter 37 with respect to coconut oil wholly of the production of Guam or American Samoa, or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Secretary or his delegate, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa. (Aug. 16, 1954, ch. 736, 68A Stat. 909.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7809 of this title.

§ 7655. Cross references.

(a) Imposition of tax in possessions.

For provisions imposing tax in possessions, see—

(1) Chapter 2, relating to self-employment tax;

(2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act;

(5) Subchapter A of chapter 37, relating to tax on sugar.

(b) Other provisions.

For other provisions relating to possessions of the United States, see—

(1) Section 933, relating to income tax on residents of Puerto Rico;

(2) Section 6418 (b), relating to exportation of sugar to Puerto Rico.

(Aug. 16, 1954, ch. 736, 68A Stat. 909; Sept. 2, 1958, Pub. L. 85-859, title II, § 204 (19), 72 Stat. 1430; Oct. 27, 1970, Pub. L. 91-513, title III, § 1102(k), 84 Stat. 1293.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-513 struck out pars. (3) and (4) relating to taxes in respect of narcotic drugs and taxes in respect of marihuana, respectively, and making references to parts I and III of subchapter A of chapter 39 and to parts II and III of subchapter A of chapter 39, respectively.

1958—Subsec. (a)(5). Pub. L. 85-859 redesignated former subsec. (a)(6) as (a)(5) and eliminated former subsec. (a)(5) containing a cross reference to chapter 51 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as a note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-859 effective on Sept. 3, 1958, see section 210 (a) (1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

Chapter 79.—DEFINITIONS

Sec.
7701. Definitions.

§ 7701. Definitions.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person.

The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner.

The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation.

The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) Domestic.

The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) Foreign.

The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary.

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock.

The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder.

The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) United States.

The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) State.

The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary.

The term "Secretary" means the Secretary of the Treasury.

(12) Delegate.

(A) In general.

The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa.

The term "delegate," in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 2 and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner.

The term "Commissioner" means the Commissioner of Internal Revenue.

(14) Taxpayer.

The term "taxpayer" means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States.

The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent.

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, 1451, or 1461.

(17) Husband and wife.

As used in sections 71, 152 (b) (4), 215 and 682, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

(18) International organization.

The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(19) Domestic building and loan association.

The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C) at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i) cash,

(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv) loans secured by a deposit or share of a member,

(v) loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible

for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property,

(vii) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii) property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix) loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary or his delegate, and

(x) property used by the association in the conduct of the business described in subparagraph (B).

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary or his delegate. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary or his delegate, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property.

(20) Employee.

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) Levy.

The term "levy" includes the power of distraint and seizure by any means.

(22) Attorney General.

The term "Attorney General" means the Attorney General of the United States.

(23) Taxable year.

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary or his delegate, the period for which such return is made.

(24) Fiscal year.

The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued.

The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business.

The term "trade or business" includes the performance of the functions of a public office.

(27) Tax Court.

The term "Tax Court" means the United States Tax Court.

(28) Other terms.

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code.

The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person.

The term "United States person" means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation, and

(D) any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).

(31) Foreign estate or trust.

The terms "foreign estate" and "foreign trust" mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(32) Cooperative bank.

The term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) either—

(i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility.

The term "regulated public utility" means—

(A) A corporation engaged in the furnishing or sale of—

(i) electric energy, gas, water, or sewerage disposal services, or

(ii) transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Power Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Interstate Commerce Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Civil Aeronautics Board.

(F) A corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under part III of the Interstate Commerce Act, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

(G) A railroad corporation subject to part I of the Interstate Commerce Act, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to part I of the Interstate Commerce Act if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary or his delegate that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for

purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

(34) Estimated income tax.

The term "estimated income tax" means—

(A) in the case of an individual, the estimated tax as defined in section 6015(c), or

(B) in the case of a corporation, the estimated tax as defined in section 6154(c).

(b) Includes and including.

The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Commonwealth of Puerto Rico.

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) Cross references.

(1) Other definitions.

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.
(4) Officer, section 1.
(5) Oath as including affirmation, section 1.
(6) County as including parish, section 2.
(7) Vessel as including all means of water transportation, section 3.
(8) Vehicle as including all means of land transportation, section 4.
(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references.

For effect of cross references in this title, see section 7806 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 911; June 25, 1959, Pub. L. 86–70, § 22 (g), (h), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, § 18 (i), (j), 74 Stat. 416; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(t), 74 Stat. 941; Oct. 16, 1962, Pub. L. 87–834, §§ 6(c), 7(h), 76 Stat. 982, 988; Oct. 23, 1962, Pub. L. 87–870, § 5(a), 76 Stat. 1161; Feb. 26, 1964, Pub. L. 88–272, title II, §§ 204 (a)(3), 234(b)(3), 78 Stat. 36, 114; Mar. 15, 1966, Pub. L. 89–368, title I, § 102(b)(5), 80 Stat. 64; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(*l*)(1), 80 Stat. 1554; June 28, 1968, Pub. L. 90–364, title I, § 103(e)(6), 82 Stat. 264; Dec. 30, 1969, Pub. L. 91–172, title IV, § 432(c), (d), title IX, § 960(j), 83 Stat. 622, 623, 735.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Act of 1962, referred to in subsec. (a)(19), means the date of the enactment of Pub. L. 87–834, which was approved on Oct. 16, 1962.

Parts I and II of the Interstate Commerce Act, referred to in subsec. (a)(33) (F), (G), are classified to chapter 1 and 9 of Title 49, Transportation, respectively.

Intercoastal Shipping Act, 1933, referred to in subsec. (a)(33)(F), is classified to chapter 23A of Ttitle 46, Shipping.

AMENDMENTS

1969—Subsec. (a)(19)(A). Pub. L. 91–172, § 432(c) reenacted subsec. (a)(19)(A) without change.

Subsec. (a)(19)(B). Pub. L. 91–172, § 432(c), struck out reference to subpar. (C).

Subsec. (a)(19)(C). Pub. L. 91–172, § 432(c), substituted 60 percent for 90 percent in the material preceding cl. (i), reenacted cl. (i) without change, in cl. (ii), excluded obligations the interest on which was excludible from gross income under section 103, expanded the provisions of former cl. (iii) and transferred them to cl. (v), reenacted cl. (iv) without change, redesignated former cls. (v) and (vi) as cls. (viii) and (x) and added cls. (iii), (vi), (vii) and (ix), and the material following cl. (x).

Subsec. (a)(19)(D)–(F). Pub. L. 91–172, § 432(c), omitted subsec. (a)(19)(D) to (F) and the material following subpar. (F), which had further qualified the assets.

Subsec. (a)(27). Pub. L. 91–172, § 960(j), substituted "United States Tax Court" for "Tax Court of the United States".

Subsec. (a)(32). Pub. L. 91–172, § 432(d), omitted references to subpars. (D), (E) and (F) and struck out "determined with the application of the second, third, and fourth sentences of paragraph (19)." in subpar. (B) and, in the material following subpar. (B), omitted the provisions relating to the deduction allowable for a reasonable addition to the reserve for bad debts.

1968—Subsec. (a)(34)(B). Pub. L. 90–364 substituted "section 6154(c)" for "section 6016(b)".

1966—Subsec. (a). Pub. L. 89–809 substituted ", from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States," for "from sources without the United States", in par. (31).

Pub. L. 89–368 added par. (34).

1964—Subsec. (a)(20). Pub. L. 88–272 inserted "For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees."

Subsec. (a)(33). Pub. L. 88–272 added par. (33).

1962—Subsec. (a)(19). Pub. L. 87–834, § 6(c), amended subsec. (a)(19) generally to read as above set forth. Prior to such amendment, subsection read as follows: "The term 'domestic building and loan association' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members."

Subsecs. (a) (30), (31). Pub. L. 87–834, § 7(h), added subsecs. (a) (30), (31).

Subsec. (a)(32). Pub. L. 87–870 added par. (32).

1960—Subsec. (a)(9). Pub. L. 86–624, § 18(i), eliminated the Territory of Hawaii.

Subsec. (a)(10). Pub. L. 86–624, § 18(j), eliminated the Territory of Hawaii.

Subsec. (a)(12). Pub. L. 86–778 designated existing provisions as par. (A) and added par. (B).

1959—Subsec. (a)(9). Pub. L. 86–70, § 22(g), substituted "the Territory of Hawaii" for "the Territories of Alaska and Hawaii."

Subsec. (a)(10). Pub. L. 86–70, § 22(h), substituted "Territory of Hawaii" for "Territories."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment of section by Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

Amendment of subsec. (a)(19) and (a)(32) of this section by section 432 (c), (d) of Pub. L. 91–172, effective for taxable years beginning after July 11, 1969, see section 432(e) of Pub. L. 91–172, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364, applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub. L. 90–364, set out as a note under section 6154 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of section by Pub. L. 89–809 applicable with respect to taxable years beginning after December 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Amendment of subsec. (a) by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88-272, set out as a note under section 79 of this title.

Amendment of section by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 6(g)(3) of Pub. L. 87-834 provided that: "The amendment made by subsection (c) [to subsec. (a)(19) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962]."

Section 5(b) of Pub. L. 87-870 provided that: "The amendment made by subsection (a) of this section [adding subsec. (a)(32) of this section] shall apply with respect to taxable years beginning after the date of the enactment of the Revenue Act of 1962 [Oct. 16, 1962]."

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment of subsecs. (a) (9), (10) by Pub. L. 86-624 effective August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 2202 of this title.

Amendment of subsec. (a)(12) of this section by Pub. L. 86-778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70 set out as a note under section 2202 of this title.

CROSS REFERENCES

Adverse, nonadverse, related and subordinate party, see section 672 of this title.

Child, see section 151 of this title.

Dependent, see sections 152, 214 of this title.

Determination, taxpayer and related taxpayer, see section 1313 of this title.

Levy, see section 6331 of this title.

Partnership and partner, see section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 71, 101, 172, 312, 542, 593, 643, 957, 958, 1246, 1247, 1249, 1313, 1341, 1503, 4916, 6046 of this title; title 42 section 410.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 46-303, 47-1551c of the District of Columbia Code.

Chapter 80.—GENERAL RULES

Subchapter

A. Application of internal revenue laws.

B. Effective date and related provisions.

Subchapter A.—Application of Internal Revenue Laws

Sec.

7801. Authority of Department of the Treasury.

7802. Commissioner of Internal Revenue.

7803. Other personnel.

7804. Effect of reorganization plans.

7805. Rules and regulations.

7806. Construction of title.

7807. Rules in effect upon enactment of this title.

7808. Depositaries for collections.

7809. Deposit of collections.

7810. Revolving fund for redemption of real property.

AMENDMENTS

1966—Pub. L. 89-719, title I, § 112(c), Nov. 2, 1966, 80 Stat. 1146, inserted item 7810.

§ 7801. Authority of Department of the Treasury.

(a) Powers and duties of Secretary.

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

(b) Office of General Counsel for the Department.

(1) General counsel.

There shall be in the Department of the Treasury the office of General Counsel for the Department of the Treasury. The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be the chief law officer of the Department and shall perform such duties as may be prescribed by the Secretary.

(2) Assistant general counsels.

The President is authorized to appoint, by and with the advice and consent of the Senate, an Assistant General Counsel who shall be the Chief Counsel for the Internal Revenue Service. The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary. The Secretary may appoint, without regard to the provisions of the civil service laws, and fix the duties of not to exceed five other assistant General Counsels.

(3) Attorneys.

The Secretary may appoint and fix the duties of such other attorneys as he may deem necessary.

(c) Functions of Department of Justice unaffected.

Nothing in this section shall be considered to affect the duties, powers, or functions imposed upon, or vested in, the Department of Justice, or any officer thereof, by law existing on May 10, 1934. (Aug. 16, 1954, ch. 736, 68A Stat. 915; Sept. 22, 1959, Pub. L. 86-368, § 1, 73 Stat. 647; Aug. 14, 1964, Pub. L. 88-426, title III, § 305(39), 78 Stat. 427.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (b)(2), are classified generally to Title 5, Government Organization and Employees.

AMENDMENTS

1964—Subsec. (b)(2). Pub. L. 88-426 repealed provisions which prescribed the compensation of the Assistant General Counsel. See section 5316(35) of Title 5, Government Organization and Employees.

1959—Pub. L. 86-368 provided for Presidential appointment and for compensation of Assistant General Counsel who shall be Chief Counsel for Internal Revenue Service.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of Pub. L. 86-368 provided that:

"(a) Except as otherwise provided in this Act, the amendments made by this Act [to this section] shall take effect on the date of the enactment of this Act [Sept. 22, 1959].

"(b) The amendments made by section 2 of this Act [to sections 7452 and 8023 (a), (b) of this title] shall take effect when the Chief Counsel for the Internal Revenue Service first appointed pursuant to the amendment made by section 1 of this Act [to this section] qualifies and takes office."

SAVING PROVISIONS

Section 4 of Pub. L. 86-368 provided that:

"(a) The position of the Assistant General Counsel serving as Chief Counsel of the Internal Revenue Service shall continue to exist until such time as the Chief

Counsel for the Internal Revenue Service first appointed pursuant to the amendment made by section 1 of this Act [to this section] qualifies and takes office, and at such time such position is hereby abolished.

"(b) Except as provided in subsection (a), this Act shall not be construed to abolish, terminate, or otherwise change, any office or position, or the appointment or employment of any officer or employee, existing immediately preceding the enactment of this Act [Sept. 22, 1959], but the same shall continue unless and until changed by lawful authority.

"(c) Any delegation of authority made pursuant to Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 [set out in the Appendix to Title 5, Government Organization and Employees], including any redelegation of authority made pursuant to any such delegation of authority, and in effect immediately preceding the enactment of this Act [Sept. 22, 1959] shall, notwithstanding the amendment made by section 1 of this Act [to this section], remain in effect unless distinctly inconsistent or manifestly incompatible with such amendment. The preceding sentence shall not be construed as limiting in any manner the power to amend, modify, or revoke any such delegation or redelegation of authority."

CROSS REFERENCES

Classification of civilian positions, see chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees.

Department of Justice, see section 501 et seq. of Title 28, Judiciary and Judicial Procedure.

Department of Treasury, see section 1001 et seq. of Title 31, Money and Finance.

§ 7802. Commissioner of Internal Revenue.

There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary. (Aug. 16, 1954, ch. 736, 68A Stat. 915.)

COMPENSATION OF COMMISSIONER OF INTERNAL REVENUE

Compensation of Commissioner, see section 5314 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Definition of Commissioner, see section 7701 (a) (13) of this title.

§ 7803. Other personnel.

(a) Appointment and supervision.

The Secretary or his delegate is authorized to employ such number of persons as the Secretary or his delegate deems proper for the administration and enforcement of the internal revenue laws, and the Secretary or his delegate shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) Posts of duty of employees in field service or traveling.

(1) Designation of post of duty.

The Secretary or his delegate shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) Detail of personnel from field service.

The Secretary or his delegate may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Secretary or his delegate may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) Bonds of employees.

Whenever the Secretary or his delegate deems it proper, he may require any such officer or employee to furnish such bond, or he may purchase such blanket or schedule bonds, as the Secretary or his delegate deems appropriate. The premium of any such bond or bonds may, in the discretion of the Secretary or his delegate, be paid from the appropriation for expenses of the Internal Revenue Service.

(d) Delinquent internal revenue officers and employees.

If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary or his delegate shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount. (Aug. 16, 1954, ch. 736, 68A Stat. 915.)

CROSS REFERENCES

Jurisdiction of district courts, concurrently with state courts, of actions on official bonds of internal revenue officers or employees, see section 7402 (d) of this title.

Other provisions for bonds, see section 7103 of this title.

Repayments to officers and employees, see section 7423 of this title.

§ 7804. Effect of reorganization plans.

(a) Application.

The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

(b) Preservation of existing rights and remedies.

Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary or his delegate, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law. (Aug. 16, 1954, ch. 736, 68A Stat. 916.)

REFERENCES IN TEXT

Reorganization Plan No. 26 of 1950 and Reorganization Plan No. 1 of 1952, referred to in the text, are set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 1 OF 1952

Eff. Mar. 14, 1952, 17 F. R. 2243, 66 Stat. 823, amended June 28, 1955, ch. 189, § 12 (c) (19), 69 Stat. 182.

BUREAU OF INTERNAL REVENUE

§ 1. ABOLITION OF EXISTING OFFICES

There are abolished the offices of Assistant Commissioner, Special Deputy Commissioner, Deputy Commissioner, Assistant General Counsel for the Bureau of Internal Revenue, Collector, and Deputy Collector, provided for in sections 3905, 3910, 3915, 3931, 3941, and 3990, respectively, of the Internal Revenue Code. The provisions of the foregoing sentence shall become effective with respect to each office abolished thereby at such time as the Secretary of the Treasury shall specify, but in no event later than December 1, 1952. The Secretary of the Treasury shall make such provisions as he shall deem necessary respecting the winding up of the affairs of any officer whose office is abolished by the provisions of this section.

§ 2. ESTABLISHING OF NEW OFFICES

(a) New offices are hereby established in the Bureau of Internal Revenue as follows: (1) three offices each of which shall have the title of "Assistant Commissioner of Internal Revenue"; (2) so many offices, not in excess of twenty-five existing at any one time, as the Secretary of the Treasury shall from time to time determine, each of which shall have the title of "district commissioner of internal revenue"; and (3) so many other offices, not in excess of seventy existing at any one time, and with such title or titles, as the Secretary of the Treasury shall from time to time determine.

(b) There is hereby established in the Department of the Treasury a new and additional office which shall have the title "Assistant General Counsel".

§ 3. APPOINTMENT AND COMPENSATION

Each Assistant Commissioner and district commissioner, the Assistant General Counsel, and each other officer provided for in section 2 of this reorganization plan shall be appointed by the Secretary of the Treasury under the classified civil service and shall receive compensation which shall be fixed from time to time pursuant to the classification laws, as now or hereafter amended.

§ 4. TRANSFER OF FUNCTIONS

There are transferred to the Secretary of the Treasury the functions, if any, that have been vested by statute in officers, agencies, or employees of the Bureau of Internal Revenue of the Department of the Treasury since the effective date of Reorganization Plan Numbered 26 of 1950 (15 F. R. 4935).

§ 7805. Rules and regulations.

(a) Authorization.

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) Retroactivity of regulations or rulings.

The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) Preparation and distribution of regulations, forms, stamps, and other matters.

The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue. (Aug. 16, 1954, ch. 736, 68A Stat. 917.)

CROSS REFERENCES

Departmental regulations, see section 301 of Title 5, Government Organization and Employees.

§ 7806. Construction of title.

(a) Cross references.

The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification.

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law. (Aug. 16, 1954, ch. 736, 68A Stat. 917.)

§ 7807. Rules in effect upon enactment of this title.

(a) Interim provision for administration of title.

Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules or regulations which are in effect immediately prior to the enactment of this title shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision.

(b) Provisions of this title corresponding to prior internal revenue laws.

(1) Reference to law applicable to prior period.

Any provision of this title which refers to the application of any portion of this title to a prior period (or which depends upon the application to a prior period of any portion of this title) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of the Internal Revenue Code of 1939 or of such other internal revenue laws as were applicable to the prior period.

(2) Elections or other acts.

If an election or other act under the provisions of the Internal Revenue Code of 1939 would, if this title had not been enacted, be given effect for a period subsequent to the date of enactment of this title, and if corresponding provisions are contained in this title, such election or other act shall be given effect under the corresponding provisions of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 917.)

CROSS REFERENCES

Adjustments required by changes in method of accounting, applying subsection (b) (1) of this section, see section 481 (b) (3) (C) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 481 of this title.

§ 7808. Depositaries for collections.

The Secretary or his delegate is authorized to designate one or more depositaries in each State for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depositary to the proper officer or employee of the Treasury Department for the money deposited by him shall be a sufficient voucher for such Treasury officer or employee in the settlement of his accounts. (Aug. 16, 1954, ch. 736, 68A Stat. 918.)

§ 7809. Deposit of collections.

(a) General rule.

Except as provided in subsections (b) and (c) and in sections 4735, 4762, 7651, 7652, 7654, and 7810, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary or his delegate as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Secretary or his delegate.

(b) Deposit funds.

In accordance with instructions of the Secretary or his delegate, there shall be deposited with the Treasurer of the United States in a deposit fund account—

(1) Sums offered in compromise.

Sums offered in compromise under the provisions of section 7122;

(2) Sums offered for purchase of real estate.

Sums offered for the purchase of real estate under the provisions of section 7506;

(3) Surplus proceeds in sales under levy.

Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale; and

(4) Surplus proceeds in sales of redeemed property.

Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary or his delegate shall refund to the maker of such offer the amount thereof.

(c) Deposit of certain receipts.

Moneys received in payment for—

(1) Work or services performed pursuant to section 7515 (relating to special statistical studies and compilations and other services on request);

(2) work or services performed (including materials supplied) pursuant to section 7516 (relating to the supplying of training and training aids on request); and

(3) other work or services performed for a State or a department or agency of the Federal Government (subject to all provisions of law and regulations governing disclosure of information) in supplying copies of, or data from, returns, statements, or other documents filed under authority of this title or records maintained in connection with the administration and enforcement of this title,

shall be deposited in a separate account which may be used to reimburse apropriations which bore all or part of the costs of such work or services, or to refund excess sums when necessary. (Aug. 16, 1954, ch. 736, 68A Stat. 918; Oct. 23, 1962, Pub. L. 87–870, § 3(b), 76 Stat. 1161; Nov. 2, 1966, Pub. L. 89–719, title I, § 112(b), 80 Stat. 1146.)

AMENDMENTS

1966—Pub. L. 89–719 inserted reference to section 7810 in subsec. (a), and added subsec. (b)(4).

1962—Subsec. (a). Pub. L. 87–870, § 3(b)(1), substituted "subsections (b) and (c) and in" for "subsection (b),".

Subsec. (c). Pub. L. 87–870, § 3(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of section by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114 of Pub. L. 89–719, set out as a note under section 6323 of this title.

§ 7810. Revolving fund for redemption of real property.

(a) Establishment of fund.

There is established a revolving fund, under the control of the Secretary or his delegate, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary or his delegate) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $1,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

(b) Reimbursement of fund.

The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by

the United States in an amount equal to the amount expended out of such fund for such redemption.

(c) System of accounts.

The Secretary or his delegate shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts. (Added Pub. L. 89–719, title I, § 112(a), Nov. 2, 1966, 80 Stat. 1145.)

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the section would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114 of Pub. L. 89–719, set out as a note under section 6323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7809 of this title.

Subchapter B.—Effective Date and Related Provisions

Sec.
7851. Applicability of revenue laws.
7852. Other applicable rules.

§ 7851. Applicability of revenue laws.

(a) General rules.

Except as otherwise provided in any section of this title—

(1) Subtitle A.

(A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.

(B) Chapters 3 and 5 of this title shall apply with respect to payments and transfers occurring after December 31, 1954, and as to such payments and transfers sections 143 and 144 and chapter 7 of the Internal Revenue Code of 1939 are hereby repealed.

(C) Any provision of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), or in terms of taxable years ending after a specific date (occuring after December 31, 1953), shall apply to taxable years ending after such specific date. Each such provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall be applicable only to taxable years ending after such specific date. The provisions of the Internal Revenue Code of 1939 superseded by provisions of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) shall be deemed to be included in subtitle A of this title, but shall be applicable only to the period prior to the taking effect of the corresponding provision of subtitle A.

(D) Effective with respect to taxable years ending after March 31, 1954, and subject to tax under chapter 1 of the Internal Revenue Code of 1939—

(i) Sections 13 (b) (3), 26 (b) (2) (C), 26 (h) (1) (C) (including the comma and the word "and" immediately preceding such section), 26 (i) (3), 108 (k), 207 (a) (1) (C), 207 (a) (3) (C), and the last sentence of section 362 (b) (3) of such Code are hereby repealed; and

(ii) Sections 13 (b) (2), 26 (b) (2) (B), 26 (h) (1) (B), 26 (i) (2), 207 (a) (1) (B), 207 (a) (3) (B), 421 (a) (1) (B), and the second sentence of section 362 (b) (3) of such Code are hereby amended by striking out "and before April 1, 1954" (and any accompanying punctuation) wherever appearing therein.

(2) Subtitle B.

(A) Chapter 11 of this title shall apply with respect to estates of decedents dying after the date of enactment of this title, and with respect to such estates chapter 3 of the Internal Revenue Code of 1939 is hereby repealed.

(B) Chapter 12 of this title shall apply with respect to the calendar year 1955 and all calendar years thereafter, and with respect to such years chapter 4 of the Internal Revenue Code of 1939 is hereby repealed.

(3) Subtitle C.

Subtitle C of this title shall apply only with respect to remuneration paid after December 31, 1954, except that chapter 22 of such subtitle shall apply only with respect to remuneration paid after December 31, 1954, which is for services performed after such date. Chapter 9 of the Internal Revenue Code of 1939 is hereby repealed with respect to remuneration paid after December 31, 1954, except that subchapter B of such chapter (and subchapter E of such chapter to the extent it relates to subchapter B) shall remain in force and effect with respect to remuneration paid after December 31, 1954, for services performed on or before such date.

(4) Subtitle D.

Subtitle D of this title shall take effect on January 1, 1955. Subtitles B and C of the Internal Revenue Code of 1939 (except chapters 7, 9, 15, 26, and 28, subchapter B of chapter 25, and parts VII and VIII of subchapter A of chapter 27 of such code) are hereby repealed effective January 1, 1955. Provisions having the same effect as section 6416 (b) (2) (H), and so much of section 4082 (c) as refers to special motor fuels, shall be considered to be included in the Internal Revenue Code of 1939 effective as of May 1, 1954. Section 2450 (a) of the Internal Revenue Code of 1939 (as amended by the Excise Tax Reduction Act of 1954) applies to the period beginning on April 1, 1954, and ending on December 31, 1954.

(5) Subtitle E.

Subtitle E shall take effect on January 1, 1955, except that the provisions in section 5411 permitting the use of a brewery under regulations prescribed by the Secretary or his delegate for the purpose of producing and bottling soft drinks,

section 5554, and chapter 53 shall take effect on the day after the date of enactment of this title. Subchapter B of chapter 25, and part VIII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective on the day after the date of enactment of this title. Chapters 15 and 26, and part VII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective January 1, 1955.

(6) Subtitle F.

(A) General rule.

The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) Assessment, collection, and refunds.

Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credits allowed after the date of enactment of this title, and section 3777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

(C) Taxes imposed under the 1939 Code.

After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

(i) Chapter 73, relating to bonds.

(ii) Chapter 74, relating to closing agreements and compromises.

(iii) Chapter 75, relating to crimes and other offenses, but only insofar as it relates to offenses committed after the date of enactment of this title, and in the case of such offenses, section 6531, relating to periods of limitation on criminal prosecution, shall be applicable. The penalties (other than penalties which may be assessed) provided by the Internal Revenue Code of 1939 shall not apply to offenses, committed after the date of enactment of this title, to which chapter 75 of this title is applicable.

(iv) Chapter 76, relating to judicial proceedings.

(v) Chapter 77, relating to miscellaneous provisions, except that section 7502 shall apply only if the mailing occurs after the date of enactment of this title, and section 7503 shall apply only if the last date referred to therein occurs after the date of enactment of this title.

(vi) Chapter 78, relating to discovery of liability and enforcement of title.

(vii) Chapter 79, relating to definitions.

(viii) Chapter 80, relating to application of internal revenue laws, effective date, and related provisions.

(D) Chapter 28 and subtitle D of 1939 Code.

Except as otherwise provided in subparagraphs (B) and (C), the provisions of chapter 28 and of subtitle D of the Internal Revenue Code of 1939 shall remain in effect with respect to taxes imposed by the Internal Revenue Code of 1939.

(7) Other provisions.

If the effective date of any provision of the Internal Revenue Code of 1954 is not otherwise provided in this section or in any other section of this title, such provision shall take effect on the day after the date of enactment of this title. If the repeal of any provision of the Internal Revenue Code of 1939 is not otherwise provided by this section or by any other section of this title, such provision is hereby repealed effective on the day after the date of enactment of this title.

(b) Effect of repeal of Internal Revenue Code of 1939.

(1) Existing rights and liabilities.

The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

(2) Existing offices.

The repeal of any provision of the Internal Revenue Code of 1939 shall not abolish, terminate, or otherwise change—

(A) any internal revenue district,

(B) any office, position, board, or committee, or

(C) the appointment or employment of any officer or employee,

existing immediately preceding the enactment of this title, the continuance of which is not manifestly inconsistent with any provision of this title, but the same shall continue unless and until changed by lawful authority.

(3) Existing delegations of authority.

Any delegation of authority made pursuant to the provisions of Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1

of 1952, including any redelegation of authority made pursuant to any such delegation of authority, and in effect under the Internal Revenue Code of 1939 immediately preceding the enactment of this title shall, notwithstanding the repeal of such code, remain in effect for purposes of this title, unless distinctly inconsistent or manifestly incompatible with the provisions of this title. The preceding sentence shall not be construed as limiting in any manner the power to amend, modify, or revoke any such delegation or redelegation of authority.

(c) Crimes and forfeitures.

All offenses committed, and all penalties or forfeitures incurred, under any provision of law hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted.

(d) Periods of limitation.

All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

(e) Reference to other provisions.

For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 to any period, any reference in either such code to another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period. (Aug. 16, 1954, ch. 736, 68A Stat. 919.)

REFERENCES IN TEXT

Date of enactment of this title, referred to in the text, is Aug. 16, 1954.

CROSS REFERENCES

Treatment of joint return after death of either spouse for purposes of subsection (a) (1) (A) of this section, see section 6013 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6013 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 46–301, 46–303 of the District of Columbia Code.

§ 7852. Other applicable rules.

(a) Separability clause.

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) Reference in other laws to Internal Revenue Code of 1939.

Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

(c) Items not to be twice included in income or deducted therefrom.

Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

(d) Treaty obligations.

No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title. (Aug. 16, 1954, ch. 736, 68A Stat. 922.)

REFERENCES IN TEXT

Reorganization Plan No. 26 of 1950 and Reorganization Plan No. 1 of 1952, referred to in the text, are set out in the Appendix to Title 5, Government Organization and Employees.

APPLICATION OF SUBSEC. (d) TO PUB. L. 87–834

Section 31 of Pub. L. 87-834, Oct. 16, 1962, 76 Stat. 1069, provided that: "Section 7852(d) of the Internal Revenue Code of 1954 [subsec. (d) of this section] (relating to treaty obligations) shall not apply in respect of any amendment made by this Act [see Short Title note under section 38 of this title]."

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 46–301, 46–303 of the District of Columbia Code.

Subtitle G.—The Joint Committee on Internal Revenue Taxation

Chapter
91. Organization and membership of the Joint Committee
92. Powers and duties of the Joint Committee.

Chapter 91.—ORGANIZATION AND MEMBERSHIP OF THE JOINT COMMITTEE

Sec.
8001. Authorization.
8002. Membership.
8003. Election of chairman and vice chairman.
8004. Appointment and compensation of staff.
8005. Payment of expenses.

§ 8001. Authorization.

There shall be a joint congressional committee known as the Joint Committee on Internal Revenue Taxation (hereinafter in this subtitle referred to as the "Joint Committee"). (Aug. 16, 1954, ch. 736, 68A Stat. 925.)

§ 8002. Membership

(a) Number and selection.

The Joint Committee shall be composed of 10 members as follows:

(1) From Committee on Finance.

Five members who are members of the Committee on Finance of the Senate, three from the majority and two from the minority party, to be chosen by such Committee; and

(2) From Committee on Ways and Means.

Five members who are members of the Committee on Ways and Means of the House of Representatives, three from the majority and two from the minority party, to be chosen by such Committee.

(b) Tenure of office.

(1) General limitation.

No person shall continue to serve as a member of the Joint Committee after he has ceased to be a member of the Committee by which he was chosen, except that—

(2) Exception.

The members chosen by the Committee on Ways and Means who have been reelected to the House of Representatives may continue to serve as members of the Joint Committee notwithstanding the expiration of the Congress.

(c) Vacancies.

A vacancy in the Joint Committee—

(1) Effect.

Shall not affect the power of the remaining members to execute the functions of the Joint Committee; and

(2) Manner of filling.

Shall be filled in the same manner as the original selection, except that—

(A) Adjournment or recess of Congress.

In case of a vacancy during an adjournment or recess of Congress for a period of more than 2 weeks, the members of the Joint Committee who are members of the Committee entitled to fill such vacancy may designate a member of such Committee to serve until his successor is chosen by such Committee; and

(B) Expiration of Congress.

In the case of a vacancy after the expiration of a Congress which would be filled by the Committee on Ways and Means, the members of such Committee who are continuing to serve as members of the Joint Committee may designate a person who, immediately prior to such expiration, was a member of such Committee and who is re-elected to the House of Representatives, to serve until his successor is chosen by such Committee.

(d) Allowances.

The members shall serve without compensation in addition to that received for their services as members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Joint Committee, other than expenses in connection with meetings of the Joint Committee held in the District of Columbia during such times as the Congress is in session. (Aug. 16, 1954, ch. 736, 68A Stat. 925.)

§ 8003. Election of chairman and vice chairman.

The Joint Committee shall elect a chairman and vice chairman from among its members. (Aug. 16, 1954, ch. 736, 68A Stat. 926.)

§ 8004. Appointment and compensation of staff.

Except as otherwise provided by law, the Joint Committee shall have power to appoint and fix the compensation of a clerk and such experts and clerical, stenographic, and other assistants as it deems advisable. (Aug. 16, 1954, ch. 736, 68A Stat. 926.)

COMPENSATION OF CHIEF OF STAFF

Annual basic Compensation of Chief of Staff, see section 74a–1 of Title 2, The Congress.

§ 8005. Payment of expenses.

The expenses of the Joint Committee shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives, upon vouchers signed by the chairman or the vice chairman. (Aug. 16, 1954, ch. 736, 68A Stat. 926.)

Chapter 92.—POWERS AND DUTIES OF THE JOINT COMMITTEE

Sec.
8021. Powers.
8022. Duties.
8023. Additional powers to obtain data.

§ 8021. Powers.

(a) To obtain data and inspect income returns.

For powers of the Joint Committee to obtain and inspect income returns, see section 6103 (d).

(b) Relating to hearings and sessions.

The Joint Committee, or any subcommittee thereof, is authorized—

(1) To hold.

To hold hearings and to sit and act at such places and times;

(2) To require attendance of witnesses and production of books.

To require by subpoena (to be issued under the signature of the chairman or vice chairman) or otherwise the attendance of such witnesses and the production of such books, papers, and documents;

(3) To administer oaths.

To administer such oaths; and

(4) To take testimony.

To take such testimony;

as it deems advisable.

(c) To procure printing and binding.

The Joint Committee, or any subcommittee thereof, is authorized to have such printing and binding done as it deems advisable.

(d) To make expenditures.

(1) General authority.

The Joint Committee, or any subcommittee thereof, is authorized to make such expenditures as it deems advisable.

(2) Limitation.

The cost of stenographic services in reporting such hearings as the Joint Committee may hold shall not be in excess of 25 cents per 100 words. (Aug. 16, 1954, ch. 736, 68A Stat. 927.)

CROSS REFERENCES

Congressional and committee procedure, see chapter 6 of Title 2, The Congress.

§ 8022. Duties.

It shall be the duty of the Joint Committee—

(1) Investigation.

(A) Operation and effects of law.

To investigate the operation and effects of the Federal system of internal revenue taxes;

(B) Administration.

To investigate the administration of such taxes by the Internal Revenue Service or any executive department, establishment, or agency charged with their administration; and

(C) Other investigations.

To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary.

(2) Simplification of law.

(A) Investigation of methods.

To investigate measures and methods for the simplification of such taxes, particularly the income tax; and

(B) Publication of proposals.

To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes.

(3) Reports.

To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendation as it may deem advisable.

(4) Cross reference.

For duties of the Joint Committee relating to refunds of income and estate taxes, see section 6405.

(Aug. 16, 1954, ch. 736, 68A Stat. 927.)

§ 8023. Additional powers to obtain data.

(a) Securing of data.

The Joint Committee or the Chief of Staff of the Joint Committee, upon approval of the Chairman or Vice Chairman, is authorized to secure directly from the Internal Revenue Service, or the office of the Chief Counsel for the Internal Revenue Service, or directly from any executive department, board, bureau, agency, independent establishment, or instrumentality of the Government, information, suggestions, rulings, data, estimates, and statistics, for the purpose of making investigations, reports, and studies relating to internal revenue taxation.

(b) Furnishing of data.

The Internal Revenue Service, the office of the Chief Counsel for the Internal Revenue Service, executive departments, boards, bureaus, agencies, independent establishments, and instrumentalities are authorized and directed to furnish such information, suggestions, rulings, data, estimates, and statistics directly to the Joint Committee or to the Chief of Staff of the Joint Committee, upon request made pursuant to this section.

(c) [Application of Reorganization Plans].[1]

Subsections (a) and (b) shall be applied in accordance with their provisions without regard to Reorganization Plan Numbered 26 of 1950 or to any other reorganization plan becoming effective on, before, or after February 28, 1951. (Aug. 16, 1954, ch. 736, 68A Stat. 928; Sept. 22, 1959, Pub. L. 86-368, § 2(b), 73 Stat. 648.)

REFERENCES IN TEXT

Reorganization Plan No. 26 of 1950, referred to in subsec. (c), is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1959—Subsec. (a). Pub. L. 86-368, § 2(b)(1), substituted "or the office of the Chief Counsel for the Internal Revenue Service" for "(including the Assistant General Counsel of the Treasury Department serving as the Chief Counsel of the Internal Revenue Service)."

Subsec. (b). Pub. L. 86-368, § 2(b)(2), substituted ", the office of the Chief Counsel for the Internal Revenue Service" for "(including the Assistant General Counsel of the Treasury Department serving as the Chief Counsel of the Internal Revenue Service)."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-368 effective when the Chief Counsel for the Internal Revenue Service first appointed pursuant to amendment of section 7801 of this title by Pub. L. 86-368 qualifies and takes office, see section 3(b) of Pub. L. 86-368, set out as a note under section 7801 of this title.

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[1] Subsection catchline supplied by editor.

APPENDIX

RULES OF PRACTICE BEFORE THE UNITED STATES TAX COURT

Revised to January 21, 1971

Rule
1. Location, address, telephone number, and business hours of the Court, fees, and definitions.
2. Admission to practice.
3. Personal representation in lieu of counsel.
4. Form and style of papers.
5. Filing of all documents.
6. Proper parties.
7. Initiation of a case—Petition—Filing fee—Form.
11. Docket.
14. Answer.
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17. Amended and supplemental pleadings.
18. Admissions and denials of pleaded facts.
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20. Extensions of time.
21. Dismissal.
22. Service upon the parties.
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26. Place of trial—Requests and designation.
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28. Pretrial conferences.
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31. Evidence and the submission of evidence.
32. Burden of proof.
35. Briefs.
36. Small tax cases.
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46. Depositions upon written interrogatories.
47. Tender of and objections to depositions.
48. Commissioner of the Tax Court.
50. Computations by parties for entry of decision.
51. Estate tax deduction developing after trial.
52. Preparation of record on appeal—Costs.
53. Court records—Removal—Fees for copies.
60. Fees and mileage.
61. Computation of time—Saturdays, Sundays, and holidays.
63. Cases based upon disallowance of claims for refund or relief.
64. Renegotiation of contracts cases.
65. Bond to stay execution of order of Renegotiation Board.

Rule 1. Location, address, telephone number, and business hours of the Court, fees, and definitions.

(a) *Office of the Court.*—The office of the United States Tax Court is located on the second floor of the building on the northeast corner of 12th Street and Constitution Avenue NW., Washington, D.C. The office of the Clerk of the Court is in Room 2137.

(b) *Mailing address.*—All mail sent to the Court should be addressed to:

United States Tax Court
Box 70
Washington, D.C. 20044

Other addresses where the Court may be in session should never be used in addressing mail to the Court or to its Clerk.

(c) *Telephone number.*—The telephone number of the United States Tax Court as its office in Washington, D.C., is area code 202, 628-5771 (see also notice inside front cover).

(d) *Business hours.*—The Office of the Clerk of the Court at Washington, D.C., shall be open during business hours on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving petitions, pleadings, motions, and the like. "Business hours" are from 8:45 a.m. to 5:15 p.m. (For legal holidays see Rule 61 (b) and (c).)

(e) *Fees—Method of payment.*—Checks, money orders, etc., for fees or charges of the Court should be made payable to the "Treasurer of the United States" and mailed or delivered to the Clerk of the Court. (See Rules 2,7 (b), 52, and 53.)

(f) *Definitions.*—

(1) *Time.*—Time, as provided in these Rules and in orders and notices of the Court, means standard time in the city mentioned except when advanced time is substituted therefor by law. (See Rule 61.)

(2) *Commissioner.*—Where in these Rules (except in Rule 48) the word "Commissioner" is used, it refers to the Commissioner of Internal Revenue.

(3) *Code of 1954.*—The designation of "Code of 1954" as used in these Rules refers to the Internal Revenue Code of 1954, as amended.

Rule 2. Admission to practice.

An applicant who establishes to the satisfaction of the Court that he or she is a citizen of the United States, of good moral character and repute, and possessed of the requisite qualifications to represent others in the preparation and trial of cases, may be admitted to practice before the Court subject to the specific requirements stated hereafter in this Rule.

Each application must be on the form provided by the Court. Application forms and other necessary information will be furnished upon request addressed to the Admissions Clerk of this Court, Box 70, Washington, D.C. 20044.

An attorney at law may be admitted to practice upon filing with the Admissions Clerk a completed application accompanied by the admission fee of $10 and a current certificate from the Clerk of the appropriate court, showing that the applicant has been admitted to practice before and is a member in good standing of the Bar of the Supreme Court of the United States, or of the highest or other appropriate court of any State, or Territory, or of the District of Columbia. A current court certificate is one executed within 60 calendar days preceding the date of the filing of the application.

An applicant, not an attorney at law, as a condition of being admitted to practice, must pass a

written examination given by the Court and the Court may require such person, in addition, to take an oral examination. Any person who has thrice failed such examinations shall not thereafter be eligible to take another examination for admission.

An applicant for admission by examination must be sponsored by at least three persons theretofore admitted to practice before this Court, and each sponsor must send a letter of recommendation directly to the Admissions Clerk of the Court where it will be treated as a confidential communication. The sponsor shall send in his letter promptly, stating therein fully and frankly the extent of his acquaintance with the application, his opinion of the moral character and repute of the applicant, and his opinion of the qualifications of the applicant to practice before this Court. The Court may in its discretion accept an applicant with less than three such sponsors.

The Court will hold a written examination for applicants at its offices in Washington, D.C., on the last Wednesday in October of each year, and at such other times and places as it may designate. The Court will notify each applicant, whose application is in order, of the time and place at which he is to present himself for examination, and the applicant must present that notice to the examiner as his authority for taking an examination. An applicant seeking to qualify by examination must accompany his application with a fee of $15.

A check or money order, submitted in payment of a required admission fee, shall be made payable to the "Treasurer of the United States."

Upon approval of an application for admission and the taking and subscribing of an oath or affirmation in such form as may be prescribed by the Court, each applicant shall be admitted and shall thereupon be entitled to a certificate of admission.

Corporations and firms will not be admitted or recognized.

Practitioners before this Court shall carry on their practice in accordance with the letter and spirit of the canons of professional ethics as adopted by the American Bar Association.

The Court may deny admission to, suspend, or disbar any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. No person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

The Court may require any practitioner before it to furnish a statement under oath of the terms and circumstances of his employment in any case. (See Rule 24.)

Each person admitted to practice before the Court shall promptly notify the Admissions Clerk of any change in office address for mailing purposes.

Rule 3. Personal representation in lieu of counsel.

Any individual taxpayer may appear for himself upon adequate identification to the Court. A taxpayer corporation may be represented by a bona fide officer of the corporation upon permission granted, in its discretion, by the Court or the Division sitting.

Rule 4. Form and style of papers.

(a) *General.*—

(1) *Typing process to be used.*—Papers filed with the Court may be prepared by any process provided the information therein is set forth in clear and legible type.

(2) *Binding.*—All papers shall be bound together on the *lefthand side only* and shall have no backs or covers.

(3) *Caption, signature, and number of copies.*—All papers shall have a caption and a signature and copies shall be filed as specified below.

(b) *Printed papers* shall be printed in 10- or 12-point type, on good unglazed paper, 5⅞ inches wide by 9 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded quotations.

(c) *Typewritten papers* shall be typed on only one side of plain white paper, 8½ inches wide by 11 inches long, and weighing not less than 16 pounds to the ream.

(d) *Citations* shall be in italics when printed and shall be underscored when typewritten.

(e) *The proper caption omitting all prefixes and titles* shall be placed on all papers filed. The full name and surname of each individual petitioner shall be set forth in the caption, but *without* any prefix or title, such as "Mrs.," "Dr.," etc. The name of the estate, the trust, or the other person for whom he acts, shall be given first by each fiduciary filing a petition, followed then by his own name and pertinent title, thus: "Estate of John Doe, deceased, Richard Roe, Executor." (See Rules 6 and 7 (c) (4) (A) and Appendix I, form a.)

(f) *The signature,* either of the petitioner or of his counsel, shall be subscribed in writing to the original of all pleadings, motions, and briefs, and shall be in individual and not in firm name, except that the signature of a petitioner corporation shall be in the name of the corporation by one of its active officers, thus: "John Doe, Inc., by Richard Roe, President." The name and the mailing address of the petitioner or counsel actually signing shall be typed or printed immediately beneath the written signature. The mailing address of counsel shall include the firm name if it is an essential part of the accurate mailing address.

(g) *Four conformed copies* shall be filed with the signed original of every paper filed, except as otherwise provided in these Rules. Papers to be filed in more than one case (as a motion to consolidate, or in cases already consolidated) shall include one additional copy for each such additional case.

(h) *All copies shall* be clear and legible, but they may be on any weight paper.

Rule 5. Filing of all documents.

Any document to be filed with the Court, must be filed in the office of the Clerk of the Court in Washington, D.C., during business hours (see Rule 1); except that the Judge presiding at any trial or hearing in a case may permit documents pertaining thereto to be filed at that particular session of the Court.

Rule 6. Proper parties.

A case in the Tax Court shall be brought by and in the name of the person against whom the Commissioner determined the deficiency (or liability, as the case may be), or by and in the full descriptive name of the fiduciary legally entitled to institute a case on behalf of such person.

In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition. (See Rules 4, 7, and 23.)

The Commissioner shall be named as the respondent.

Rule 7. Initiation of a Case—Petition—Filing fee—Form.

(a) *Petition.*—

(1) *Filing.*—A case shall be initiated by filing with the Court a petition consisting of an original and 4 complete, accurately conformed, clear copies, either printed or typed. (See Rules 4 and 6.)

(2) *Improper petition—Dismissal.*—Failure of a petition to comply with this Rule or with Rule 4 or 6 shall be ground for dismissal of the case.

See also section 6213(a) and section 7502, Code of 1954, in regard to absolute statutory time limit on filing.

(b) *Fee for filing petition.*—The fee for filing a petition with the Court shall be $10, payable at the time of filing. (See Rule 1(e).)

(c) *Form of petition.*—

(1) The petition shall be substantially in accordance with form a, shown in Appendix I.

(2) It shall be complete in itself so as fully to state the issues.

(3) No telegram, cablegram, radiogram, telephone call, or similar communication will be recognized as a petition.

(4) The petition shall contain:

(A) A caption in the following form:

UNITED STATES TAX COURT

Petitioner *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

(B) Numbered paragraph stating:

1. Petitioner's name and legal residence in the case of a petitioner other than a corporation, or in the case of a corporate petitioner, its name and principal place of business, or principal office or agency; and, in all petitions, the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. (For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency shall be determined as of the time of filing the petition.)

2. The date of mailing of the notice of deficiency on which the petition is based, or other proper allegations showing jurisdiction in the Court.

3. The amount of the deficiency (or liability, as the case may be) determined by the Commissioner, the nature of the tax, the year or other period for which the determination was made and, if different from the determination, the approximate amount of taxes in controversy.

4. Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency. Issues in respect of which the burden of proof is by statute placed upon the Commissioner will not be deemed to be raised by the petitioner in the absence of assignments of error in respect thereof. Each assignment of error shall be lettered.

5. Clear and concise lettered statements of the facts upon which the petitioner relies as sustaining the assignments of error, except those assignments of error in respect of which the burden of proof by statute is placed upon the Commissioner.

6. A prayer, setting forth relief sought by the petitioner.

(C) The signature of the petitioner or that of his counsel. (See Rule 4 (f).)

(D) A verification by the petitioner; provided that where the petitioner is sojourning outside the United States or is a nonresident alien, the petition may be verified by a duly appointed attorney in fact, who shall attach to the petition a copy of the power of attorney under which he acts and who shall state in his verification that he acts pursuant to such power, that such power has not been revoked, that petitioner is absent from the United States, and the grounds of his knowledge of the facts alleged in the petition. As used herein the term "United States" includes only the States and the District of Columbia. A notary public is not authorized to administer oaths, etc., in matters in which he is employed as counsel. (See D.C. Code, title 1, ch. 5 (1967), and 26 Op. A.G. 236.)

Verifications by fiduciaries shall contain a statement that the fiduciaries signing and verifying have authority to act for the taxpayer.

Where the petitioner is a corporation, the person verifying shall state in his verification that he has authority to act for the corporation.

The signature and the verification to the petition shall be considered the certificate of those performing these acts that there is good ground for the petition, the case has not been instituted merely for delay, and it is not frivolous.

(E) A copy of the notice of deficiency (or liability, as the case may be), shall be appended to the petition and to each copy required. If a statement has accompanied the notice of deficiency, so much thereof as is material to the issues set out in the assignments of error likewise shall be appended. If the notice of deficiency refers to prior notices from the Commissioner, which are necessary to elucidate the determination, such parts thereof as are material to the issues set out in the assignments of error shall likewise be appended. (See Appendix I, form a. See Rule 22 re service of the petition.)

Rule 11. Docket.

Upon receipt of the petition by the Clerk, the case will be entered upon the docket and assigned a number and the parties notified thereof. This docket number shall be placed by the parties on all

papers thereafter filed in the case and referred to in all correspondence with the Court. (See Rules 5 and 7(a)(1).)

Rule 14. Answer.

(a) *Time to answer or move.*—The Commissioner, after service upon him of the petition, shall have 60 days within which to file an answer or 45 days within which to move with respect to the petition (See Rule 22(a) re service of answer.)

(b) *Form of answer.*—The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation of fact contained in the petition and a statement of any facts upon which the Commissioner relies for defense or for affirmative relief or to sustain any issue raised in the petition in respect of which issue the burden of proof is, by statute, placed upon him. Paragraphs of the answer shall be numbered to correspond to those of the petition to which they relate. The original shall be signed by the Commissioner or his counsel.

(c) *Copies and conformation.*—The original and 3 copies of the answer shall be filed, and each copy shall be conformed.

(d) *Application of Rule to amended answers.*—This Rule shall apply to the filing of answers to amended petitions and to amendments to petitions, except as the Court in a particular case may otherwise direct.

Rule 15. Reply.

(a) *Time to reply or move.*—The petitioner, after service upon him of an answer in which material facts are alleged, shall have 45 days within which to file a reply or 30 days within which to move with respect to the answer. (See Rule 22(a) re service of reply.)

(b) *Contents and form.*—The reply shall contain a specific admission or denial of each material allegation of fact contained in the answer and shall set forth any facts upon which the *petitioner* relies for defense. The paragraphs in the reply shall be numbered to correspond with the paragraphs of the answer. The original copy of each reply shall be signed by the petitioner or his counsel.

(c) *Copies and conformation.*—An original and 4 copies of the reply shall be filed, and each copy shall be conformed to the original by the petitioner or his counsel.

(d) *Verification.*—The Court, upon motion of the Commission in which good cause is shown, or upon its own motion, may require the verification of any reply.

Rule 16. Joinder of issue.

A case shall be deemed at issue upon the filing of the answer unless a reply is required under Rule 15, in which event it shall be deemed at issue upon filing of the reply, or the entry of an order under Rule 18(c).

Rule 17. Amended and supplemental pleadings.

(a) *General.*—A motion for leave to amend a pleading shall state reasons for granting it and shall be accompanied by the proposed amendement.

(b) *Petition.*—

(1) *Before answer.*—The petitioner may amend his petition at any time before answer is filed.

(2) *After answer.*—A petition may be amended, after answer is filed and up to the commencement of the trial, only with the consent of the Commissioner or by leave of the Court.

(c) *Amendment ordered.*—

(1) *Occasion for.*—The Court upon its own motion, or upon motion of either party showing good cause filed prior to the setting of the case for trial, may order a party to file a further and better statement of the nature of his claim, of his defense, or of any matter stated in any pleading. Such a motion filed by a party shall point out the defects complained of and the details desired.

(2) *Consideration of such motion.*—The Court, in its discretion, may set such a motion for hearing (see Rule 27(a)) or may act upon it *ex parte.*

(3) *Penalty for failure to amend.*—The Court may strike the pleadings to which the motion was directed or make such other order as it deems just, if an order of the Court to file amended pleadings hereunder is not obeyed within 15 days of the date of the service of said order or within such other time as the Court may fix.

(d) *To conform pleadings to proof.*—The Court may at any time during the course of the trial grant a motion of either party to amend its pleadings to conform to the proof in particulars stated at the time by the moving party. The amendment or amended pleadings thus permitted, shall be filed with the Court at the trial or shall be filed in the office of the Clerk of the Court in Washington, D.C., within such time as the Court may fix. (See Rules 4, 5, and 19.)

Rule 18. Admissions and denials of pleaded facts.

(a) *Effect of answer.*—Every material allegation of fact set out in the petition and not expressly admitted or denied in the answer, shall be deemed to be admitted.

(b) *Effect of reply.*—Every material allegation of fact set out in the answer and not expressly admitted or denied in the reply, where a reply is filed, shall be deemed to be admitted. Any new material contained in the reply shall be deemed to be denied.

(c) *Effect of failure to reply and motion thereon.*—

(1) *Denial—Motion seeking admission.*—The affirmative allegations of the answer will be deemed denied in the absence of a reply, unless the Commissioner, within 45 days after the expiration of the time for filing a reply, files a motion reciting that a reply required under these Rules was not filed and requesting the Court to enter an order that specified allegations of fact in the answer shall be deemed to be admitted.

(2) *Service of and hearing on motion.*—The Clerk will serve a copy of the Commissioner's motion upon the petitioner and issue notice of a hearing thereon at which hearing the Court may grant the motion unless the required reply is filed on or before the day fixed for such hearing.

Rule 19. Motions.

(a) Motions must be timely, must fully set forth the alleged reasons for the action sought, and must be prepared in the form and style prescribed by Rule 4. (See Rule 22(a) re service.)

(b) Motions will be acted upon as justice may require and may, in the discretion of the Court, be placed upon the motion calendar for argument. Disposition of motions will be expedited if the party filing the same, after consultation with his adversary, is able to note on the motion that there is no objection thereto. (See Rule 27 (a) and (d) and Rule 30(b).)

(c) The filing of a motion shall not constitute cause for postponement of a trial from the date set. (See also Rule 27(d) with respect to motions for continuance.)

(d) If a motion, other than one relating to the receipt of evidence during trial, is made orally during trial, the maker thereof shall promptly reduce it to writing and file it with the Court unless the Division sitting directs otherwise.

(e) No motion for retrial, further trial, or reconsideration may be filed more than 30 days after the opinion has been served, except by special leave.

(f) No motion to vacate or revise a decision may be filed more than 30 days after the decision has been entered, except by special leave.

Motions covered by (e) and (f) shall be separate from each other and not joined to or made a part of any other motion.

Rule 20. Extensions of time.

(a) An extension of time (except for the absolute time limit on filing of the petition, see section 6213 (a), Code of 1954, and except as otherwise provided in these Rules) may be granted by the Court within its discretion upon a timely motion filed in accordance with these Rules setting forth good and sufficient cause therefor or may be ordered by the Court upon its own motion.

(b) If a motion is filed or an order issued in respect to the adequacy of any petition, the time prescribed in Rule 14(a) shall begin to run from the date upon which the Court takes final action with respect to the motion or the order unless the Court orders otherwise. The time for reply shall be similarly extended in the case of a motion or an order with respect to the adequacy of an answer unless the Court orders otherwise.

(c) Any extention of time for filing a brief shall correspondingly extend the time for filing all other briefs yet to be filed in that case unless the Court orders otherwise. (See Rules 19, 22, and 35.)

(For continuances, see Rule 27(d).)

Rule 21. Dismissal.

A case may be dismissed for cause upon motion of either party or of the Court. (See Rule 7(a)(2) and Rule 27(c)(3).)

Rule 22. Service upon the parties.

(a) *Who will serve and method to be used.*—The Clerk shall make service upon the petitioner by mailing to him or to his counsel of record a copy of the pleading, motion, notice, brief, or other document to be served.

Service shall be made by the Clerk upon any named respondent in person, upon deputies duly designated by him to accept service, or upon counsel appearing for the respondent in the case. (See Rules 14 and 15.)

(b) *Upon first counsel of record.*—Service upon any counsel of record will be deemed service upon the party, but, where there are more than one, service will be made only upon counsel for petitioner whose appearance was first entered of record—unless the first counsel of record, by writing filed with the Court, designates other counsel to receive service, in which event service will be so made.

(c) *Where no counsel of record.*—If there is no counsel of record, service will be made upon the petitioner.

Rule 23. Substitution of parties—Change of names.

(a) *Successor fiduciaries—Certificate needed.*—A motion shall be filed to substitute parties who are successor fiduciaries and shall be supported by a certificate of the proper court or official showing the appointment and qualification of the party who seeks to be substituted. (See Rules 4, 19, and 24(a)(2).)

(b) *Change in name—Certificate needed.*—A motion shall be filed to amend the pleadings to show a change in the name of a corporation or other party and shall be supported by a proper official certificate or copy of the decree or other document by which the change was affected, duly certified by the official having its custody. (See Rules 4 and 19.)

(c) *Waiver of certificate.*—No certificate need be filed, unless required by Court order, if the respondent consents to a change as described in paragraphs (a) and (b) above.

(d) *Court order.*—The Court, on motion of a party or upon its own motion, may order the substitution of proper parties upon the death of a petitioner, where a mistake in the name or title of a party appears, or for other cause.

Rule 24. Counsel—Appearance—Withdrawal—Substitution—Changed address.

(a) *Entry of appearance of counsel.*—

(1) Counsel enrolled to practice before this Court may enter his appearance by subscribing the initial petition.

(2) Counsel who subscribes any motion filed under Rule 23(a) will be deemed to have entered his appearance for such new party and he shall promptly file a motion by the new petitioner for the withdrawal of counsel who had previously entered their appearance unless they are to be recognized as counsel for the new petitioner.

(3) Counsel may otherwise enter his appearance *only* by filing, in duplicate, an entry of appearance which shall be signed by counsel individually, shall show his mailing address, and shall state that he is enrolled to practice before this Court. Form 305 may be obtained from the Clerk and used for this purpose but an adequate substitute will suffice. (See Appendix I, form 305.)

(4) Counsel not properly enrolled to practice before this Court will not be recognized except by special leave of the Court granted at a hearing or trial and then only where it appears that counsel can and will promptly become enrolled. (See Rules 2, 4(f), and 7(c)(4)(C).)

(b) *Withdrawal of counsel.*—Counsel of record in any case desiring to withdraw, or any petitioner desiring to withdraw counsel of record, must file a motion with the Court requesting leave therefor reciting that notice thereof has been given to the client or to the counsel being withdrawn, as the case may be. The Court may, in its discretion, deny such motion.

(c) *Substitution of counsel.*—New counsel may be substituted by conforming to the provisions of (a)(2) or (a)(3) and (b) above. (See Rules 2, 4, 19, and 27(d).

(See Rule 22(b) in regard to substitution of "first counsel of record" for purposes of service.)

(d) *Change of address.*—Notice of any change in the mailing address of either counsel or petitioner shall be filed promptly with the Court, in duplicate. Separate notices shall be filed for each case.

Counsel may not act as notary. (See Rule 7(c)(4)(D).)

Rule 26. Place of trial—Requests and designation.

(a) *Requests for place of trial.*—The petitioner at the time of filing the petition shall also file a request showing the name of the place where he would prefer the trial to be held. If the petitioner has filed no request the respondent shall file at the time he files his answer, a request showing the name of the place preferred by him.

(b) *Form and caption.*—These requests shall be separate from the petition or answer, shall have a caption, and shall consist of an original and 2 copies. (See Rule 7(c)(4)(A).)

(c) *Designation of place of trial.*—The Court will designate the place of trial in accordance with the statutory provision that the time and place of trial shall be fixed "with as little inconvenience and expense to taxpayers as is practicable," and, in all cases, will notify the parties of the place at which or in the vicinity of which the trial will be held.

(d) *Motions for changing place designated.*—If either party desires a change in designation of the place of trial he must file a motion (with 4 copies) to that effect, stating fully his reasons therefor. Such motions, made after the notice of the time of the trial has been mailed, will not be deemed to have been timely filed.

(See Appendix II for further information to assist in making requests as to place of trial. See Rule 4.)

Rule 27. Place, time, and notice of hearings and trials—Attendance and continuances.

(a) *Calendars of hearings on motions and other procedural and subsidiary matters.*—

(1) If it is necessary for the Court to hear the parties on matters other than the merits, the proceeding will be listed for such hearing on a motion calendar which is called in Washington, D.C., unless good cause for holding the hearing elsewhere is shown in a timely motion to the Court. Ordinarily such calendars will be set for call at 10 a.m. (see Rule 1) on Wednesdays throughout the year, but due notice of the time and place in each case will be given to the parties by the Clerk. (See Rule 22.)

(2) *Attendance at hearings on motion calendar.*—If a party fails to appear at the call of the motion calendar, the Court will hear the proceeding *ex parte*. However, a memorandum or brief stating the position of the petitioner upon the pending motion will be accepted, when the failure of the petitioner to appear is justified by distance, shortness of time, or other good reason stated in such memorandum or brief.

(3) Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(b) *Report calendars.*—On a calendar specifically set for the purpose or on a trial calendar, and after due notice of the time and place given to the parties by the Clerk, any case at issue may be listed and called, first, for report as to whether the case is to be tried or otherwise disposed of, and if the latter, to report on its status, and second, if it is to be tried, for report on the current status of preparations for trial, particular reference being given to the requirements of Rule 31(b).

(c) *Trial calendars.*—

(1) Each case, when at issue, will be placed upon a calendar for trial in accordance with Rule 26 and the Clerk, not less than 90 days in advance unless otherwise authorized by the Chief Judge, will notify the parties of the place where and the date and time when it will be called.

(2) *Calendar call.*—Each case appearing on such a calendar will be called at the time and place scheduled. The cases will be called usually in the order listed, and counsel or the parties will state their estimate of the time required for trial or file stipulations in lieu of trial. The cases for trial will thereupon be tried in due course, but not necessarily in the order listed.

(3) *Attendance at trials.*—The unexcused absence of a party or his counsel when a case is called for trial will not be the occasion for delay. The case may be dismissed for failure properly to prosecute or the trial may proceed and the case be regarded as submitted on the part of the absent party or parties.

(4) The Court may require appearance for argument or it may accept briefs in lieu of personal appearance.

(d) *Continuances—Motions—Trials.*—

(1) Court action on cases set for hearing on motions or trial will not be delayed by a motion for continuance unless it is timely, sets forth good and sufficient cause, and complies with all applicable Rules.

(2) Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance unless set forth in a motion filed promptly after the notice of hearing or trial has been mailed or unless extenuating circumstances are shown which the Court deems adequate (See Rule 20.)

(e) *Reserve calendar.*—A case once at issue may, upon motion, be placed on an inactive list called the reserve calendar. Good cause must be shown, as, for example, that the case will be governed by the decision in a case pending in a higher court. The case may be placed later on a trial calendar by motion of either party or by the Court on its own motion when the reason for inaction no longer exists.

Rule 28. Pretrial conferences.

(a) *General.*—In appropriate cases the Court will undertake to confer with the parties in pretrial conference with a view to narrowing issues, stipulating facts, simplifying the presentation of evidence, or otherwise assisting in the preparation for trial or possible disposition of the case in whole or in part without trial.

(b) *Cases calendared for trial.*—Either party in a case listed for trial on any trial calendar may request of the trial judge, or the judge on his own motion may order, a pretrial conference. The trial judge may, in his discretion, set the case for a pretrial conference at such time and place during the calendar or prior thereto as may appear to be practicable and appropriate.

(c) *Cases not yet calendared for trial.*—Prior to listing of any case for trial, the Chief Judge in his discretion, upon motion of either party or upon his own motion, may place any case upon the next calendar in the city involved for a pretrial conference, or may assign a particular case to a Judge for a prertial conference either in Washington, D.C., or in any other city where such conference may conveniently be held.

(d) *Conditions.*—A request or motion for a pretrial conference shall include a statement of the reasons therefor. Pretrial conferences will in no circumstances be held as a substitute for the conferences required between the parties by Rule 31(b)(2), and a pretrial conference for the purpose of assisting the parties in entering into the stipulations called for by Rule 31(b)(1) will be held by the Court only where the party requesting such pretrial conference has in good faith attempted without success to obtain such stipulation from his adversary. Nor will any pretrial conference be held where the Court is satisfied that the request therefor is frivolous or is made for purposes of delay.

(e) *Order.*—The Judge holding a pretrial conference may, in his discretion, issue an appropriate order.

Rule 30. Submission without trial or appearance.

(a) *Submission of cases without trial where facts are uncontested.*—Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way) may be submitted at any time by notice of the parties filed with the Court. The parties need not wait for the case to be calendared and need not appear in person. The Chief Judge will then assign the case to a Division for report, which Division, upon request of the parties, will fix a time for filing briefs or for oral argument. (See, however, Rule 31(g).)

(b) A contested motion, not predicated upon an issue of fact, may be submitted in the same way. (See Rules 27(g).)

Rule 31. Evidence and the submission of evidence.

(a) *Rules applicable.*—The trials before the Court and its Division will be conducted in accordance with the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia. With reference to the examination of unwilling or hostile witnesses, see Rule 43(b) of the Rules of Civil Procedure for the United States District Courts.[1]

(b) *Stipulations.*—

(1) *Stipulations required.*—The Court expects the parties to stipulate evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or fairly should not be in dispute.

(2) *In preparation for trial.*—The party expecting to introduce any evidence which might possibly be stipulated (as, for example, entries or summaries from books of account and other records, documents, and all other evidence, to the extent not disputed) shall confer with his adversary promptly after receipt of the trial notice, and both shall endeavor to stipulate all facts not already stipulated.

(3) *Presentation—Copies—Form.*—Stipulations in writing may be filed with the Court in advance or presented at the trial and when filed need not be offered formally to be considered in evidence. They shall be filed in duplicate except that duplicates of the exhibits attached to the original of the stipulation need not be filed. (See Rule 4 as to form and style.)

(4) *Objections.*—Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to stipulated facts made at the trial.

(5) *Results of noncompliance by a party.*—If at the date of issuance of trial notice in a case a party has failed to confer with his adversary, or has refused or failed to stipulate the facts and evidence which are not in dispute or fairly should not be in dispute, and after trial notice, still fails or refuses to stipulate, as required under paragraphs (1) and (2) hereof, the party proposing to stipulate may within 50 days, but not less than 35 days, prior to the date set for call of the case from a trial calendar, file with the Court a motion for an order to show cause why the facts and evidence covered in his motion should not be accepted as established for the purposes of the case. The facts and evidence of the proposed stipulation covered by the motion shall be shown with particularity and by numbered paragraphs. The motion shall contain adequate references to the sources of the matter set forth, and where such sources are in possession or under control of the moving party, the motion shall also show that the opposing party has had and has reasonable access thereto. The motion shall be accompanied by proof of service on the opposing party or his coun-

[1] Rules of Civil Procedure for the United States District Court.

Rule 43. Evidence.

(b) SCOPE OF EXAMINATION AND CROSS-EXAMINATION. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

sel. Upon the filing of such motion, an order to show cause as moved shall be issued forthwith, unless the Court, in its discretion, directs otherwise.

The party against whom the order to show cause has issued shall, within 25 days of the date of such order, file a response listing by numbers the paragraphs in the proposed stipulation in respect of which there is no dispute. Where there is disagreement with respect to any paragraph in part only, the response shall show the part admitted and the part denied. Where there is any disagreement with respect to any paragraph, either in whole or in part, or where the disagreement takes the form merely of a variance in the statement of the facts or evidence, the response shall show the basis for the disagreement including references to pertinent sources. Where the truth and authenticity of facts or evidence is not disputed, an objection on the ground of materiality or relevance may be noted but it is not to be regarded as just cause for refusal to stipulate. The response shall be accompanied by proof of service on the opposing party or his counsel.

The matters covered by the show cause order and response shall be heard at the call of the case from the trial calendar, or, if practicable, at such earlier time and at such place as the Chief Judge in his discretion may fix.

(6) *No evidence received to alter or contradict.*—The Court may set aside a stipulation in whole or in part where justice requires, but otherwise will not receive evidence tending to qualify, change, or contradict any fact properly introduced into the record by stipulation.

(c) *Depositions must be offered.*—Testimony taken by deposition will not be considered until offered and received in evidence.

(d) *Marking exhibits.*—Exhibits attached to a stipulation or a deposition shall be numbered serially, i.e., 1, 2, 3, etc., if offered by the petitioner; shall be lettered serially, i.e., A, B, C, etc., if offered by the respondent; and shall be marked serially, i.e., 1–A, 2–B, 3–C, etc., if offered as a joint exhibit.

(e) *Documentary evidence.*—

(1) *Copies.*—A copy of any book, record, paper, or document may be offered directly in evidence in lieu of the original, where the original is available or where there is no objection, and, where the original is admitted in evidence, a copy may be substituted later for the original or such part thereof as may be material or relevant, upon leave granted in the discretion of the trial Judge.

(2) *Return after final decision.*—Either party desiring the return at his expense of any exhibit belonging to him, after the decision of the Court in any case has become final, shall make prompt application in writing to the Clerk, suggesting a practical manner of delivery. Otherwise exhibits may be disposed of as the Court deems advisable.

(f) *Ex parte statements are not evidence.*—*Ex parte* affidavits, statements in briefs, and unadmitted allegations in pleadings do not consitute evidence.

(g) *Failure of proof.*—Failure to adduce evidence in support of the material facts alleged by the party having the burden of proof and denied by his adversary, may be ground for dismissal. The provisions of Rule 30 do not relieve the party upon whom rests the burden of proof of the necessity of properly producing evidence in support of issues joined on questions of fact.

Rule 32. Burden of proof.

The burden of proof shall be upon the petitioner, except as otherwise provided by statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent.

Rule 35. Briefs.

(a) *General.*—The filing of briefs and the making of oral arguments shall be in accordance with the directions of the Judge presiding at the trial. The parties should be prepared to make oral argument at the conclusion of a trial or to file a written citation of authorities at that time if the Judge so directs.

(b) *Filing.*—Each party shall file an original brief within 45 days after the day on which the trial was concluded and a reply brief within another 30 days thereafter unless the trial Judge directs otherwise. A party who fails to file an original brief may not file a reply brief except on leave granted by the Court, and if his reply brief is filed; his adversary may have an additional 30 days thereafter to file his reply brief. (See Rules 19 and 20 re extensions of time.)

(c) *Service.*—Each brief, whether original or reply, will be served promptly upon the opposite party after it is filed, except where it bears a notation that a copy has already been served, and except that where simultaneous briefs are to be filed they will be served upon the other party immediately after the time for filing such briefs (including any extension thereof) has expired. If an extension is granted after the original time for filing has expired and the brief of the opposite party has been filed but not served, it will be served promptly after the extended period. (See Rule 20(c).)

(d) *Number of copies.*—An original and 2 copies shall be filed if briefs are typewritten and 20 copies shall be filed if briefs are printed. An original and 6 copies shall be filed on Internal Revenue Code of 1939 section 722 and section 721(a) and (2)(C) issues.

(e) *Form and contents.*—All briefs shall contain the following in the order indicated:

(1) On its first page, a *table of contents* with page references followed by a list of all citations alphabetically arranged as to cases cited together with references to pages. Citations shall be in italics when printed and underscored when typewritten. (See Rule 4.)

(2) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(3) The party having the burden of proof shall set forth complete *statements of the facts* based upon the evidence. Each statement shall be numbered, shall be complete in itself, and shall consist of a concise statement of the essential fact and not a discussion or argument relating to the evidence or the law. Reference to the pages of the transcript or the exhibits relied upon in support thereof shall be inserted after each separate statement.

If the other party disagrees with any or all of the statements of fact, he shall set forth each correction which he believes the evidence requires and shall give the same numbers to his statements of fact as appear in his opponent's brief. His statements of fact shall be set forth in accordance with the requirements above designated.

(4) A concise *statement of the points* upon which the party relies.

(5) *The argument.*—The argument shall set forth the points of law relied upon and any discussion of the evidence deemed necessary to support the statement of fact.

(6) The *signature* of counsel or the party filing. (See Rule 4(f).)

Rule 36. Small tax cases.

(a) *In general.*—This Rule sets forth the special provisions which are to be applied to small tax cases, as defined in paragraph (b). Except as provided in this Rule, the other rules of practice of the Court are applicable to such cases. This Rule shall take effect on December 30, 1970.

(b) *Definition.*—The term "small tax case" means a case in which:

(1) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds—

(A) $1,000 for any one taxable year in the case of income or gift taxes, or

(B) $1,000 in the case of estate taxes;

(2) The petitioner has made a request in accordance with paragraph (c) of this Rule to have the proceedings conducted under section 7463, Code of 1954; and

(3) The Court has not entered an order in accordance with paragraph (c)(5) or (d) of this Rule discontinuing the proceedings in the case under section 7463, Code of 1954.

(c) *Election.*—

(1) A petitioner who wishes to have the proceedings in his case conducted under section 7463, Code of 1954, may so request at the time he files his petition.

(2) If the Commissioner disagrees with the petitioner's request to have the proceedings conducted under section 7463, Code of 1954, he shall at the time he files his answer submit an accompanying motion in which he shall set forth the reasons for his disagreement.

(3) With leave of the Court, a petitioner may, after filing his petition but before the trial of the case, request that the proceedings be conducted under section 7463, Code of 1954. If the Court grants such leave, the Commissioner will be given due time in which to indicate his agreement or disagreement with the request; if he disagrees, he shall set forth the reasons for his disagreement.

(4) In the case of a petition filed before December 30, 1970, a request to have the proceedings conducted under section 7463, Code of 1954, may be filed without leave of the Court at any time not later than the thirtieth day after the date of the notice that the case has been placed upon a calendar for trial, and such request may also be made thereafter with leave of the Court. In either case, the Court will notify the Commissioner of such request and he will be given due time in which to indicate his agreement or disagreement with the request; if he disagrees, he shall set forth the reasons for his disagreement.

(5) If such request is made in accordance with the provisions of this paragraph, the case will be docketed as a small tax case. The Court, on its own motion or for good cause shown by either of the parties, may, at any time before the tiral commences, enter an order directing that the small tax case designation shall be removed and that the proceedings shall be conducted under the other Rules of the Court. If no such order is entered, the petitioner will be considered to have exercised his option and the Court shall be deemed to have concurred therein, in accordance with section 7463, Code of 1954, at the commencement of the trial.

(d) *Discontinuance of proceedings.*—After the beginning of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under section 7463, Code of 1954, and that the case be tried under the other Rules of Court, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed $1,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under section 7463, Code of 1954, taking into consideration the convenience and expenses for both parties that would result from the other.

(e) *Number of copies of papers.*—Only an original and two conformed copies of *any* paper need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.

(f) *Preliminary hearings.*—If, in a small tax case, it becomes necessary to hold a hearing on a motion or other preliminary matter, the parties may submit their views in writing and may, but shall not ordinarily be required to, appear personally at such hearing. However, if the Court deems it advisable for the petitioner or his counsel to appear personally, the Court will so notify the petitioner or his council and will make every effort to schedule such hearing at a place convenient to them.

(g) *Representation.*—A petitioner in a small tax case may appear for himself without representation or may be represented by any person admitted to practice before the Court.

(h) *Petition.*—

(1) The petition in a small tax case shall be substantially in accordance with form a-S in Appendix I or shall, in the alternative, comply with the requirements of Rule 7(c)(4) and contain additionally (A) the office of the Internal Revenue Service which issued the deficiency notice, (B) the taxpayer identification number (e.g., social security number) of each petitioner, and (C) a request that the proceedings be conducted under section 7463, Code of 1954.

(2) The fee for filing a petition shall be $10 payable at the time of filing (see Rule 1(e).)

(3) The petition need not be verified, unless the Court directs otherwise.

(i) *Answer.*—The provisions of Rule 14(a), (b), and (d) shall apply to answers in small tax cases.

(j) *Reply.*—A reply shall not be filed unless the Court, on its own motion, or upon motion of the Commissioner for which good cause is shown, otherwise directs. Any reply shall conform to the requirements of Rule 15(b). In the absence of the requirement of a reply, the provisions of Rule 18(c) shall not apply and the affirmative allegations of the answer will be deemed denied.

(k) *Place of trial.*—At the time of filing the petition, the petitioner may, in accordance with form a-S in Appendix I or by a separate writing, request the place where he would prefer the trial to be held. The Court will make every effort to designate the place of trial at the location most convenient to that requested where suitable facilities are available.

(l) *Conduct of trial and evidence.*—Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

(m) *Briefs.*—Neither briefs nor oral arguments will be required in small tax cases, but the Court on its own motion or upon request of either party may hear oral argument or permit the filing of briefs or memorandum briefs.

(n) *Transcripts of proceedings.*—The hearing in, or trial of, a small tax case shall be stenographically reported or otherwise recorded but a transcript thereof need not be made a part of the record unless the Court otherwise directs.

Rule 40. Transcripts of proceedings.

Hearings or trials before the Court or its Divisions shall be stenographically reported and a transcript thereof shall be made if, in the opinion of the Court or of the Division conducting the hearing or trial, a permanent record is deemed necessary. Transcripts shall be supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the court and the reporter.

Rule 44. Subpoenas.

(a) *How issued.*—Subpoenas shall be issued to a proper party, upon request, and when issued shall be signed and sealed, but may otherwise be in blank. Subpoenas so issued in blank shall be completed before service by the party receiving them.

(b) *Contents.*—A subpoena when completed shall state the caption of the case, the names and last-known addresses of the witnesses to be called, the time and place at which they are to appear and give testimony, and whether a witness may designate someone to appear in his place.

(c) *For production of documentary evidence.*—If evidence other than oral testimony is required, such as documentary or written data, the subpoena shall number, set forth separately, and describe adequately each item to be produced.

(d) *Service.*—The party on whose behalf a subpoena is issued shall be responsible for its service, and service may be made by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

Rule 45. Depositions.

(a) *Application to take.*—When either party desires to take a deposition, he shall file with the Court a verified application and 2 conformed copies, together with an additional copy for each additional docket number involved. The Court upon request will furnish forms for this purpose. If the space in the form furnished by the Court is inadequate for setting forth the reasons in support of the application in any particular case, a substitute form may be used, but the substitute must contain all of the information called for on the Court's form. (See Appendix I, form 5–A).

(b) *Limitation on time for application to take.*—Applications to take depositions must be filed at least 30 days prior to the date set for the trial of the case, and such depositions must be completed and filed with the Court at least 10 days prior to the trial: *Provided,* Such applications will not be regarded as sufficient ground for the granting of a continuance from the date or place of the trial theretofore set, unless the case shall have been at issue less than 60 days and the motion for continuance shall have been filed not less than 20 days prior to said date of trial: *Provided, further,* That under special circumstances, and for good cause shown, the Court may otherwise order.

(c) *Qualification of officer.*—The officer before whom depositions are taken must be authorized to administer oaths. (See section 7622, Code of 1954.) In no case shall a deposition be taken before any person who has any office connection or business employment with either party or his counsel except by consent of the parties and when no other officer is available, and in his certificate of return to such deposition such officer shall so certify.

(d) *Order for taking.*—Upon receipt of such application, the Clerk will serve a copy thereof on the opposite party, and allow a reasonable time for objection thereto. Thereafter, the Court will, in its discretion, make an order, a copy of which will be mailed or delivered to the parties or their counsel, wherein the Court will name the witness whose deposition is to be taken and specify the time when, the place where, and the officer before whom the witness is to testify, but such time, place, and officer specified in the Court's order may or may not be the same as set forth in the application. The applicant shall thereupon make all necessary arrangements for the taking of each deposition and shall furnish the officer before whom it is to be taken with a copy of the order above mentioned.

(e) *By stipulation.*—At any time after issue is joined, the parties or their counsel may, by stipulation duly signed and filed, take depositions. In such cases, the stipulation shall state the name and address of each witness, the time when and the place where such depositions will be taken, and the name, address, and official title of the officer before whom it is proposed to take the depositions. In such cases, no order to take depositions will be issued, but they shall be taken and returned by the officer in accordance with the Rules of the Court.

(f) *Manner of taking.*—Each witness must first take the oath or affirm. The questions propounded to him and his answers must be recorded verbatim.

Objections to questions or answers shall be explicitly but briefly and concisely stated and recorded without any unnecessary comment, explanation, or argument by counsel for either party.

(g) *Other witness to be excluded.*—At the request of either party, a person whom either expects or intends to call as a witness in the same or any related case shall be excluded from the room where the testimony of a witness is being taken. If such person remains in the room or within hearing of the examination after such request has been made, he shall not thereafter be permitted to testify except by the consent of the party who requested his exclusion.

(h) *Depositions to be signed.*—The testimony of the witness when transcribed shall be read to or by him and shall be signed by him. (See Appendix I, form 5–re.)

(i) *Form in which depositions must be returned to the Court.*—When a depositon is returned to the Court it must show the docket number and the caption (the names of the parties) of the case as they appear in the Court's records, the place and date of taking, the name of the witness, the party by whom called, the names of counsel present, indicating which party each counsel represents, and (in the body of the deposition) the name of counsel examining or cross-examining the witness.

The officer must so fasten the sheets of the deposition that they cannot be tampered with. He must spare no pains to return to the Court the exact testimony he has taken. All exhibits must be carefully marked so as to be capable of identification, and when practicable must be attached to the deposition.

The officer must properly execute and attach to the deposition a certificate of return in the form prescribed. (See Appendix I, from 5–re.)

(j) *Return of.*—The officer must enclose the original depositions and exhibits, together with 2 copies of the depositions, in a sealed packet, with postage or other transportation charges prepaid, and direct and forward the same to the United States Tax Court, Box 70, Washington, D.C. 20044. In each case, the original of the depositions must be directed and forwarded to the Court. The officer may, however, upon written request, deliver a copy of the depositions to either or to both of the parties, or to their representatives, in lieu of sending such copies to the Court as above provided. If one or both of the required copies are delivered by the officer taking the depositions, he shall attach to his return the written request of the party or parties, or of their counsel to whom such copy or copies were delivered, and shall state in his certificate of return the fact of delivery by him of such copy or copies. If copies of the depositions are delivered by the officer taking the same, no service of copies of such depositions upon the party or his counsel of record will be made by the Court.

Rule 46. Depositions upon written interrogatories.

(a) *Application for, interrogatories, objections, etc.*—Applications to take depositions upon written interrogatories may be made in substantially the same manner as depositions taken under Rule 45 except as hereinafter noted. An original and 5 copies of the interrogatories must be filed with the verified application. The Clerk will serve a copy of the application and of the interrogatories with notice to the opposite party that objections or cross-interrogatories may be filed within 15 days thereafter. Cross-interrogatories shall consist of an original and 5 copies. The Clerk will serve a copy thereof with notice that any objections thereto may be filed within 15 days. The initial application and interrogatories must be filed in time to allow for service, objections, cross-interrogatories, and objections thereto, and for taking and filing the deposition at least 10 days prior to any trial then scheduled.

(b) *Manner of taking.*—The officer taking the deposition upon written interrogatories shall propound the interrogatories and cross-interrogatories in their proper order to each witness and shall cause the testimony to be reduced to writing in the witness' own words by a stenographic reporter then present, but no person other than the witness, reporter, and the officer taking the deposition shall be present at the examination. Otherwise said officer shall conform substantially to the provisions of Rule 45.

(c) *Certificate and return of deposition.*—The officer taking the deposition shall certify in his return that no person was present at the examination except the witness, the reporter, and himself and he shall otherwise comply with the pertinent provisions of Rule 45.

(d) *Depositions in foreign countries.*—Depositions obtained in foreign countries must be taken upon written interrogatories except as otherwise directed by the Court for cause shown.

Rule 47. Tender of and objections to depositions.

(a) *Objections to depositions taken upon oral examination.*—

(1) *Competency, relevancy, or materiality.*—Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony, where depositions are taken upon oral examination, may be made at the trial, even though not noted at or before the taking of the deposition, unless the ground for the objection is one which might have been obviated or removed if presented at or before the time of the taking of the deposition.

(2) *Irregularities as to manner or form.*—Objections directed to errors and irregularities in the manner of taking the deposition, in the form of any question or answer, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might have been obviated, removed, or cured if promptly presented will not be considered unless made at the taking of the deposition. (See Rule 45 (f).)

(3) *Errors re how transcribed, signed, certified, etc.*—Errors or irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 45 and 46 shall not form the basis for objections but questions in respect thereto shall be raised on a motion to suppress the deposition in whole or in part made with reasonable promptness after such defect is or with due diligence might have been ascertained.

(b) *Objections to written interrogatories or cross-interrogatories.*—No objections to written interrogatories or cross-interrogatories will be considered subsequent to the taking of the deposition unless they have been made in the manner and within the time prescribed therefor by Rule 46. (See Rule 31(c) and (e).)

Rule 48. Commissioner of the Tax Court.

(a) The term "commissioner" as used in this Rule 48 applies to any person who shall have been appointed by the Chief Judge as a commissioner pursuant to section 7456(c), Code of 1954.

(b) Any commissioner shall conduct trials, pretrial conferences, and hearings upon motions, in cases assigned to him by the Chief Judge or by a division of the Court. Such trials and other proceedings shall be conducted in accordance with the Court's Rules of Practice. The commissioner shall rule upon objections and other evidentiary matters in accordance with the provisions of sections 7453 and 7463, Code of 1954, and the Rules of the Court, and shall exercise such further and incidental authority, including the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings. Paragraphs (c), (d), (e), (f), and (g) of this Rule are not applicable to small tax cases, but paragraph (h) of this Rule is applicable to such cases.

(c) Each party shall file his proposed findings of fact and original brief within 60 days after the date on which the hearing is concluded, unless otherwise directed. As to their form and contents, the provisions of Rule 35(e) shall apply, except that the proposed findings of fact of each party shall be complete under the evidence and shall not be subject to the limiting provision of the first sentence of Rule 35(e)(3). The number of copies of proposed findings of fact and briefs to be filed and service thereof shall be as specified in Rules 35(d) and 35 (c), respectively.

(d) The objections of each party to the proposed findings of fact of the opposing party, prepared in the manner provided in the second paragraph of Rule 35(e)(3), shall be filed within 30 days after service of the proposed findings.

(e) Thereafter the commissioner shall prepare and file a report of his finidngs of fact based upon the evidence in the case, and a copy thereof shall be served on each party.

(f) Reply briefs and any exceptions which the parties may have to the commissioner's findings of fact shall be filed within 30 days from the date of service of the said findings of fact.

(g) Upon motion of either party, made not later than the due date for filing his reply brief, or upon its own motion, the Division to which the case is assigned may, in its discretion, direct oral argument and set a date therefor.

(h) A commissioner who conducts the trial of a small tax case subject to Rule 36 shall, as soon after such trial as is practicable, prepare a summary of the facts and reasons for his proposed disposition of the case, which shall promptly be submitted to the Chief Judge or to a judge or division of the Court, if the Chief Judge shall so direct.

Rule 50. Computations by parties for entry of decision.

(a) *Agreed computations.*—Where the Court has filed its opinion determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency or overpayment to be entered as the decision. If the parties are in agreement as to the amount of the deficiency or overpayment to be entered as the decision pursuant to the report of the Court, they or either of them shall file promptly with the Court an original and 2 copies of a computation showing the amount of the deficiency or overpayment and that there is no disagreement that the figures shown are in accordance with the report of the Court. The Court will then enter its decision.

(b) *Procedure in absence of agreement.*—If, however, the parties are not in agreement as to the amount of the deficiency or overpayment to be entered as the decision, in accordance with the report of the Court, either of them may file with the Court a computation of the deficiency or overpayment believed by him to be in accordance with the report of the Court. The Clerk will serve a copy thereof upon the opposite party, will place the matter upon a motion calendar for argument in due course, and will serve notice of the argument upon both parties. If the opposite party fails to file objection, accompanied by an alternative computation, at least 5 days prior to the date of such argument, or any continuance thereof, the Court may enter decision in accordance with the computation already submitted. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, the parties will be afforded an opportunity to be heard in argument thereon on the date filed, and the Court will determine the correct deficiency or overpayment and enter its decision.

(c) *Limits on argument under this Rule.*—Any argument under this Rule will be confined strictly to the consideration of the correct computation of the deficiency or overpayment resulting from the report already made, and no argument will be heard upon or consideration given to the issues or matters already disposed of by such report or of any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration.

Rule 51. Estate tax deduction developing after trial.

If the parties in an estate tax case are unable to agree under Rule 50, or under a remand, upon a deduction involving expenses incurred at or after the trial, the petitioner may move to reopen the case for further trial on that issue provided it is raised in the petition or by amendment thereto.

Rule 52. Preparation of record on appeal—Costs.

(a) Immediately after the contents of a record on appeal have been settled or agreed to, the Clerk will notify the petitioner of the costs and charges for the preparation, comparison, and certification of said record; such charges to be determined in accordance with the provisions of section 7474, Code of 1954, and the Act of September 27, 1944, 58 Stat. 743.

(b) No transcript will be certified and transmitted to the appellate court until the costs and charges therefor have been paid. (For name of payee, see Rule 1(e).)

(c) An appellant who requests the Clerk to certify but not to prepare documents for transmission to a United States Court of Appeals shall furnish the Clerk with the copies of the documents to be certified, if duplicates are not already in the record. (See Rules 4(g) and 31(b).)

(The Federal Rules of Appellate Procedure should be consulted. For statutory provisions relating to appellate court review of Tax Court decisions, see section 7482 et seq., Code of 1954. For forms of bonds, see Appendix I, forms b and c.)

Rule 53. Court records—Removal—Fees for copies.

(a) *Original records to be retained by Clerk—Exceptions.*—The Clerk shall not permit any original record, paper, document, or exhibit filed with the Court to be taken from the courtroom or from other offices of the Court, except as ordered by a Judge of the Court, or except as the Clerk may find necessary in furnishing photostat copies of such records or transmitting originals to higher courts for appeal purposes, but when a decision of the Court becomes final he shall proceed in accordance with Rule 31(e)(2).

(b) *Copies obtained from Clerk.*—A plain or a certified copy of any document, record, entry, or other paper pertaining to a case before this Court may be had upon application to the Clerk, the fee to be charged and collected therefor to be determined in accordance with the provisions of section 7474, Code of 1954, and the Act of September 27, 1944, 58 Stat. 743. No copy of any exhibit or original document in the files of the Court shall be furnished to other than the parties until the decision in the case becomes final.

Rule 60. Fees and mileage.

Section 7457 of the Internal Revenue Code of 1954 provides:

(a) *Amount.*—Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) *Payment.*—Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) *Witnesses for Secretary or his delegate.*—In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

(2) *Other witnesses.*—In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

No witness, other than one for the Commissioner, shall be required to testify in any case before the Court until he shall have been tendered the fees and mileage to which he is entitled in accordance with the above provision of law.

Rule 61. Computation of time—Saturdays, Sundays, and holidays.

(a) *Computation of time—Exclusions.*—The day of the act, event, or default starting any period of time prescribed or allowed by these Rules or by an order of this Court shall not be counted as a part of the period, but Saturdays, Sundays, legal holidays in the District of Columbia, and legal holidays established by other Federal statute shall count just as any other days, except that when the period would expire on a Saturday, Sunday, legal holiday in the District of Columbia, or a legal holiday established by other Federal statute, it shall extend to and include the next succeeding day that is not a Saturday, Sunday, or such legal holiday.

(b) *The legal holidays within the District of Columbia are:*

New Year's Day—January 1
Inauguration Day—Every fourth year
Washington's birthday—Third Monday in February
Memorial Day—Last Monday in May
Independence Day—July 4
Labor Day—First Monday in September
Columbus Day—Second Monday in October
Veterans Day—Fourth Monday in October
Thanksgiving Day—Fourth Thursday in November
Christmas Day—December 25

(c) *Legal holidays established by other Federal statute.*—When a holiday occurs on a Saturday, the Friday immediately before is a legal public holiday (5 U.S.C. sec. 6103).

Rule 63. Cases based upon disallowance of claims for refund or relief.

All of the Rules of Practice, with appropriate changes in wording wherever necessary, shall apply to cases involving the disallowance of claims for refund or relief over which this Court has jurisdiction. Petitions in such cases shall have attached to them a copy of the notice of disallowance, together with whatever statements may accompany that notice, and shall also have attached to them a copy of the claim or application for refund or relief. In cases where no appeal lies from the decision of the Tax Court a copy of the claim or application need be attached only to the original and first copy of the petition.

Rule 64. Renegotiation of contracts cases.

(a) *Applicability of other rules to renegotiation cases.*—Except as otherwise prescribed by this Rule, cases for the redetermination of excessive profits under the Renegotiation Acts[1] shall be governed by the existing Rules of Practice before this Court. Where any of the existing Rules (except Rule 48) or the matter contained in the Appendix refer to the Commissioner, such Rules and the matter in the

[1] Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 701, Revenue Act of 1943, and section 108 of the Renegotiation Act of 1951; also, the Renegotiation Act of 1948 (Supplemental National Defense Appropriation Act of 1948, section 3(e)), Public Law No. 547 (80th Cong., 62 Stat. 260); also, Public Law No. 764 (83d Cong., 68 Stat. 1116).

Appendix, when applied to a case for the redetermination of excessive profits under the Renegotiation Acts, shall refer to the War Contracts Price Adjustment Board (or to the United States when substituted therefor),[2] to the Secretary as defined and used in the Renegotiation Acts, or to the Renegotiation Board. Similarly references to the taxpayer shall refer to the contractor or subcontractor; references to tax shall refer to profits under a contract or subcontract subject to renegotiation, or to excessive profits thereunder, dependent upon context; and references to the determination of a deficiency, or a notice of such determination, shall refer to the order of the Board or the Secretary determining the amount of excessive profits.

(b) *Initiation of cases.*—A case for the redetermination of excessive profits under the Renegotiation Acts shall be initiated by the filing of a petition, as provided in Rules 4, 6, and the pertinent parts of Rule 7, in which the authority making the determination of excessive profits shall be shown as the respondent. (See form a, Appendix I.)

The petition shall be complete in itself so as fully to state the issues. It shall contain:

(A) A caption in the following form:

UNITED STATES TAX COURT

----------, Petitoner, *v.* ----------, Respondent.	Docket No.

(B) Proper allegations showing jurisdiction in the Court.

(C) A statement of the amount of excessive profits determined by the Board or the Secretary, as the case may be, the period for which determined, and the amount thereof in controversy. If the determination of excessive profits was made on the basis of a specific contract or contracts, the petition shall identify the contract or contracts and shall state the period covered thereby.

(D) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Board or the Secretary in the determination of excessive profits. Each assignment of error shall be lettered.

(E) Clear and concise lettered statements of the facts upon which the petitioner relies as sustaining the assignments of error. The allegations of fact shall contain a statement of the amount received or accrued during the period in question under the contracts or subcontracts subject to renegotiation; the costs paid or incurred with respect thereto and the profits derived therefrom, the type and character of business done, and any other facts pertinent to a determination of the error alleged.

(F) A prayer, setting forth relief sought by the petitioner.

(G) The signature of the petitioner or that of his counsel. (See Rule 4.)

(H) A vertification by the petitioner in accordance with the applicable provision of Rule 7(c)(4)(D).

(I) A copy of the notice and a copy of the order determining the amount of excessive profits, which form the basis for the initiation of the case, shall be appended to the petition. If a statement has been furnished to the petitioner by the renegotiating authority setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination, a copy of such statement shall also be appended to the petition.

(c) *Claim by respondent for increased amount of excessive profits.*—Any claim for the redetermination of an amount of excessive profits greater than the amount shown in the notice of determination shall be made by the respondent in his answer filed under Rule 14, or in an amendment thereto filed under Rule 17 at or before the time of the trial.

(See statutory references, footnotes 2 and 3, *supra.*)

Rule 65. Bond to stay execution of order of Renegotiation Board.

(a) *Statute.*—The Renegotiation Act of 1951 provides that execution of the order of the Renegotiation Board may be stayed by filing with the Tax Court a bond, approved as to form and in an amount fixed by the Court, within 10 days after the filing of the petition. See sections 105(a) and 108 of the Renegotiation Act of 1951. For forms of bonds see Appendix I, forms d, e, f, and g.

(b) *Fixing amount of bond.*—The amount of bond to be filed to stay execution of an order of the Renegotiation Board pursuant to statute will be fixed by order of the Tax Court upon motion timely filed by the petitioner. The amount of bond requested will be considered prima facie evidence of the proper amount of the bond if the motion requests that it be fixed:

(1) At 112 percent of the full amount of the excessive profits determined in the unilateral order on which the petition is based, or

(2) At 112 percent of an amount equal to the full amount of the excessive profits determined in that order reduced by the credit authorized by section 3806 of the Internal Revenue Code of 1939, or section 1481, Code of 1954, and is accompanied by a statement from the district director of internal revenue for the district in which the return for the taxable year was filed, showing the amount of the credit to which the petitioner is entitled as a result of the determination, and

(3) The motion recites that petitioner agrees that approval of a bond in an amount fixed as provided in (1) or (2) shall not preclude the entry of an order increasing the amount of bond at any time thereafter upon a showing satisfactory to the Court of the necessity for increase.

The Court will consider other applications differing from the above, but the applicant must have in mind the short time allowed by the statute for the approval of the bond.

(c) *Sureties and collateral.*—

(1) The Tax Court will accept as sureties on such bonds companies holding certificates of authority from the Secretary of the Treasury. (See latest U.S. Treasury Dept. Circ. 570.)

[2] Section 201(h) of the Renegotiation Act of 1951, as amended by section 3, Public Law No. 576, 82d Cong., 2d Sess., approved July 17, 1952, and by section 8, Public Law 764, 83d Cong., 2d Sess., approved September 1, 1954, 68 Stat. 1116.

(2) If collateral is to be deposited as security for a bond, in lieu of a surety, United States Government marketable public securities fully negotiable by the bearer, owned by the petitioner, in a sum equal at their par value to the amount of the bond to be furnished, will be acceptable. A power of attorney and agreement must accompany such securities. (See Appendix I, forms f and g.) For other collateral which may be furnished and documents required therewith see the latest revision of U.S. Treasury Dept. Circ. No. 154 (rev.).

APPENDIX

I. FORMS

The forms listed below *by small letter,* with the exception of form a-S, are not printed forms and are not obtainable from the Court. When preparing pleadings or documents involving such forms, be sure to follow Rule 4 carefully as to form, size, type, *and copies,* of papers required, unless the number of copies is otherwise specified in the pertinent rule.

The forms identified below *by number* and form a-S are printed forms, which the Court will furnish upon request. Typed copies of these printed forms may be used instead of the printed forms, except for the subpoena form, which latter must be obtained from the Court.

The forms to be found herein as as follows:

a. Petition.

a-S. Petition (small tax case).

TC 56. Requestion for place of trial (to be attached to form a-S).

4. Subpoena.

5–A. Application for order to take depositions.

5–re. Certificate of return of depositions.

305. Entry of appearance.

b. Appeal bond, corporate surety.

c. Appeal bond, approved collateral.

d. Bond with corporate surety in renegotiation cases.

e. Bond with approved collateral in renegotiation cases.

f. Power of Attorney and Agreement by Corporation.

g. Power of Attorney and Agreement by Individuals.

A. PETITION

(See Rules 4, 5, 6, and 7)

UNITED STATES TAX COURT

----------, Petitioner, *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Service symbols) dated ----------, 19--, and as the basis for his case alleges as follows:

1. The petitioner is (set forth whether individual, corporation, fiduciary, etc., as provided in Rule 6) with principal office (or residence) at ----------, (Street) ----------, ----------. The return (City) (State) for the period here involved was filed with the collector (director or district director) for the ------ district of ----------.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on ----------, 19--.

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (profits, estate, or gift) taxes for the calendar (or fiscal) year 19-- in the amount of ---------- dollars of which approximately ---------- dollars is in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors: (Set forth specifically in lettered subparagraphs the assignments of error in a concise manner and avoid pleading facts which properly belong in the succeeding paragraph.)

5. The facts upon which the petitioner relies as the basis of this case are as follows: (Here set forth allegations of the facts relied upon—but not the evidence—in orderly and logical sequence, with subparagraphs lettered, so as fully to inform the Court of the issues to be presented and to enable the Commissioner to admit each or deny each specific allegation.)

Wherefore, the petitioner prays that this Court may try the case and (here state the relief desired).

(Signed) ----------
(Petitioner or counsel)

(Post-office address)

STATE OF ----------
COUNTY OF ---------- } *ss:*

----------, being duly sworn, says that he is the petitioner (if a corporation, or fiduciary, state title of office or trust of person verifying and that he is duly authorized to verify the foregoing petition) above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

(Signed) ----------

Subscribed and sworn to before me this ---- day of ----------, 19--.

(Signed) ----------
(Official title)

[SEAL]

a-S. PETITION (SMALL TAX CASE)

(Available—Ask for form a-S)

(See Rule 36)

UNITED STATES TAX COURT

----------, Petitioner(s) *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

PETITION

1. Petitioner(s) request(s) the Court to redetermine the tax deficiency(ies) for the year(s) ----------, as set forth in the notice of deficiency, a copy of which is attached. The notice was issued by the Office of the Internal Revenue Service at ----------
(City and State)

2. Petitioner(s) taxpayer identification (e.g. social security) number(s) is (are) _____.

3. Petitioner(s) make(s) the following claims as to his tax liability:

Year	Amount of deficiency disputed	Amount of addition to tax, if any, disputed	Amount of overpayment claimed
_____			
_____			
_____			

4. The Commissioner of Internal Revenue made the following errors in determining this (these) tax deficiency(ies):

a. _____

_____

_____

b. _____

_____

_____

c. _____

_____

_____

5. Petitioner(s) assert(s) the following facts to support the assignment(s) of error(s) set out in paragraph 4. (In your own words, describe fully the facts in support of your claim; use additional pages if necessary):

a. _____

_____

_____

b. _____

_____

_____

c. _____

_____

_____

Petitioner(s) request(s) that the proceedings in this case be conducted as a "small tax case" under section 7463 of the Internal Revenue Code of 1954, as amended, and Rule 36 of the Rules of Practice of the United States Tax Court.* (See note below.)

_____	_____
Signature of petitioner (husband)	Present address
_____	_____
Signature of petitioner (wife) (If joint return was filed)	Present address

_____

Signature and address of counsel, if retained by petitioner(s)

* If you do not want to make this request, you should strike out the paragraph at the top of the page. In considering whether to request that the proceedings in this case be conducted as a "small tax case," your attention is called to the following provisions of section 7463:

(a) IN GENERAL.—In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) $1,000 for any one taxable year, in the case of the taxes imposed by subtitle A [Income taxes] and chapter 12 [Gift Tax], or

(2) $1,000, in the case of the tax imposed by chapter 11 [Estate Tax], at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. * * *

(b) FINALITY OF DECISIONS.—A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

TC 56. REQUEST FOR PLACE OF TRIAL

(Available—Ask for form TC 56)

(See Rule 36)

(Page to be attached to the Form Petition in small tax cases—Form a-S)

UNITED STATES TAX COURT

_____, Petitioner(s) *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

REQUEST FOR PLACE OF TRIAL

Petitioner(s) hereby request(s) that trial of this case be held at _____.
(City and State)

_____
Signature of petitioner (husband)

_____
Signature of petitioner (wife)

_____
Signature of counsel (If retained by petitioner(s))

_____

4. SUBPOENA

(Available—Ask for form 4)

(See Rule 44)

UNITED STATES TAX COURT
Washington, D.C.

_____, Petitioner *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

SUBPOENA

To _____

You Are Hereby Commanded to appear before the United States Tax Court _____

_____
(or the name and official title of a person authorized to take depositions)

at _____ (Time) on the _____ (Date) day of _____ (Month)

at _____
(Place)

then and there to testify on behalf of _____

_____
(Petitioner) or (Respondent)

in the above-entitled case, and to bring with you

(Use reverse if necessary)

and not to depart without leave of the Court.

Date _____

_____
Attorney for (Petitioner)
(Respondent)

_____
(Name) (Title)

RETURN ON SERVICE

The above-named witness was summoned on the _____ day of _____, 19__ at _____ by delivering a copy of this subpoena to h____ and, if a witness for the petitioner, by tendering fees and mileage to h____ pursuant to Rule 60 of the Rules of Practice of the Tax Court.

Dated _____ Signed _____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ [SEAL]
(Name and Title)

5–A. APPLICATION FOR ORDER TO TAKE DEPOSITIONS*

(Available—Ask for form 5–A)

(See Rules 45 and 46)

UNITED STATES TAX COURT

_____ Petitioner *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

APPLICATION FOR ORDER TO TAKE DEPOSITIONS*

To the United States Tax Court:

1. Application is hereby made by the above-named _____ for an order to take
(Petitioner or respondent)
the deposition ____ of the following-named person _____:

	Name of witness	*Post-office address*
(a)	_____	_____
(b)	_____	_____
(c)	_____	_____
(d)	_____	_____

*Applications must be filed at least 30 days prior to the date set for trial. When the applicant seeks to take depositions upon written interrogatories the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed interrogatories. The taking of depositions upon written interrogatories is not favored, except when the depositions are to be take in foreign countries, in which latter case any depositions taken *must* be upon written interrogatories, except as otherwise directed by the Court for cause shown. (See Rule 46.) If the parties so stipulate depositions may be taken without application to the Court. (See Rule 45(e).)

2. It is desired to take the deposition of the persons above named and each of them for the following reasons:

(a) _____ will testify to the following material matters:
(Set forth briefly the matter upon which said witness will be called to testify)

(b) _____ will testify to the following material matters:

(c) _____ will testify to the following material matters:

(d) _____ will testify to the following material matters:

---

3. The reasons why _____ desires to take the testimony of the above-named persons rather than have them appear personally and testify before the Court are as follows: (State specifically reasons for each witness.)

---

4. It is desired to take the testimony of _____
(Names of witnesses)
on the _____ day* of _____, 19__, at the hour of _____ o'clock __m.

*(A date sufficiently in advance of the day set for hearing of the proceedings to enable the deposition to be completed and filed with the Court at least 10 days prior to the hearing)

before _____ in the city
(State name and title of official)
of _____, State of _____ at room _____
(Give number of room, street

---
number, and name of building)

5. That _____ is a _____
(Give official title)
(Name of official before whom depositions are to be taken)
_____, who has authority to administer oaths but has no office connection or business employment with the petitioner or his counsel.

Dated _____, 19__.

(Signed) _____
(Petitioner or counsel)

_____
(Post-office address)

STATE OF _____ }
COUNTY OF _____ } *ss:*

_____, being duly sworn,
(Petitioner or counsel)
says that the foregoing application for order to take depositions is made in good faith and for the reasons therein stated and that the same is not made for purposes of delay.

(Signed) _____

Subscribed and sworn to before me this ____ day of _____, 19__.

(Signed) _____
(Official title)

[SEAL]

5-re. CERTIFICATE ON RETURN

(Reverse of form 5)

To the United States Tax Court:

I, _____, the person named in the foregoing order to take deposition, hereby certify:

1. That I proceeded, on the _____ day of _____, A.D. 19__, at the office of _____, in the city of _____, State of _____, at _____, o'clock __m., under the said order and in the presence of _____ and _____ the counsel of the respective parties, to take the following depositions, viz:

_____, a witness produced on behalf of the _____;
(Petitioner or respondent)

_____, a witness produced on behalf of the _____;
(Petitioner or respondent)

_____, a witness produced on behalf of the _____;
(Petitioner or respondent)

2. That each witness was examined under oath at such times and places as conditions of adjournment required, and that the testimony of each witness (or his answers to the interrogatories filed) was taken stenographically and reduced to typewriting by me or under my direction.

3. That after the said testimony of each witness was reduced to writing, the transcript of the testimony was read and signed by the witness in my presence, and that each witness acknowledged before me that his testimony was in all respects truly and correctly transcribed.

4. That, after the signing of the deposition in my presence, no alterations or changes were made therein.

5. That I have no office connection or business employment with the petitioner or his attorney except that of _____, objection to
(State connection)
which was waived by both parties to the proceeding.

[SEAL]

_____
(Signature of person taking depositions)

_____
(Official title)

NOTE.—This form, when properly executed, should be attached to and bound with the transcript preceding the first page thereof. It should then be enclosed in a sealed packet, with postage or other transportation charges prepaid, and directed and forwarded to the United States Tax Court, P.O. Box 70, Washington, D.C. 20044.

305. ENTRY OF APPEARANCE

(Available—Ask for form 305)

(See Rule 24)

UNITED STATES TAX COURT

_____, Petitioner, *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

ENTRY OF APPEARANCE

The undersigned, being duly admitted to practice before the United States Tax Court, hereby enters his appearance for the petitioner in the above-entitled case.

_____
(Signed)

_____
(Type signature)

_____
(Office address)

_____
(City)

A SEPARATE ENTRY OF APPEARANCE MUST BE FILED IN DUPLICATE FOR EACH DOCKET NUMBER.

b. APPEAL BOND, CORPORATE SURETY

The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the assessment and collection of tax involved in an appeal from a decision of the Tax Court. The original bond and one copy are required. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

_____, Petitioner, *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS that we _____ as principal, and _____, as surety, are held and firmly bound unto the above-named COMMISSIONER OF INTERNAL REVENUE and/or the UNITED STATES OF AMERICA, in the sum of $_____, (double the deficiency or such sum as the Tax Court has fixed upon petitioner's prior motion), to be paid to the said Commissioner of Internal Revenue and/or the United States of America for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns jointly and severally firmly by these presents.

Signed, sealed, and dated this _____ day of _____, 19__.

WHEREAS, the above named _____ is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years _____, by the United States Court of Appeals for the _____ Circuit to reverse the decision rendered in the above-entitled cause.

NOW, THEREFORE, the condition of this Obligation is such that if the above-named _____ shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by

law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

_____ [SEAL]
(For an individual petitioner)

_____
(For a corporate petitioner)
By _____
Title

_____
Surety
By _____
(Title) (Surety corporate seal)

[CORPORATE SEAL] _____
Attest: (Secretary)

c. APPEAL BOND, APPROVED COLLATERAL

A satisfactory form of bond for use in case an appellant desires to furnish aproved collateral (Treasury Department Circular No. 154, Revised), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below. The original and one copy are required in either case. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

_____, Petitioner, *v.* COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS that _____ is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of _____ ($_____) Dollars, to be paid to the said Commissioner of Internal Revenue and/or the United States of America, for the payment of which, well and truly to be made, the _____ binds itself and its successors, firmly by these presents.

Signed, sealed, and dated this _____ day of _____, 19__.

WHEREAS, the above-named _____ is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years _____ by the United States Court of Appeals for the _____ Circuit to reverse the decision rendered in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named _____ shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounden obligor, in order the more fully to secure the Commissioner of Internal Revenue and/or the United States in the payment of the aforementioned sum, hereby pledges as security therefor bonds/notes of the United States in a sum equal at their par value to the aforementioned sum, to wit: _____ dollars ($_____), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows: _____
_____
_____
which said bonds/notes have this day been deposited with the Clerk of the United States Tax Court and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of the United States Tax Court, authorizing and empowering him, as such attorney to collect or sell or transfer or assign, the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

_____ [SEAL]
(For an individual petitioner)

_____
(For a corporate petitioner)
By _____
(Title)

[CORPORATED SEAL] _____
Attest: (Secretary)

d. BOND WITH CORPORATE SURETY IN RENEGOTIATION CASES

The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the execution of an order of the Renegotiation Board (created by the Act of March 23, 1951) involved in a petition to the Tax Court. The original bond and one copy are required. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

_____, Petitioner, *v.* _____, Respondent.	Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____ as principal, and _____, as surety, are held and firmly bound unto the Renegotiation Board and/or the United States of America, in the sum of $_____ (See Rule 65 (*b*) as to amount), to be paid to the Renegotiation Board and/or the United States of America, for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns, jointly and severely, firmly by these presents.

SIGNED, sealed, and dated this _____ day of _____, 19__.

WHEREAS, the Renegotiation Board by its order dated _____ determined that the above-named principal derived excessive profits from contracts and subcontracts subject to renegotiation, during the fiscal year ended _____, in the amount of $_____; and

WHEREAS, said principal has filed or is about to file a petition in the United States Tax Court for a rede-

termination of the amout of the aforesaid excessive profits,

NOW, THEREFORE, the condition of this obligation is such that if the above-named principal shall well and truly pay the amount of profits adjudged by the United States Tax Court to be excessive, less any tax credit applicable thereto under section 3806 of the Internal Revenue Code of 1939, or section 1481, Code of 1954, with interest thereon as required by law, or if said principal, in the event that said proposed proceeding in the United States Tax Court is not timely filed, or after filing is dismissed or otherwise concluded without an adjudication by said Court as to the amount of excessive profits, shall well and truly pay the amount of profits determined by the Renegotiation Board to be excessive by its said order dated _____, less any tax credit applicable thereto under section 3806 of the Internal Revenue Code of 1939, or section 1481, Code of 1954, with interest thereon as required by law, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

_____[SEAL]
(For an individual petitioner)

_____
(For a corporate petitioner)

By _____
(Title)

_____
(Surety)

By _____
(Title) (Surety corporate seal)

[CORPORATE SEAL] _____
Attest: (Secretary)

e. BOND WITH APPROVED COLLATERAL IN RENEGOTIATION CASES

A satisfactory form of bond for use in case the petitioner in a renegotiation case filed under the Act of March 23, 1951, desires to furnish approved collateral under Rule 65 (*c*)(2), instead of furnishing a corporate surety bond, follows. Forms of power of attorney covering the pledged collateral for use with bonds secured by collateral, both in appeals from this Court in tax cases and in petitions to this Court in such renegotiation cases, are also shown below. The original instrument and one copy are required in each instance. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

_____, Petitioner, *v.* _____, Respondent.	Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS: That _____ is (are) held and firmly bound unto the Renegotiation Board and/or the United States of America in the sum of _____ ($_____) Dollars (see Rule 65 (*b*) as to amount), to be paid to the Renegotiation Board and/or the United States of America, for the payment of which, well and truly to be made, the said _____ bind(s) himself (herself, itself, or themselves) and his (her, its, or their) successors and assigns, firmly by these presents.

SIGNED, sealed and dated this _____ day of _____, 19__.

WHEREAS, the Renegotiation Board by its order dated _____ determined that the above-named _____ derived excessive profits from contracts and subcontracts subject to renegotiation, during the fiscal year ended _____ in the amount of $_____; and

WHEREAS, the above-named _____ has (have) filed or is (are) about to file a petition in the United States Tax Court for redetermination of the amount of the aforesaid excessive profits,

NOW, THEREFORE, the condition of this obligation is such that if the above-named _____ shall well and truly pay the amount of profits adjudged by the United States Tax Court to be excessive, less any tax credit applicable thereunto under section 3806 of the Internal Revenue Code of 1939, or section 1481, Code of 1954, with interest thereon as required by law, or if the above-named _____, in the event that said proposed case in the United States Tax Court is not timely filed or after filing is dismissed or otherwise concluded without an adjudication by said Court as to the amount of excessive profits, shall well and truly pay the amount of profits determined by the Renegotiation Board to be excessive by its said order dated _____, less any tax credit applicable thereto under section 3806 of the Internal Revenue Code of 1939, or section 1481, Code of 1954, with interest thereon as required by law, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

The above-bounden obligor(s) in order the more fully to secure the Renegotiation Board and/or the United States in the payment of the aforementioned sum, hereby pledge(s) as security therefor bonds/notes of the United States in a sum equal at their par value to the aforementioned sum, to wit: _____ ($_____) Dollars, which said bonds/notes are numered serially and are in the denominations and amounts, and are otherwise more particularly described as follows:

_____

_____

which said bonds/notes are being herewith deposited with the Clerk of the United States Tax Court and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of the United States Tax Court, authorizing and empowering him, as such attorney, to collect or sell or transfer or assign the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above named conditions or stipulations.

_____ [SEAL]
(For an individual petitioner)

_____
(For a corporate petitioner)

By _____
(Title)

[CORPORATE SEAL] _____
Attest: (Secretary)

f. POWER OF ATTORNEY AND AGREEMENT BY CORPORATION

KNOW ALL MEN BY THESE PRESENTS: That_____, a corporation duly incorporated under the laws of the State of _____ and having its principal office in the city of _____, State of _____, in pursuance of a resolution of the Board of Directors of said corporation, passed on the _____ day of _____, 19__, a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the Clerk of the United States Tax Court as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds or other bonds or notes of the United States, the property of said corporation, described as follows:

Title of bonds/notes	*Total face amount*	*Denomination*	*Serial No.*	*Interest rate*

such bonds/notes having been deposited by it, pursuant to the Act of July 30, 1947, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with (here enter "the Commissioner of Internal Revenue and/or the United States" or enter "the Renegotiation Board and/or the United States") under date of _____, which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the _____, the corporation hereinabove named, by _____ (Name and title of officer), duly authorized to act in the premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this _____ days of _____, 19__.

Attest:

_____

_____
(Secretary)

[CORPORATE SEAL] By_____
(Title)

STATE OF_____ } ss:
COUNTY OF_____ }

Before me, the undersigned, a notary public within and for the said county and State, personally appeared _____ (Name and title of officer), and for and in behalf of said _____, corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 19__.

[NOTARIAL SEAL] _____
(Notary Public)

My Commission expires _____

g. POWER OF ATTORNEY AND AGREEMENT BY INDIVIDUAL

KNOW ALL MEN BY THESE PRESENTS: That I (we), _____, do hereby constitute and appoint the Clerk of the United States Tax Court as attorney for me (us), and in my (our) name to collect or to sell, assign, and transfer certain United States Liberty bonds, or other bonds or notes of the United States, being my (our) property described as follows:

Title of bonds/notes	*Total face amount*	*Denomination*	*Serial No.*	*Interest dates*

such bonds/notes having been deposited by me (us) pursuant to the Act of July 30, 1937, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with (here enter "the Commissioner of Internal Revenue and/or the United States" or enter "the Renegotiation Board and/or the United States") under date of _____, which is hereby made a part thereof, and I (we), agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and I (we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, haved executed this instrument and affixed my (our) seal this _____ days of _____, 19__.

_____[SEAL]

STATE OF _____ } ss:
COUNTY OF _____ }

Before me, the undersigned, a notary public within and for the said county and State, personally appeared _____ (Name of obligor), and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 19__.

[NOTARIAL SEAL] _____
(Notary Public)

My Commission expires_____

II. Requests for place of trial.

The Court will fix the time and place for trial to afford reasonable opportunity to a taxpayer to try his case with as little inconvenience and expense as is practicable. A trial may be requested at any place at which suitable courtroom facilities are available and a sufficient number of cases are ready for trial. A partial list of cities in which sessions of the Court are held appears below. This list is published to assist parties in making requests under Rules 26 and 36. The grouping of cities indicates that it may be necessary to conduct a trial at another city if there are not sufficient cases for trials at the requested city. Moreover, if sufficient cases are not ready for trial in a city requested by a taxpayer, or if suitable courtroom facilities are not available in that city, the Court may find it necessary to calendar cases for trial in some other city within reasonably proximity of the designated place.

LIST

Alabama: Birmingham.
Alaska: Anchorage.
Arizona: Phoenix.
Arkansas: Little Rock, or Memphis, Tenn.
California: Los Angeles, San Francisco.
Colorado: Denver.
Connecticut: New Haven.
District of Columbia: Washington.
Florida: Jacksonville, Miami, Tampa.
Georgia: Atlanta.
Hawaii: Honolulu, or Los Angeles, or San Francisco, Calif.
Idaho: Boise.
Illinois: Chicago.
Indiana: Indianapolis.
Iowa: Des Moines.
Kansas: Kansas City.
Kentucky: Louisville.
Louisiana: New Orleans.
Maryland: Baltimore.
Massachusetts: Boston.
Michigan: Detroit.
Minnesota: St. Paul.
Mississippi: Jackson.
Missouri: Kansas City, St. Louis.
Montana: Helena.
Nebraska: Omaha.
Nevada: Las Vegas.
New Jersey: Newark.
New Mexico: Albuquerque.
New York: Buffalo, New York City.
North Carolina: Greensboro.
Ohio: Cleveland, Cincinnati, Columbus.
Oklahoma: Oklahoma City or Tulsa.
Oregon: Portland.
Pennsylvania: Philadelphia, Pittsburgh.
South Carolina: Columbia.
Tennessee: Knoxville, Memphis, Nashville.
Texas: Dallas, Lubbock, El Paso, San Antonio, Houston.
Utah: Salt Lake City.
Virginia: Richmond.
Washington: Seattle, Spokane.
West Virginia: Charleston, Huntington.
Wisconsin: Milwaukee, or Chicago, Ill.

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